



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 -----) ISCR Case No. 11-10282
)
)
 Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro se*

June 6, 2013

Decision

MOGUL, Martin H., Administrative Judge:

On November 28, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On December 26, 2012, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on March 20, 2013. DOHA issued a notice of hearing on March 20, 2013, and I convened the hearing as scheduled on April 4, 2013. The Government offered Exhibits 1 through 8, which were admitted without objection. Applicant testified on his own behalf and submitted Exhibits A and B, which were also admitted without objection. One additional witness also testified on behalf of Applicant. DOHA received the transcript of the hearing (Tr) on April 15, 2013. I granted Applicant's request to keep the record open until April 22, 2013, to submit additional documents. Additional

documents were identified as Exhibits C and D, and entered into evidence without objection. Based upon a review of the pleadings, exhibits, and the testimony of Applicant and his witness, eligibility for access to classified information is denied.

Findings of Fact

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and all the testimony, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 35 years old. He is divorced, and he has three children. Applicant received a Bachelor of Science degree in Business Management in 2012. Applicant is not currently employed as a civilian, but he has been employed by the United States Army National Guard from 2003 to the present. Applicant had previously served in the United States Army on active duty from August 1995 to January 2001, when he received an Honorable Discharge. Applicant is seeking a DoD security clearance in connection with his employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists 19 allegations (1.a. through 1.s.) regarding overdue debts under Adjudicative Guideline F. Applicant admitted every allegation in his RSOR except 1.m. The allegations will be discussed below in the same order as they were listed on the SOR:

1.a. This overdue debt is cited in the SOR in the amount of \$18,144. At the hearing, Applicant testified that this debt is unpaid. (Tr at 32.) I find that this debt has not been resolved.

1.b. This overdue debt is cited in the SOR in the amount of \$396. Applicant testified that this debt is unpaid. (Tr at 32.) I find that this debt has not been resolved.

1.c. This overdue debt is cited in the SOR in the amount of \$67. Applicant testified that this debt is unpaid. (Tr at 32.) I find that this debt has not been resolved.

1.d. This overdue debt is cited in the SOR in the amount of \$1,654. Applicant testified that this debt is unpaid. (Tr at 32.) I find that this debt has not been resolved.

1.e. This overdue debt is cited in the SOR in the amount of \$2,655. Applicant testified that the debts, listed as 1.e., 1.f., 1.g., and 1.h., were four education loans. He was contacted by the creditor of these student loans, and informed that if he paid a certain amount per month for nine straight months, his student loan would be reinstated in good standing. Applicant explained that he has paid \$115 a month from September 2012 to April 2013. (Tr at 33-37.) Exhibit D confirms that Applicant owes \$15,187.23 on these four debts, and he has made eight payments of \$115 toward these debts. I find that these debts are now in the process of being resolved, but Applicant still owes \$15,187.23 toward these four debts.

1.f. This overdue debt is cited in the SOR in the amount of \$3,161. This debt is reviewed in 1.e., above. I find that this debt is being resolved, but it is still owed.

1.g. This overdue debt is cited in the SOR in the amount of \$5,050. This debt is reviewed in 1.e., above. I find that this debt is being resolved, but it is still owed.

1.h. This overdue debt is cited in the SOR in the amount of \$1,654. This debt is reviewed in 1.e., above. I find that this debt is being resolved, but it is still owed.

1.i. This overdue debt is cited in the SOR in the amount of \$540. Applicant testified that this debt is unpaid. (Tr at 38.) I find that this debt has not been resolved.

1.j. This overdue debt is cited in the SOR in the amount of \$308. Applicant testified that this debt is unpaid. (Tr at 38.) I find that this debt has not been resolved.

1.k. This overdue debt is cited in the SOR in the amount of \$1,062. Applicant testified that this debt is unpaid. (Tr at 38.) I find that this debt has not been resolved.

1.l. This overdue debt is cited in the SOR in the amount of \$214. Applicant testified that this debt is unpaid. (Tr at 38.) I find that this debt has not been resolved.

1.m. This overdue debt is cited in the SOR in the amount of \$39,546. Applicant denied this allegation in his RSOR. He testified that this debt is the same as that listed as 1.m., above. He had no documentation to establish that this was the same debt as that listed as 1.a., but he could not think of any debt he would have in this amount, except for 1.a., which was for a repossessed vehicle that he had owned. (Tr at 38-39.) Exhibit 2 page 15, and Exhibit 4 page 13 show that 1.a. and 1.m. are duplicate debts. However, Exhibit 4, the more recent credit report, shows that the amount owed on this debt is \$39,546. I find that this debt is a duplicate of 1.a., above, but Applicant owes \$39,546 on this debt.

1.n. This overdue debt is cited in the SOR in the amount of \$75. Applicant testified that this debt is unpaid. (Tr at 39.) I find that this debt has not been resolved.

1.o. This overdue debt is cited in the SOR in the amount of \$1,348. Applicant testified that he believed that this debt and 1.p., 1.q., 1.r., and 1.s., below, are for student loans and are duplicates of the debts listed as 1.e. through 1.h. (Tr at 39-41, 43-45.) However, Applicant did not furnish any evidence to establish that any of these debts are duplicates of any debts listed above. I find that this debt has not been resolved.

1.p. This overdue debt is cited in the SOR in the amount of \$2,165. This debt is reviewed in 1.o., above. I find that this debt is still owed.

1.q. This overdue debt is cited in the SOR in the amount of \$1,348. This debt is reviewed in 1.o., above. I find that this debt is still owed.

1.r. This overdue debt is cited in the SOR in the amount of \$4,020. This debt is reviewed in 1.o., above. I find that this debt is still owed.

1.s. This overdue debt is cited in the SOR in the amount of \$2,102. This debt is reviewed in 1.o., above. I find that this debt is still owed.

Applicant explained that his financial problems occurred as a result of some periods of underemployment and unemployment, in part because his deployments would take him away from his temporary employment, and would result in his losing those positions. Applicant was deployed on three occasions, from 2003 to 2004, 2006 to 2007, and 2009 to 2010, and he was unemployed from January to December 2001, April to December 2007, and from June 2010 to May 2011. He also contended that his divorce, which was finalized in January 2005, hurt him financially. (Tr at 45-49.)

In reviewing Applicant's current financial status, he testified that he has two children with one woman and another child with another woman, and he has been ordered to pay each woman \$500 a month toward child support, but because of his current unemployment situation he pays each of them \$221 a month. (Tr at 56-59.) Applicant testified that he has not considered filing bankruptcy, because he did not want to have a bankruptcy on his record. (Tr at 65.)

Applicant submitted a Personal Financial Statement, dated April 3, 2013. It showed Applicant currently has a net monthly income of \$1,576 and monthly expenses of \$1,510. However, since it shows \$0 for child support and does not list any debts, I do not find it to be an accurate assessment of Applicant's current financial picture. (Exhibit B.)

Mitigation

As stated above, one witness testified on behalf of Applicant. The witness, a Sergeant First Class in the United States Army, has known Applicant since 2007, initially working with him for 10 months, and then working with him again in 2011, on a monthly basis during National Guard drills. He described Applicant as "very knowledgeable," with "a good soldier personality. . . and very trustworthy." (Tr at 68-73.)

Additionally, Applicant offered into evidence a recommendation letter from Applicant's Commanding Officer, who wrote that Applicant has served the Army National Guard and the United States Army in an Honorable manner for 17 years. (Exhibit A.)

Finally, Applicant also submitted a positive character letter from his former civilian supervisor. The supervisor has managed Applicant for one and a half years and described Applicant as someone who "displays excellence and is a strong advocate of the military both in the work place and to the community." (Exhibit C.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns and could potentially apply in this case. Under AG ¶ 19(a), "an inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. I find that both of these disqualifying conditions apply to Applicant in this case. The evidence has established that Applicant has accumulated significant delinquent debt.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties: Under AG ¶ 20(b), it may be mitigating where "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances." As noted above, Applicant testified that his financial problems resulted from several factors beyond his control, including periods of unemployment and underemployment, and Applicant's divorce.

While I find that Applicant has attempted to act responsibly by making some small payments toward the education loans, I find that he is still overdue on the vast majority of past debt, so I cannot consider this mitigating condition applicable.

Similarly, I cannot find that AG ¶ 20(d) is applicable, because, as discussed above, while Applicant has "initiated a good-faith effort" to become current on some of his overdue education loans, there is still far too much outstanding debt to allow this mitigating condition to be applied. I also can not find that any other mitigating condition is a factor for consideration in this case.

I conclude that until Applicant has significantly reduced or resolved his overdue debt in a far more significant amount, he has not mitigated the financial concerns of the Government.

Whole-Person Concept

Under the whole-person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2 (a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2 (c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above as to why the disqualifying conditions apply and the mitigating conditions do not apply, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.b. -1.d.:	Against Applicant
Subparagraphs 1.i.-1.s.:	Against Applicant
Subparagraphs 1.a., 1.e., 1.f., 1.g., 1.h.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge