



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 11-13712
)	
)	
Applicant for Security Clearance)	

Appearances

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

September 19, 2013

Decision

MOGUL, Martin H., Administrative Judge:

On February 28, 2013, 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 March 27, 2013, 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 May 28, 2013. DOHA issued a notice of hearing on May 29, 2013, and I convened the hearing as scheduled on June 13, 2013. The Government offered Exhibits 1 through 7, which were admitted without objection. Applicant testified on his own behalf, called one additional witness, and submitted Exhibits A and B, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on June 24, 2013. I granted Applicant's request to keep the record open until June 28, 2013, to submit additional documents. Additional documents were submitted, identified

as Exhibits C through F, 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 Applicant's testimony, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 52 years old. He is married, and he has one daughter. Applicant received a Bachelor of Science degree in Finance in 1983. Applicant is employed by a defense contractor, but he is not currently working due to lack of contract work. He is seeking a DoD security clearance in connection with his employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists 10 allegations (1.a. through 1.j.) regarding overdue debts and failure to file Federal and state taxes, under Adjudicative Guideline F. 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 \$1,553 for a judgement entered against him by City A in May 2008. At the hearing, Applicant denied this allegation. He testified that this debt is paid, and that he checked with City A and they confirmed that he did not owe a debt. (Tr at 33-38.) Exhibit C confirms that this debt was paid on June 19, 2009. I find that this debt has been resolved.

1.b. This overdue debt is cited in the SOR in the amount of \$1,133 for a lien from State A. Applicant testified that this debt is paid. He stated that his wages were garnished in 2011 and 2012, and it appears that the amount garnished was the amount of this debt. (Tr at 38-39.) Exhibits 3 and 6 show that some liens have been released. However, they do not show that a lien in the amount of this lien has been released. Therefore, I do not find that this debt has been resolved.

1.c. This overdue debt is cited in the SOR in the amount of \$5,000 for a lien from State A. Applicant testified that this debt is being paid by his wife in the amount of \$35 a month, but he did not know how much was paid or the amount that is still owed. (Tr at 39-42.) Exhibit 6 shows that this lien was released on February 2013. I find that this debt has been resolved.

1.d. This overdue debt is cited in the SOR in the amount of \$1,150 for a lien from State A. Applicant testified that this debt was paid. (Tr at 42-43.) However, Exhibit 3 shows this lien has not been satisfied. I find that this debt has not been resolved.

1.e. This overdue debt is cited in the SOR in the amount of \$80.96 for a check issued by Applicant with insufficient funds. (Tr at 43-46.) Applicant testified that he

thought this debt was paid. However, Exhibit 6 shows that this debt is still owed. I find that this debt has not been resolved.

1.f. This overdue debt is cited in the SOR in the amount of \$136,000 for a defaulted mortgage account. Applicant testified that this debt was for his primary residence that he purchased in September 1993, and went into foreclosure in August 2011. Applicant contends that he does not owe anything on this defaulted loan. (Tr at 46-48.) Exhibit E shows that there was a trustee sale of this foreclosed property. Applicant wrote on Exhibit E that there was no deficiency judgement issued against him for the property. Exhibit 6 does not show any amount owing on this debt. I find that this debt has been resolved.

Applicant explained that he used this residence as a means to purchase six rental properties. When the economic slowdown occurred, they had many vacancies and they did not have sufficient funds to renovate the properties to obtain new tenants. At this point, Applicant does not own any properties. He rents his primary residence. (Tr at 48-50.)

1.g. This overdue debt is cited in the SOR in the amount of \$1,293,000 for a defaulted mortgage account. Applicant testified that this loan was actually for \$129,300, and that an error had been made showing the amount stated on the SOR. Applicant also stated that this debt was for another residence, and the debt had been satisfied when the property was sold. (Tr at 50-54.) Exhibit B is a letter from the creditor of this debt showing that the debt was paid on June 23, 2009. Exhibit F establishes that the loan was for \$129,500. I find that this debt has been resolved.

1.h. This overdue debt is cited in the SOR in the amount of \$78 for a medical collection account. Applicant denied this debt because he could not ascertain the origin of the debt. He indicated that since the debt is so small he would just pay it, but no post hearing documents were introduced to show the debt had been paid. I find that this debt has not been resolved.

1.i. The SOR alleges that Applicant failed to file State A tax returns for tax years 2008, 2009, 2010, and 2011. Applicant confirmed that he had not filed State A tax returns for the years alleged. In addition, he had not filed State A tax returns for tax years 2003 and 2004. Finally, Applicant confirmed that he had not filed a State A tax return for tax year 2012. While he indicated that he had filed a State A tax return for tax year 2009, no post hearing documents were offered to prove that Applicant had filed a State A tax return for tax year 2009. (Tr at 57-59.)

1.j. The SOR alleges that Applicant failed to file Federal tax returns for tax years 2005, 2006, 2007, 2008, and 2009. Applicant confirmed that he had not filed Federal tax returns for the years alleged. In addition, he believed that he did not file Federal tax returns for tax years 2003 and 2004. Applicant also confirmed that he had not filed a Federal tax return for tax year 2012. (Tr at 59-60.)

Applicant produced no evidence that he had filed Federal or State A tax returns for the tax years discussed in 1.i. and 1.J., above. I find that Applicant has not filed State A tax returns for tax years 2003, 2004, 2008, 2009, 2010, 2011, and 2012. I also find that Applicant has not filed Federal tax returns for tax years 2003, 2004, 2005, 2006, 2007, 2008, 2009, and 2012.

Applicant explained that he and his wife failed to file Federal and State A tax returns because they had a lot of real estate and needed to verify expenses, revenues, and write-offs. He also testified that when he contacted tax accountants or tax attorneys, they estimated that it would cost him between \$2,500 and \$3,500 as an initial payment to start working on the taxes, and it could cost him between \$4,000 and \$5,000 per each tax year return. Applicant claimed that he contacted the IRS and was told to file the returns as soon as possible, which is what he stated he plans to do. (Tr at 60-62.)

Applicant explained that his financial problems occurred as a result of the downturn in the economy, when it became difficult to find tenants for his rental properties. Also, his wife became unemployed for a period of time. Finally, Applicant had a telecommunication business which he started in 1996 and closed in 2008. (Tr at 71-74.)

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. Also, AG ¶ 19(g), “failure to file annual Federal, state or local income tax returns as required” is applicable in this case as Applicant has failed to file both Federal and state tax returns for many years, including the most recent tax year of 2012.

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 a downturn in the economy that resulted in his losing tenants for his rental properties, all of which he eventually lost, periods of unemployment of his wife, and the failure of his business.

While many of the debts listed on the SOR have been satisfied, I do not find that Applicant has attempted to act responsibly since most of these debts were resolved either through liens or foreclosures. Also, Applicant’s willful failure to file Federal and state tax returns for many years, and as recently as for tax year 2012, is a most egregious example of irresponsible conduct. Therefore, I do not consider this mitigating condition applicable.

Similarly, I cannot find that AG ¶ 20(d) is applicable, because, as discussed above, Applicant’s debts have been resolved by means of liens and foreclosures, and Applicant has failed to file Federal and state tax returns for many years. I also can not find that any other mitigating condition is a factor for consideration in this case. I conclude that Applicant 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., 1.e:	Against Applicant
Subparagraphs 1.a., 1.c., 1.f., 1.g.:	For Applicant
Subparagraphs 1.h.- 1.j.:	Against 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