



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



In the matter of:)
)
-----) ISCR Case No. 11-14407
)
)
Applicant for Security Clearance)

Appearances

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

December 12, 2013

Decision

MOGUL, Martin H., Administrative Judge:

On May 8, 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 after September 1, 2006.

On June 7, 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 August 1, 2013. DOHA issued a notice of hearing on August 20, 2013, for the hearing to be scheduled on September 9, 2013. Because of a scheduling conflict the hearing was taken off calendar. DOHA issued a second notice of hearing on August 20, 2013, for the hearing to be scheduled on October 10, 2013. Because of an additional scheduling conflict the hearing was again taken off calendar. DOHA issued a third notice of hearing on October 16, 2013, and the hearing was heard on November 6, 2013.

The Government offered Exhibits 1 through 4, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through L at the time of hearing, which were also received without objection. DOHA received the transcript of the hearing (Tr) on November 15, 2013. I granted Applicant's request to keep the record open until November 20, 2013, to submit additional documents, and documents were timely received and entered into evidence as Exhibit M, without objection. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

Findings of Fact

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

Applicant is 53 years old. He is married, although he is officially separated, and he has two daughters. Applicant's wife was present at the hearing to give him moral support and to help him with his presentation of the case. Applicant served in the United States Navy from 1978 to 1982, and he was Honorably Discharged. Applicant earned a Ph.D. in Electrical Engineering in 1999, as well as a Master of Science degree in 1992 and a Bachelor of Science degree in 1988. Applicant has been employed by his current employer, a defense contractor, for 25 years, and he is seeking a DoD security clearance in connection with employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists 1 allegation (1.a.) regarding an overdue debt under Adjudicative Guideline F:

1.a. This overdue debt is cited in the SOR to a County Superior Court for a money judgement in favor of Applicant's estranged spouse for attorney's fees, and delinquent spousal and child support in the approximate amount of \$60,111. Applicant admitted this allegation in his RSOR with an explanation.

At the hearing, Applicant testified that this debt arose out of his pending divorce from his spouse. On October 24, 2010, the court froze the majority of his savings, which included \$386,396 in his 401k and \$144,212 in a CD savings account for his children's college education, totaling \$530,608. He was also ordered to pay \$114,000 on that day, two amounts for attorneys fees of \$29,000 and \$25,000, and \$60,000 to his wife. Three levies were issued for these three debts. (Tr at 39-43.) Exhibit 3 includes copies of all three levies.

According to Applicant, two of the levies, the ones for the attorneys' fees, were paid from Applicant's assets, and those debts were resolved. However, the levy order for payment to Applicant's wife did not include a number identifying that the money was to be drawn from Applicant's CD account. Because of this only \$28,529 was withdrawn

and paid to Applicant's wife, rather than the court ordered \$60,000. Applicant averred and the evidence suggests that the debt would have been resolved completely if not for the clerical error of not including the CD number on the levee notice. (Tr at 44-52.) Applicant's RSOR Attachment C confirms that \$28,529 was withdrawn on January 8, 2013. Exhibit M includes three cancelled check, establishing that the three payments were made as testified by Applicant.

Applicant testified that his wife received a letter from her attorney explaining to her that \$31,550 was still owed to her by her husband, and inquiring as to whether she wanted them to pursue this resolution of the debt. Exhibit H is the letter, dated June 10, 2013, from Applicant's wife's attorney. Applicant further testified that the amount now owed to his wife is not the \$60,000 as stated in the SOR, but actually \$31,550 as reviewed in her attorney's letter, because she has already received the payment of \$28,529. (Tr at 44- 59.)

Finally, Applicant testified most credibly that the assets to pay the additional amount owed to his wife are still in his frozen funds, and he has not opposed having the amount owed taken from these funds and transferred to his wife. He contends that he has "encouraged her to get that money." (Tr at 66.) RSOR Attachment C establishes that Applicant has more than sufficient funds remaining in the account from which the money was drawn that partially paid his wife, to pay the additional amount owed to his wife. Finally, in the post hearing submissions offered by Applicant, he wrote that he and his wife were scheduled to meet with his wife's attorney on November 26, 2013, to attempt to resolve the remaining debt owed by Applicant to his wife. (Exhibit M.)

Applicant also testified, and the credit report confirmed, that with the exception of the one SOR debt, Applicant is current on all of his other debts. He stated that his mortgage is paid off, as are his vehicles, and no other debt is overdue. (Tr at 67-69.) (Exhibit 2.)

Mitigation

Applicant submitted several post hearing documents, including certificates and awards. One certificate congratulated him for his employment with his current employer for 25 years, and another one he received as an "Innovation Award" from his employer. Applicant also submitted letters thanking him for speaking to public school classes about his work, and for being a judge at a science fair. (Exhibit M.)

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 common sense 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 "any 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 concerns relating to the guideline for Financial Considerations are 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 do not find that either of these disqualifying conditions apply to Applicant in this case, nor do any other disqualifying conditions apply to this case.

The evidence has established that Applicant has been up to date on all of his other debts, and he has done everything he reasonably could do to resolve the one delinquent debt that is the subject of the SOR. Applicant actually had three debts as a result of his divorce. Two of the debts have been paid in full, and the SOR debt to his wife was reduced by approximately 50% to \$31,550. Additionally, I am convinced that Applicant has acted responsibly by using every reasonable means available to him to attempt to resolve the remaining part of the debt to his wife.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties. While I have ruled that no disqualifying conditions apply to this case, I do find that certain mitigating conditions are applicable. 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 reviewed above, Applicant's divorce resulted in three debts. I find that Applicant has acted responsibly as two debts have been paid in full, and the debt listed on the SOR has been reduced by half. Additionally, Applicant has acted responsibly by not only not opposing having his funds transferred to his wife, but, in fact, encouraging her to have them transferred. I find that this mitigating condition is applicable.

Similarly, I find that AG ¶ 20(d) is applicable, because, as discussed above, Applicant has "initiated a good-faith effort" to resolve his one overdue debt. I conclude that Guideline F, Financial Considerations, is found for Applicant.

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 no disqualifying conditions apply, together with Applicant's excellent overall financial history, I find that the record evidence leaves me with no questions or 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 mitigated the security concerns under the whole-person concept.

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: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul
Administrative Judge