



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



In the matter of:)	
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)	ISCR Case No. 12-00993
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

January 10, 2014

Decision

MOGUL, Martin H., Administrative Judge:

On April 25, 2013, in accordance with Department of Defense (DoD) Directive 5220.6, the DoD issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. (Item 1.) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD 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 July 7, 2013, Applicant replied to the SOR (RSOR) in writing, and he requested that his case be decided on the written record in lieu of a hearing. (Item 2.) On September 26, 2013, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered seven documentary exhibits. (Items 1-7.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on November 2, 2013. Applicant did not submit a response. The case was assigned to this Administrative Judge on November 26, 2013.

Based upon a review of the pleadings and exhibits, 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, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 41 years old. He is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists nine allegations (1.a. through 1.i.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. No evidence was introduced to show that any of the debts listed on the SOR has been resolved or reduced. The debts 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 for a medical account in the amount of \$240. Applicant admitted this SOR allegation in his RSOR. (Item 2.) I do not find that this debt has been resolved or reduced.

1.b. This overdue debt is cited in the SOR for a collection account in the amount of \$200. Applicant admitted this SOR allegation in his RSOR. (Item 2.) I do not find that this debt has been resolved or reduced.

1.c. This overdue debt is cited in the SOR for a collection account in the amount of \$3,261. Applicant admitted this SOR allegation in his RSOR. (Item 2.) I do not find that this debt has been resolved or reduced.

1.d. This overdue debt is cited in the SOR for a collection account in the amount of \$2,010. Applicant admitted this SOR allegation in his RSOR. (Item 2.) In Applicant's Subject Interview, he contended that this debt is the same as the debt listed as 1.c., above. (Item 7.) However, there are different account numbers in the credit reports, for each of these debts. (Items 5,6.) Applicant has not produced any evidence to establish that these two debts are the same. I therefore, find that this debt is not the same as 1.c., and I do not find that this debt has been resolved or reduced.

1.e. This overdue debt is cited in the SOR for a collection account in the amount of \$6,738. Applicant admitted this SOR allegation in his RSOR. (Item 2.) I do not find that this debt has been resolved or reduced.

1.f. This overdue debt is cited in the SOR for a collection account in the amount of \$6,851. Applicant admitted this SOR allegation in his RSOR. (Item 2.) I do not find that this debt has been resolved or reduced.

1.g. This overdue debt is cited in the SOR for a collection account in the amount of \$2,392. Applicant admitted this SOR allegation in his RSOR. (Item 2.) I do not find that this debt has been resolved or reduced.

1.h. This overdue debt is cited in the SOR for a collection account in the amount of \$2,392. Applicant admitted this SOR allegation in his RSOR. (Item 2.) In Applicant's Subject Interview, he contended that this debt is the same as the debt listed as 1.g., above. (Item 7.) However, there are different account numbers in the credit reports, for each of these debts. (Items 5,6.) Applicant has not produced any evidence to establish that these two debts are the same. I therefore, find that this debt is not the same as 1.g., and I do not find that this debt has been resolved or reduced.

1.i. This overdue debt is cited in the SOR for a charged off account in the amount of \$1,067. Applicant denied this SOR allegation in his RSOR, claiming that he had no record of this debt. (Item 2.) The Credit Report, dated November 15, 2013, at page 12 shows this debt is owed by Applicant. (Item 5.) I do not find that this debt has been resolved or reduced.

Applicant explained in his RSOR that he and his wife are Realtors, and while it was not uncommon to go for several months without receiving commission checks, in 2007, when the real estate market began its crash, the time without paychecks expanded to several months and they realized they had a problem. During this period, they also owned three homes that they were attempting to sell, and for which they had monthly mortgage payments.

As a result of no income and payments due for three homes, they began to deplete their savings quickly. They changed their careers and opened a lawn care business that just supplied enough income to take care of the essentials. Applicant wrote in the RSOR that since 2007 they only pay cash for what they need. Applicant did take out a credit card to use when he is traveling, but he pays it off immediately. Finally, Applicant indicated that they have started to pay off his wife's debts, and soon they will start paying off his debts. However, no evidence was introduced to show that any of the debts listed on the SOR have been resolved or reduced.

In Applicant's Subject Interview, he explained that in 2006, he and his wife bought five new homes for investment purposes, in addition to their own residence. They hoped to be able to sell the homes, but they were unable to do so. Sometime in either 2006 or 2007, they were unable to make the mortgage payments, and all of the homes were returned to the builder. (Item 7.)

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 that 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 accumulated significant delinquent debt, most of which has been overdue for several years.

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." While a business downturn is part of the reason for Applicant's financial difficulties, I also find that his purchasing of five homes on speculation, when he clearly did not have the income to make the required payments, shows poor judgement, and his action was certainly within his control. Also, since there is no evidence that Applicant has made any attempt to resolve the overdue debts listed on the SOR, which were incurred several years ago, I do not find that Applicant has acted responsibly. Therefore, this mitigating condition is not applicable in this case.

Because Applicant indicated on his Subject Interview that he never received financial counseling or debt consolidation services I do not find that AG ¶ 20(c) is applicable. (Item 7.) Additionally, I do not find that AG ¶ 20(d) is applicable, since Applicant has not "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts [listed on the SOR]." Finally, I do not find any other mitigating condition applies to this case. Therefore, I find Guideline F against 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 the lack of evidence to establish that Applicant has made any attempt to resolve the past-due debts listed on the SOR, 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 under the whole-person concept.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. - 1.i.:	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