



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-01601

Appearances

For Government: Tovah Minster, Esquire, Department Counsel

For Applicant: *Pro se*

June 27, 2016

Decision

MOGUL, Martin H., Administrative Judge:

On August 19, 2015, the Department of Defense (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; 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 September 12, 2015, 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 1.) On October 27, 2015, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant on November 4, 2015. In the FORM, Department Counsel offered six documentary exhibits. (Items 1-6.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due by December 10, 2015. Applicant submitted additional evidence, which has been identified and entered into evidence as Items A through G. The case was assigned to this Administrative

Judge on January 5, 2016. 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 46 years old, and he is married and has 4 children. He earned a Bachelor's degree in 1994. Applicant has been employed since 2010 as a Computer Operator by his current employer, a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector. (Items 2, F.)

Guideline F, Financial Considerations

The SOR lists five allegations (1.a. through 1.e.) regarding financial difficulties, specifically delinquent debts, 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 for a collection account in the amount of \$518. In his RSOR, Applicant admitted this SOR allegation. In his Post-FORM letter, Applicant wrote that this debt had been paid off. Applicant also included a letter from the creditor indicating that they would accept three monthly payments of \$104.48 to settle this debt. (Item A.) Item E shows that the creditor made an arrangement with Applicant to debit electronically \$104.48 from Applicant's account on September 11, 2015, for this debt.

1.b. This overdue debt is cited in the SOR for a judgement filed against Applicant in April 2009, in the amount of \$14,892. In his RSOR, Applicant admitted this SOR allegation, and he wrote that he was unable to negotiate at this time. (Item 1.) In his Post-FORM letter, Applicant wrote that this judgment debt had been placed with a law firm that informed Applicant a portion of his wages would be garnished bi-weekly for the next six months. (Item A.) Items F and G show that \$357.73 was deducted from the paycheck of Applicant on November 29, 2015. No evidence was introduced to establish the total amount that has been deducted from Applicant's pay or how much is still owing on this debt.

1.c. This overdue debt is cited in the SOR for a collection account in the amount of \$2,506. In his RSOR, Applicant admitted this SOR allegation. (Item 1.) In his Post-FORM letter, Applicant wrote that he is currently on a payment schedule for this debt to pay \$156.25 a month until this debt is resolved. (Item A.) Item E shows that Applicant has made one payment of \$163.75 on September 14, 2015, and two payments of \$156.25 on October 14, 2015, and November 17, 2015, toward this debt.

1.d. This overdue debt is cited in the SOR for a collection account in the amount of \$5,649. In his RSOR, Applicant admitted this SOR allegation. (Item 1.) In his Post-

FORM letter, Applicant wrote that he is currently on a payment schedule for this debt to pay \$187.90 a month until this debt is resolved. (Item A.) Item D shows that Applicant has made three payments of \$187.90 on September 28, 2015; October 26, 2015; and November 23, 2015; and three additional payments of \$104.48.

1.e. This overdue debt is cited in the SOR for a collection account in the amount of \$3,677. In his RSOR, Applicant admitted this SOR allegation. (Item 1.) In his Post-FORM letter, Applicant wrote that he is currently on a payment schedule for this debt to pay \$155 a month until this debt is resolved. (Item A.) Item C shows that Applicant has made two payments of \$155 on October 26, 2015, and November 23, 2015, toward this debt.

Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP) on July 26, 2011, and he explained each of his delinquent debts, writing, "In Year 2008, had difficulty paying bills due to being laid off at 2nd job due to company file [sic] bankruptcy." (Item 2.) As reviewed above, Applicant began working at his present employment in 2010, but he gave no explanation for why he did not begin attempting to resolve his debts until 2015, after the SOR was issued.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised 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 accumulated significant delinquent debt several years ago.

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 reviewed above, some of Applicant’s financial difficulties occurred as a result of his periods of unemployment. However, since Applicant has been employed by his current employer since 2010, and only began making payments toward the SOR debts after the SOR was

issued in 2015, I find that Applicant has not acted responsibly. Accordingly, I find that this mitigating condition is not applicable in this case.

¶ 20(d) is now applicable but not controlling, since Applicant has begun taking action to “initiate a good-faith effort to repay his overdue creditors or otherwise resolve debts,” because even though he has been working at his present employment since 2010, he did not begin this process until after the SOR was issued in 2015. To be applicable and controlling in the future, Applicant must establish a consistent history of continuing to resolve these delinquent past debts and not become past due on his present debts. At this time, 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 all of the reasons cited above as to why the mitigating conditions are not applicable at this time, 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.e.:

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