



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



In the matter of:)
)
) ISCR Case No. 14-06287
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esquire, Department Counsel
For Applicant: *Pro se*

November 4, 2016

Decision

MOGUL, Martin H., Administrative Judge:

On November 13, 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 December 8, 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 2.) On February 9, 2016, Department Counsel issued the Department's written case. On February 10, 2016, a complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered nine documentary exhibits. (Items 1-9.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on March 17, 2016. Applicant submitted five, one page character letters, identified and entered into evidence without objection as Item A. The case was assigned to this Administrative

Judge on May 11, 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 41 years old. He was born in the Philippines. Applicant is married for the second time. He attended community college. Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector. (Item 3.)

Guideline F, Financial Considerations

The SOR lists eight allegations (1.a. through 1.h.) regarding financial difficulties, specifically the filing of two bankruptcies and 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. It is alleged in the SOR that Applicant filed a Chapter 7 Bankruptcy in November 2007, which was dismissed in 2008. Applicant admitted this SOR allegation in his RSOR. He wrote that he filed the Chapter 7 Bankruptcy due to unexpected medical expenses related to the pregnancy of his wife and third child, who was born in June 2007, and from the medical bills of his mother-in-law. Applicant also filed bankruptcy so that he could refinance his home mortgage. Finally, Applicant wrote that this bankruptcy was dismissed in 2008, because it was determined that he had the means to make minimum payments toward his debt. (Item 2.)

1.b. It is alleged in the SOR that Applicant filed a Chapter 13 Bankruptcy in October 2013, with liabilities totaling \$47,945 and assets totaling \$44,628. This bankruptcy was dismissed in April 2014. Applicant admitted this SOR allegation in his RSOR. He wrote that he filed the Chapter 13 Bankruptcy at the advice of his bankruptcy attorney as it would be the best way to consolidate all of his debts and properly manage his debts. (Item 2.)

Items 5 and 6 include the Trustee's Final Report and Account, which establishes that Applicant's Chapter 13 Bankruptcy was dismissed on April 30, 2014, for Applicant's failure to appear and testify at the regularly scheduled and duly noticed first meeting of creditors. No claims were discharged in this Chapter 13 Bankruptcy. Applicant provided no explanation for his failure to appear at the first meeting of creditors.

1.c. This overdue debt is cited in the SOR for a delinquent account in the amount of \$9,999. Applicant admitted this SOR allegation in his RSOR. He wrote that this debt was part of a debt consolidation filed under the Chapter 13 Bankruptcy. (Item 2.) As reviewed in 1.b., above, no debts were discharged in this dismissed Chapter 13

Bankruptcy. I find that no independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.d. This overdue debt is cited in the SOR for a delinquent account in the amount of \$6,107. Applicant admitted this SOR allegation in his RSOR. He wrote that this debt was part of debt consolidation filed under the Chapter 13 Bankruptcy. (Item 2.) I find that this debt was not discharged in bankruptcy, and no independent evidence has been introduced to establish that the debt has been resolved or reduced.

1.e. This overdue debt is cited in the SOR for a delinquent account in the amount of \$3,745. Applicant admitted this SOR allegation in his RSOR. He wrote that this debt was part of debt consolidation filed under the Chapter 13 Bankruptcy. (Item 2.) I find that this debt was not discharged in bankruptcy, and no independent evidence has been introduced to establish that the debt has been resolved or reduced.

1.f. This overdue debt is cited in the SOR for a delinquent account in the amount of \$372. Applicant admitted this SOR allegation in his RSOR. He wrote that this debt was part of debt consolidation filed under the Chapter 13 Bankruptcy. (Item 2.) I find that this debt was not discharged in bankruptcy, and no independent evidence has been introduced to establish that the debt has been resolved or reduced.

1.g. This overdue debt is cited in the SOR for a delinquent medical account in the amount of \$229. Applicant admitted this SOR allegation in his RSOR. He wrote that this medical debt should have been paid by his medical insurance company. He contended that he has questioned his medical insurance company as to why this bill was not paid, but has received no response. (Item 2.) No independent evidence has been introduced to establish that the debt has been resolved or reduced.

1.h. This overdue debt is cited in the SOR for a delinquent medical account in the amount of \$152. Applicant admitted this SOR allegation in his RSOR. He wrote that this medical debt should also have been paid by his medical insurance company. He contended that he has questioned his medical insurance company as to why this bill was not paid, but has received no response. He indicated that he planned to make an arrangement to pay the full amount of this debt. (Item 2.) No independent evidence has been introduced to establish that the debt has been resolved or reduced.

As reviewed above, Applicant submitted five Post-FORM character letters. (Item A.) He was described in them as a “one of the most reliable employees,” and “trustworthy and reliable.”

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 AG ¶ 2 describing 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 the applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.

A person who applies for access to classified information seeks to enter 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 adverse 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, much of it several years old, which has not been satisfied.

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, Applicant explained his financial difficulties occurred, in part, because of the medical bills of his wife and daughter, and his mother-in-law. However, Applicant has not been responsible in attempting to resolve the delinquent SOR debts. While he initially attempted to use the legal means of bankruptcy to resolve the debts, he failed to meet his legal responsibility to appear at the regularly scheduled and duly noticed first meeting of creditors, resulting in the bankruptcy being dismissed without resolving any of the overdue debts. Therefore, I find that this mitigating condition is not a factor for consideration in this case.

Since there is no evidence that Applicant has initiated a good-faith effort to repay any of the overdue creditors, I do not find that AG ¶ 20(d) is applicable. I also do not find any other mitigating condition applies to this case. Finally, no evidence has been introduced to establish that Applicant's current financial situation is stable and secure. 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

