



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



In the matter of:

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) ISCR Case No. 15-02113
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Applicant for Security Clearance

Appearances

For Government: Alison O'Connell Esquire, Department Counsel
For Applicant: *Pro se*

September 29, 2016

Decision

MOGUL, Martin H., Administrative Judge:

On September 25, 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 DoD after September 1, 2006.

On November 6, 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 4.) On December 18, 2015, 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 eight documentary exhibits. (Items 1-8.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on January 27, 2016. Applicant submitted additional documents, which have been identified and entered into evidence without objection as Items A through E. The case was assigned to this Administrative

Judge on April 1, 2016. Based upon a review of the pleadings and exhibits, 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 additional documents, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 29 years old. He has never been married and he has no children. Applicant 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 10 allegations (1.a. through 1.j.) regarding financial difficulties, specifically overdue debts, and failure to file Federal tax returns, under Adjudicative Guideline F. The delinquent 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 past-due account in the amount of \$1,185. In his RSOR, Applicant admitted this debt, and he wrote that he is in dispute with the holder of this debt, and he refuses to pay for this debts until a proper review of his account can be made. (Item 4.) Applicant's post-FORM documents include his bank statement, which shows that he made a payment of \$100 to this creditor. He also wrote that this creditor refused to set up a recurring payment plan for this account so he planned to send \$100 every month. (Item C.) Applicant appears to have now begun the process of resolving this debt

1.b. This overdue debt is cited in the SOR for a state tax lien filed against Applicant in 2012, in the amount of \$6,065. In his RSOR, Applicant denied this debt, and he wrote this debt belonged to his father and it has been expunged from his record. (Item 4.) Applicant submitted a post-FORM letter from the state of the tax lien, dated October 30, 2015. The letter states that all of the liens cited on the SOR as 1.b. through 1.f., did not belong to Applicant, but instead belonged to an individual with the same first and last name as Applicant, but with a different middle initial. (Item A.) The Electronic Questionnaires for Investigations Processing (e-QIP) shows that Applicant's father has the same name as that identified in Item A. (Item 5.) I find that this debt is not owed by Applicant.

1.c. This overdue debt is also cited in the SOR for a state tax lien filed against Applicant in 2012, in the amount \$11,654. In his RSOR, Applicant denied this debt, and he wrote this debt also belonged to his father and it has been expunged from his record. (Item 4.) I find that this debt is not owed by Applicant.

1.d. This overdue debt is also cited in the SOR for a state tax lien filed against Applicant in 2012, in the amount \$874. In his RSOR, Applicant denied this debt, and he

wrote this debt also belonged to his father and it has been expunged from his record. (Item 4.) I find that this debt is not owed by Applicant.

1.e. This overdue debt is also cited in the SOR for a state tax lien filed against Applicant in 2012, in the amount \$4,223. In his RSOR, Applicant denied this debt, and he wrote this debt also belonged to his father and it has been expunged from his record. (Item 4.) I find that this debt is not owed by Applicant.

1.f. This overdue debt is also cited in the SOR for a state tax lien filed against Applicant in 2013, in the amount \$10,197. In his RSOR, Applicant denied this debt, and he wrote this debt also belonged to his father and it has been expunged from his record. (Item 4.) I find that this debt is not owed by Applicant.

1.g. This overdue debt to the Department of Education is cited in the SOR for a past-due account in the amount of \$521, with a balance of \$3,216. In his RSOR, Applicant admitted this debt, and he wrote that he does intend to pay this debt. (Item 4.) Applicant submitted a letter from the collection agency collecting the debts for the Department of Education, dated January 5, 2016. (Item B.) It confirmed that Applicant owed in total \$7,340, and he had made a payment arrangement to pay \$150 a month toward this debt, starting on January 20, 2016, and to continue making monthly payments of \$150 for the next six months, after which time the loan may be readjusted based on Applicant's finances. Applicant also submitted his bank statement showing that he made two payments of \$200 each to the Department of Education on January 6, 2016, and January 11, 2016. (Item C.) I find that Applicant has begun the process of resolving his overdue debts to the Department of Education.

1.h. This second overdue debt to the Department of Education is cited in the SOR for a past-due account in the amount of \$328, with a balance of \$2,022. In his RSOR, Applicant admitted this debt, and he wrote that he does intend to pay this debt. (Item 4.) See 1.g., above.

1.i. This overdue debt is cited in the SOR for a delinquent account in the amount of \$56. In his RSOR, Applicant admitted this debt, and he wrote that he does intend to pay this debt. (Item 4.) Item C shows that Applicant paid this debt on January 7, 2016. I find that this debt has been resolved.

1.j. The SOR alleges that Applicant failed to file Federal tax returns for at least tax years 2011 and 2012. Applicant admitted this allegation, and he wrote that he filed tax returns for both years on November 6, 2015, and that he is waiting for a confirmation from the Internal Revenue Service. (Item 4.) Items D and E are one page copies of 1040EZ tax returns completed and signed by Applicant on November 6, 2015, for tax years 2011 and 2012. Applicant wrote on one of the returns that the only penalty for the late filing would be a forfeiture of the refunds, which would have been \$13.76 for tax year 2011 and \$16.00 for tax year 2012.

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 AG ¶ 2(a) 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 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), "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 could be argued to apply to Applicant in this case. The evidence has established that Applicant accumulated significant delinquent debt, which was not initially satisfied.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties. I find that mitigating condition AG ¶ 20(a) could be argued to apply to the late filing of Applicant's federal tax returns. While a simple filing of late overdue Federal tax returns does not automatically mitigate the failure to timely file Federal tax returns, in this case the amounts owed were de minimis, the tax issue has been resolved, and his other debts are resolved or are being resolved. AG ¶ 20(d) is applicable and controlling, as there has been significant evidence introduced to establish that Applicant has "initiated a good-faith effort to repay overdue creditors or otherwise resolve [his] debts." Therefore, I find that Applicant has now mitigated the Financial Consideration concerns, which are found for him.

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 applicable, I find that the record evidence leaves me with no significant 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a. - 1.j.: 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