



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



In the matter of:)
)
) ISCR Case No. 15-04225
)
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: *Pro se*

November 4, 2016

Decision

MOGUL, Martin H., Administrative Judge:

On December 4, 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 December 18, 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 February 26, 2016, 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 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 on April 2, 2016. Applicant submitted an additional document, which has been identified and entered into evidence without objection as Item A. The case was assigned to this Administrative Judge on April 26,

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, the admitted additional documents, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 46 years old. He has been married since September 2001 to his present spouse, and he was previously married to his first spouse from 1991 to 2001. Applicant has five children. He served in the United States Navy from July 1988 through June 2009, when he received an Honorable discharge. Applicant has been employed by a defense contractor since 2010, and he seeks a DoD security clearance in connection with his employment in the defense sector. (Item 2.)

Guideline F, Financial Considerations

The SOR lists five allegations (1.a. through 1.e.) regarding financial difficulties, specifically overdue debts totaling in excess of \$46,000, 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 collection account to the Department of Education in the amount of \$23,618. Applicant admitted this debt in his RSOR, and he wrote that he had signed a payment agreement on December 9, 2015, and he had made two payments in accordance with the agreement. He further wrote that he questioned the creditor that if he enrolled in school could his payment for the loan be deferred until he finished school. Applicant was informed that the loan had to be rehabilitated before the rest of the debt could be deferred. (Item 1.)

Applicant attached a Rehabilitation Agreement with this creditor showing that he would make nine monthly payments of \$212, beginning on October 30, 2015, with each payment due on the 15th of each month thereafter. (Item 1.) Department Counsel raised the issue in the FORM that Applicant had not offered any evidence of payments made pursuant to the agreement. Applicant's post-FORM document established that he had only made three payments of \$50 on February 12, 2016, February 16, 2016, and March 3, 2016, toward this loan. (Item A.) The evidence does not support Applicant's contention that he has now begun the process of resolving this debt according to the Rehabilitation Agreement.

1.b. This overdue debt is cited in the SOR for collection account in the amount of \$13,262. Applicant denied this debt in his RSOR, writing that this is not his debt, and he has disputed this debt with all three credit reporting agencies. He also added in response to this allegation that he has not applied for any other credit outside of the education loan, listed as 1.a., above, plus a home loan and a vehicle loan. Finally, he wrote that his mortgage is current, he does not own any credit cards and his vehicle has

been paid in full. (Item 1.) The Credit Reports submitted with the FORM establish that this debt is owed. (Items 4 and 5.) Applicant had until April 2, 2016, to submit mitigating evidence, but no independent evidence has been introduced to establish that this debt has been resolved.

1.c. This overdue debt is cited in the SOR for a charged-off account in the amount \$4,959. Applicant denied this debt in his RSOR, and he wrote that he has been in contact with the creditor of this debt, with whom Applicant has an account. He contended that the creditor acknowledged that this debt was for a credit card that did not belong to him. Applicant averred that he faxed to the creditor a dispute form on December 18, 2015, and he was told the creditor would delete this debt from his credit report. Applicant attached a Consumer Report Dispute Request Form showing that he disputed this debt for a credit card that did not belong to him. (Item 1.) The Credit Reports submitted with the FORM establish that this debt is owed. (Items 4 and 5.) No independent evidence has been introduced to establish that this debt has been resolved.

1.d. This overdue debt to the same creditor as 1.c., above, is cited in the SOR for a charged-off account in the amount \$4,901. Applicant denied this debt in his RSOR, and he wrote that just as in 1.c., above, the creditor acknowledged that this debt was for a credit card that did not belong to him. Applicant also wrote that he faxed to the creditor a dispute form on December 18, 2015, and he was told the creditor would delete this debt from his credit report. The Consumer Report Dispute Request Form also showed that he disputed this debt for a credit card that did not belong to him. (Item 1.) The Credit Reports submitted with the FORM establish that this debt is owed. (Items 4 and 5.) No independent evidence has been introduced to establish that this debt has been resolved.

1.e. This overdue debt is also cited in the SOR for a medical/consumer/retail account in the amount \$116. Applicant did not address this debt in his RSOR. (Item 1.) The Credit Reports submitted with the FORM establish that this debt is owed. (Items 4 and 5.) No independent evidence has been introduced to establish that this debt has been resolved.

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 has not been proven to be satisfied or reduced.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties. I do not find that any mitigating condition could be argued to apply as there has been no significant evidence introduced to establish that Applicant has “initiated a good-faith effort to repay overdue creditors or otherwise resolve [his] debts.” Finally, I do not find that Applicant has introduced independent evidence to establish that his current financial situation is stable and secure. Therefore, I find that Applicant has not mitigated the Financial Consideration concerns, which are found against 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 not applicable, 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