



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



In the matter of:

ISCR Case No. 15-08474

Applicant for Security Clearance

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

May 22, 2017

Decision

MOGUL, Martin H., Administrative Judge:

Statement of the Case

On May 9, 2016, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E for Applicant. 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); and the adjudicative guidelines (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

On June 15, 2016, Applicant replied to the SOR (RSOR) in writing, which was dated May 26, 2016, and he requested a hearing before an Administrative Judge (AJ). The case was assigned to this AJ on August 8, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 8, 2016, and the hearing was convened as scheduled on August 29, 2016.

At the hearing, the Government offered Exhibits 1 through 9, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through G, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on September 7, 2016. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is denied.

Findings of Fact

After a complete and thorough review of the evidence in the record, described above, including Applicant's RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 53 years old. He is married but separated, and he has no children. Applicant received an Associate of Arts degree in 1988 in Network Administration. He served in the United States Air Force from 1984 to 2012, as a Reserve, and he received an Honorable Discharge. Applicant is currently unemployed, but he seeks a DoD security clearance in connection with his future employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists six allegations (1.a. through 1.f.) regarding financial difficulties, specifically overdue debts, a bankruptcy, and a tax lien under Adjudicative Guideline F. All of the SOR allegations will be discussed below in the order they were listed on the SOR:

1.a. This overdue debt is cited in the SOR for a state tax lien entered against him in March 2015, in the amount of \$21,717. Applicant admitted this allegation in his RSOR..

At the hearing, Applicant testified that this debt occurred when he cashed out his 401k in the amount of \$101,000, when he became unemployed in 2012. While money was withheld during the disbursement to pay his additional Federal taxes for that year, no money was withheld to pay his additional State taxes. Since that time, he has been mostly unemployed. He only had two short term jobs, so he has been unable to pay off this debt. (Tr at 34-35.) I find that this debt is still outstanding.

1.b. The SOR alleges that in February 2013, Applicant filed a Chapter 7 Bankruptcy, which was discharged in June 2013. Applicant admitted this allegation in his RSOR.

At the hearing, Applicant testified that he filed bankruptcy to prevent his home from being sold in foreclosure. The home was ultimately saved from foreclosure, and the bankruptcy did discharge all of his other debts at that time. (Tr at 35-37.)

1.c. This overdue debt is cited in the SOR for collection account in the amount of \$2,598. Applicant admitted this allegation in his RSOR.

Applicant testified that this debt was for a loan that he received in 2015. He was working at the time that he applied for the loan. He stated that he had no indication that he was about to be laid off, which did happen the month after he received the loan. He stated that he began paying off the loan as long as he could, for a few months, but ultimately he stopped making payments when the funds ran out. (Tr at 37-39.) While Applicant did indicate that he intends to start paying off this loan once he is employed, at this time I find that this debt is still outstanding. (Tr at 55.)

1.d. The SOR alleges that Applicant failed to pay his 2013 Federal and State A taxes, as required. Applicant admitted this allegation in his RSOR.

Applicant testified that he did file Federal and State A tax returns for 2013, but because he was unemployed, he was unable to pay the amount of taxes that he owed. The amount he owed is addressed in 1.e., below. (Tr at 39-40.)

1.e. The SOR alleges that Applicant is indebted to the Federal Government and State A Tax Board for delinquent taxes in the amount of approximately \$32,000. Applicant admitted this allegation in his RSOR and wrote that no evidence was introduced to establish that this debt has been resolved or reduced.

Applicant confirmed that he owed \$32,000, but he was not sure if this was what he owed to the Federal Government, or that was the amount he owed to both the Federal and State Government. (Tr at 40-41.) The record is not clear if Applicant's total tax debt is \$32,000 or \$53,717, but it is undisputed that the debt has not been resolved or reduced, and Applicant has not approached the Government entities to attempt to establish a payment plan to resolve the debts.

1.f. The SOR alleges that Applicant's security clearance was suspended in 2004, due to concerns regarding his failure to meet his financial obligations. Applicant admitted this allegation in his RSOR.

Applicant testified that his clearance was suspended, but not denied during this period, and when he "cleaned up [his] credit report," he received his security clearance. (Tr at 41-42.)

Applicant testified that he and his wife divided up their bills, so each of them was responsible for paying some of the bills. He averred that some of his financial difficulties, which began in 2009 or 2010, occurred because, unbeknownst to him, his wife was not paying the bills that she was scheduled to pay. She was also borrowing money from Applicant, so he would also pay the bills that she was scheduled to pay, and she did not repay him. (Tr at 51-53.)

Guideline E, Personal Conduct

The Government alleges in this paragraph that Applicant is ineligible for clearance because he engaged in conduct that exhibited questionable judgement, lack of candor, dishonesty or unwillingness to comply with rules and regulations.

2.a. It is alleged in the SOR that Applicant failed to provide truthful and candid answers to Questions asked under section 26 of an Electronic Questionnaires for Investigations Processing (e-QIP), executed by him on August 23, 2015. (Exhibit 1.) The questions asked whether in the last seven years, Applicant had a judgment entered against him, had a lien placed against his property, had bills or debts turned over to a collection agency, or had any account or credit card suspended, charged off or cancelled for failing to pay as agreed. Applicant answered, "No," to these questions. It is alleged that Applicant deliberately failed to disclose that information concerning his finances and overdue debts as set forth in subparagraph 1.c. and 1.f., above.

In his RSOR, Applicant admitted that he answered, "No," to this question, but he was not aware how it happened, as he would have answered, "Yes," to these questions, since this information was in public records and subject to discovery.

During his testimony, Applicant stated that he was aware that it was mandatory that he include all pertinent information, but he was confused and he made mistakes in his completing his e-QIP. He credibly averred that he never meant to mislead the Government about his finances or anything else when he was completing the e-QIP. (Tr at 42-45.)

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 to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching 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.

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 to obtain 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 EO 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 for Financial Considerations is set out in AG ¶ 18, as follows:

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 concern under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

The record is clear that Applicant has significant debt both to the Federal and State Governments that has not been resolved. He also has a debt from a loan that has not been resolved. Additionally, Applicant has a history of financial difficulties that are of concern, both his filing a Chapter 7 Bankruptcy in 2013 that discharged his debt at that time, and having his security clearance suspended in 2004, for failing to meet his financial responsibilities. The evidence is sufficient to raise the above disqualifying conditions.

One Financial Considerations Mitigating Conditions under AG ¶ 20 is potentially applicable:

(b) 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;

Some of Applicant's financial challenges occurred because of his long periods of unemployment. However, I do not find that he has acted responsibly under the circumstances. There are no indications that Applicant's tax debts have been resolved or reduced, or even that he has contacted these agencies to attempt to develop a payment plan. Therefore, I do not find that this mitigating condition or any other mitigating condition is applicable in this case. Until Applicant can show financial responsibility and a legitimate attempt to resolve his delinquent debts, the concern remains unmitigated.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgement, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The Government alleges in this paragraph that Applicant is ineligible for clearance because he engaged in conduct that exhibited questionable judgement, lack of candor, and dishonesty. In reviewing the disqualifying conditions under Guideline E, I conclude that while Applicant should have been more careful in completing his e-QIP, there was no "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire" by Applicant, because he testified credibly that he did not mean to mislead the Government. I find that any incorrect information about his finances was due to mistakes in completing the form rather than a willful desire to mislead the Government. I do not find disqualifying condition ¶ 16(a) or any other

disqualifying condition applies in this case against Applicant. I, therefore, resolve Guideline E for 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 relevant 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. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations security concerns under the whole-person analysis.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a.-1.f.:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a.:	For 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