



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



In the matter of:

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) ISCR Case No. 16-03315
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Applicant for Security Clearance

Appearances

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

January 17, 2018

Decision

MOGUL, Martin H., Administrative Judge:

Statement of the Case

On December 5, 2016, in accordance with Department of Defense (DoD) Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F.¹ The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant replied to the SOR on January 5, 2017, and requested a hearing before an administrative judge. (RSOR.) The case was assigned to me on February 7, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

February 8, 2017, setting the hearing for March 21, 2017. The hearing was convened as scheduled.

At the hearing, the Government offered Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf and presented two documents, which were identified and entered into evidence without objection as Exhibits A and B. The record was left open until April 14, 2017, for receipt of additional documentation. Additional documents were timely received and have been entered into evidence without objection as Exhibits C and D. DOHA received the transcript of the hearing (TR) on March 29, 2017. 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, as described above, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 53 years old. He is married, and he has two adult children. Applicant graduated high school and attended two years of college. Applicant has been employed by a defense contractor as a Mechanic Technician Composite, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists nine allegations (1.a. through 1.i.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. All of the SOR allegations were admitted by Applicant on his RSOR. The debts 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 delinquent account in the amount of \$7,223. No evidence has been submitted to establish that this debt has been resolved or reduced.

1.b. This overdue debt is cited in the SOR for a delinquent account in the amount of \$1,651. No evidence has been submitted to establish that this debt has been resolved or reduced.

1.c. This overdue debt is cited in the SOR for a delinquent account in the amount of \$1,159. No evidence has been submitted 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 \$1,281. No evidence has been submitted to establish that this debt has been resolved or reduced.

1.e. This overdue debt is cited in the SOR for a delinquent account in the amount of \$838. No evidence has been submitted to establish that this debt has been resolved or reduced.

1.f. This overdue debt is cited in the SOR for a delinquent account in the amount of \$474. No evidence has been submitted to establish that this debt has been resolved or reduced.

1.g. This overdue debt is cited in the SOR for a delinquent account in the amount of \$456. No evidence has been submitted to establish that this debt has been resolved or reduced.

1.h. This overdue debt is cited in the SOR for a delinquent account in the amount of \$456. No evidence has been submitted to establish that this debt has been resolved or reduced.

1.i. This overdue debt is cited in the SOR for a delinquent account in the amount of \$278. No evidence has been submitted to establish that this debt has been resolved or reduced.

At the hearing, Applicant testified that for the last four years he has been trying to catch up to pay all of his overdue debts, but he has been unable to do so. Four years ago, his company could not get a new contract, and so the employees voluntarily cut the amount of hours they would work. He claimed that he lost about one week each month, and this lasted approximately three and a half to four years. In January 2016, his company won a new contract, and he is now back to working a full schedule. He explained that he was not a good money manager, so he was not able to reduce his debts, even though he was now working full-time. He was referred to a credit counseling company from his employer, but they required that he sign a contract and pay a fee before they would tell him how they would help him, so he decided against using their services. (Tr at 28-33.)

In November 2016, he engaged the services of a bankruptcy attorney, and on January 13, 2017, the attorney filed a Chapter 7 Bankruptcy on behalf of Applicant and his wife. (Tr at 33-37.) Exhibit A is a Notice of Bankruptcy Meeting of Creditors. Exhibit B is an email from the bankruptcy attorney to Applicant, in which he writes that the trustee filed a "Report of No Distribution", indicating that there did not appear to be any problems with the bankruptcy.

No documentation was offered into evidence by Applicant to show which debts were included in the bankruptcy. The record was left open to allow him to get from the attorney a copy of the completed bankruptcy form to show what creditors were listed on the bankruptcy. Applicant was also provided additional time to submit a brief letter from the bankruptcy attorney in which he would explain the status of the bankruptcy. While Applicant did submit post-hearing documents, he never submitted anything to establish which creditors were listed on the bankruptcy, nor did he offer a letter from the attorney.

Applicant did submit two Certificates of Debtor Education forms, showing that Applicant and his wife each completed a personal financial management course. (Exhibit C.) He also submitted a personal financial statement for him and his wife, showing their monthly income is \$4,718 and their monthly expenses are \$4,647, leaving a net monthly remainder of \$71. (Exhibit D.)

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility 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, and 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 (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 relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19.:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators;
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required;

(g) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that are inconsistent with known legal sources of income;

(h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and

(i) concealing gambling losses, family conflict, or other problems caused by gambling.

Applicant has had several delinquent debts for several years. The evidence is sufficient to raise disqualifying conditions (a) and (c) are in this case

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

(f) the affluence resulted from a legal source of income; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant attributed his delinquencies to the diminution of his income for a four year period. This is a circumstance beyond his control, and he has attempted to resolve

his financial delinquencies with the legal remedy of bankruptcy. However, when he was provided the opportunity to submit documents establishing that the SOR delinquent debts were listed on the bankruptcy, and would thereafter be discharged in bankruptcy, he failed to do so. He also failed to establish the status of the bankruptcy. Therefore, insufficient evidence was submitted to show the overdue debts are in the process of being resolved, so I do not find that he has acted reasonably or responsibly with respect to his debts. Mitigation under AG ¶ 20(b) has not been established. Nor do I find that any of the other mitigating conditions under AG ¶ 20 are applicable in this case. Therefore, Guideline F is found 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 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 significant 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 concept.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	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. National security eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge