



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



In the matter of:)	
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)	ISCR Case No. 13-01144
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

May 1, 2014

Decision

MOGUL, Martin H., Administrative Judge:

On November 25, 2013, 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 January 6, 2014, 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 February 19, 2014, 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 March 26, 2014. Applicant did not submit any additional evidence. The case was assigned to this Administrative Judge on

April 11, 2014. 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 55 years old. He 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 six allegations (1.a. through 1.f.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. The 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 charged-off account in the amount of \$3,752. In his RSOR, Applicant denied this SOR allegation, writing that he was not aware of this debt, but he would be looking into this debt to try to resolve it. (Item 4.) Items 6 at 4, 7 at 1, and 8 at 4 establish that this debt is owed. In Applicant's Personal Subject Interview, conducted on July 29, 2013, Applicant stated that he did not recall this debt, and planned to contact the creditor to resolve the debt. (Item 6 at 4.) Despite having almost eight months, Applicant produced no evidence to establish that this debt has been resolved or reduced. I find that this debt remains due and owing.

1.b. This overdue debt is cited in the SOR for a charged-off account in the amount of \$2,471. In his RSOR, Applicant denied this SOR allegation, writing that he only had one car loan that had not been paid off, and maybe this is a car loan for his son, who has the same name as Applicant. (Item 4.) Items 6 at 4, 7 at 2, and 8 at 5 establish that this debt is owed. In Applicant's Personal Subject Interview, Applicant stated that he did not recall this debt, and planned to contact the creditor to resolve the debt. (Item 6 at 4.) Applicant produced no evidence to establish that this debt has been resolved or reduced. I find that this debt remains due and owing.

1.c. This overdue debt is cited in the SOR for a collection account in the amount of \$11,241. In his RSOR, Applicant admitted this SOR allegation writing that he had not been contacted, but he would try to contact the creditor and resolve the debt. (Item 4.) Items 5 at 38-39, 6 at 3-4, 7 at 1, and 8 at 6 establish that this debt is owed. In Applicant's Personal Subject Interview, Applicant stated that he planned to set up a payment plan to resolve the debt. (Item 6 at 4.) Applicant produced no evidence to establish that this debt has been resolved or reduced. I find that this debt remains due and owing.

1.d. This overdue debt is cited in the SOR for a charged-off account in the amount of \$18,532. In his RSOR, Applicant admitted this SOR allegation writing that

this debt was for a repossessed car, for which his ex-wife failed to make the payments. He wrote that he had contacted the creditor, but has not yet resolved the debt, but he would continue to attempt to resolve the debt. (Item 4.) Items 5 at 39, 6 at 4, 7 at 1, and 8 at 6 establish that this debt is owed. In Applicant's Personal Subject Interview, Applicant disputed that he owed this debt, and stated that he would contact the creditor to resolve the debt. (Item 6 at 4.) Applicant produced no evidence to establish that this debt has been resolved or reduced. I find that this debt remains due and owing.

1.e. This overdue debt is cited in the SOR for a collection account in the amount of \$4,654. In his RSOR, Applicant admitted this SOR allegation writing that he had just finished paying off a debt to this creditor. (Item 4.) Item 6 at 4, 7 at 2, and 8 at 9-10 establish that this debt is owed. In Applicant's Personal Subject Interview, Applicant stated that he did not recall this debt, and planned to contact the creditor to resolve the debt. (Item 6 at 4.) Applicant produced no evidence to establish that this debt has been resolved or reduced. I find that this debt remains due and owing.

1.f. This overdue debt is cited in the SOR for a medical collection account in the amount of \$206. In his RSOR, Applicant denied this SOR allegation, writing that he was not aware of this debt, but he would be looking into this debt to try to resolve it. (Item 4.) Items 6 at 4, and 8 at 10 establish that this debt is owed. In Applicant's Personal Subject Interview, Applicant stated that he did not recall this debt, and planned to contact the creditor to resolve the debt. (Item 6 at 4.) Applicant produced no evidence to establish that this debt has been resolved or reduced. I find that this debt remains due and owing.

Applicant explained the reasons for his current financial difficulties include periods of unemployment in 2008 and 2012, and his divorce in 2009. (Items 5 and 6.) Finally, Applicant offered no evidence that with his current financial situation he would be able to resolve his past overdue debts or stay current with his present debts.

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 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 applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining 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 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), “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, 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 Applicant was unemployed, and also because of his divorce. However, despite Applicant’s expressed intention to resolve his significant overdue debts, no evidence was introduced that Applicant has been responsible in attempting to resolve or even reduce any of this overdue debt. Therefore, I find that this mitigating condition is not a factor for consideration in this case.

Since there is no evidence that Applicant has taken any kind of counseling to better manage his finances or has initiated a good-faith effort to repay overdue creditors, I do not find that either AG ¶ 20(c) or AG ¶ 20(d) is applicable, I also do not find that any other mitigating condition applies to this case. Therefore, I conclude that Applicant has not mitigated the Financial Consideration concerns, which are 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 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 disqualifying conditions apply and no mitigating conditions are 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.f.: **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