



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-06522
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

March 31, 2008

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA), on October 12, 2006. On October 19, 2007, the Defense Office of Hearings and Appeals (DOHA) 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), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant responded to the SOR (RSOR) in writing on November 26, 2007, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on February 4, 2008. DOHA issued a notice of hearing on February 7, 2008, and the hearing was convened as scheduled on March 4, 2008, in San Diego, California. The government offered Exhibits (Ex) 1 through 7, which were received without objection. Applicant testified on his own behalf and submitted Exhibits

A through E, without objection. DOHA received the transcript of the hearing (Tr) on March 12, 2008.

At the beginning of the hearing, Department Counsel moved to amend the SOR by withdrawing allegation 2.b., which was granted without objection. Based upon a review of the case file, pleadings, exhibits, and testimony, 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 Answer to the SOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 56 years old. He is currently not married, but he was married from 1981 to 2002, and he has four grown children. He served in the United States Marines from 1971 to 1993, and he received an Honorable Discharge (Ex E).

Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Paragraph 1 Guideline F, Financial Considerations

The SOR lists 18 allegations of overdue debts, 1.a. through 1.r., under Adjudicative Guideline F. All of the debts will be discussed in the same order as they were listed in the SOR:

1.a. This overdue debt to Creditor 1 is cited in the SOR in the amount of \$2,034.99. In his RSOR and during his testimony, Applicant admitted that this debt has not been paid. He indicated that he contacted this creditor, but could not work out a payment plan with them.

1.b. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$3,981. In his RSOR Applicant denied this debt, but when he testified, Applicant conceded that this was a debt incurred by his ex-wife when they were married, and he still owes this debt, which has not been paid.

1.c. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$348. At the hearing, Applicant testified that he had paid this bill in May 2001, but he had no documentation to show that this debt has been paid. Based on his lack of records, which he claimed he left with his ex-wife, who no longer has access to them, and his less than complete knowledge about the debts as a whole, I can not conclude that this debt has been paid in full.

1.d. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$321. This creditor of this debt is listed as the same as 1.c., above. Applicant was not sure which of these two debts he had paid, or if this was the same debt as the one above.

1.e. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$2,034. In his RSOR Applicant denied this debt, but when he testified, Applicant conceded that this was a debt incurred by his ex-wife when they were married, and he still owes this debt, which has not been paid.

1.f. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$106. Applicant testified that he had paid this bill in May 2001, but he had no documentation to show that this debt has been paid. I can not conclude that this debt has been paid in full.

1.g. This overdue debt to Creditor 7 is cited in the SOR in the amount of \$144. The creditor of this debt is listed as the same as 1.f., above. Applicant testified that this is the same debt as 1.f., and he does not owe this debt.

1.h. This overdue debt to Creditor 8 is cited in the SOR in the amount of \$1,318. During his testimony, Applicant admitted that this debt has not been paid. He indicated that he has been unable to work out a payment plan with this creditor.

1.i. This overdue debt to Creditor 9 is cited in the SOR in the amount of \$200. Applicant testified that he was unaware of the origin of this debt, but he has not attempted to dispute this debt, and at this point this debt has not been paid.

1.j. This overdue debt to Creditor 10 is cited in the SOR in the amount of \$2,145. Applicant testified that this debt has not been paid.

1.k. This overdue debt to Creditor 11 is cited in the SOR in the amount of \$331. Applicant testified that this debt was incurred because he was the cosigner of a loan with his daughter for a vehicle that was totaled in a collision. At this point this debt has not been paid.

1.l. This overdue debt to Creditor 12 is cited in the SOR in the amount of \$1,529. Applicant conceded that this was a debt incurred by his ex-wife when they were married, and he still owes this debt, which has not been paid.

1.m. This overdue debt to Creditor 13 is cited in the SOR in the amount of \$181. Applicant testified that he had paid this bill in 2000, but he had no documentation to show that this debt has been paid. I can not conclude that this debt has been paid in full.

1.n. This overdue debt to Creditor 14 is cited in the SOR in the amount of \$908. Applicant testified that the correct amount he owes on this debt is actually \$400, even though the creditor claims it is the amount cited on the SOR. At this point no amount has been paid on this debt.

1.o. This overdue debt to Creditor 15 is cited in the SOR in the amount of \$7,693. Applicant testified that this debt was incurred because he was the cosigner of a loan with his son for a vehicle that was repossessed because of lack of payment by his son. At this point this debt has not been paid.

1.p. This overdue debt to Creditor 16 is cited in the SOR in the amount of \$1,396. Applicant testified that he was unaware of the origin of this debt, but he has not attempted to dispute this debt, and at this point this debt has not been paid.

1.q. This overdue debt to Creditor 17 is cited in the SOR in the amount of \$130. Applicant testified that he had paid this bill in 2001, but he had no documentation to show that this debt has been paid. I can not conclude that this debt has been paid in full.

1.r. This overdue debt to Creditor 18 is cited in the SOR in the amount of \$200. Applicant testified that he has been unable to resolve this bill from a hospital, because he is not sure whether to pay the hospital or his health credit report provider, but at this point this debt has not been paid.

Paragraph 2 Guideline E, Personal Conduct

2.a. Applicant executed a signed SCA on October 12, 2006 (Exhibit 1). The SOR incorrectly lists this as allegation 3.a., rather than 2.a., and it lists the question as number 38 rather than question 28.a. At the hearing, the SOR was amended to show the corrected SOR allegation number and the corrected question number. Question 28.a. asks, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Applicant answered "Yes" to this question, and he listed one debt. The Government alleges that Applicant should have included the debts listed as 1.a. through 1.i., 1.m., 1.p., and 1.r., discussed above in the SOR.

Applicant testified that he misunderstood the question and believed it was asking only for debts that had arisen over the last seven years preceding the date he completed the SCA, or debts in which he had been contacted by the creditors, and since his other debts were older than seven years, and he claimed he had only been contacted by one creditor, he did not believe he had to include the other debts in his answer.

Applicant explained that his previous financial difficulties were incurred because his wife had incurred some of the bills while he was stationed overseas, and he was not always fully employed after he left the Marine Corps. However, his debts also included several loans of which he was a cosigner, and debts that occurred over many years, and he could give no reasonable explanation for why these debts were not reduced over the years.

Applicant purchased a Nissan Titan in 2007 for \$28,000, on which he is making payments of \$659 a month. While it was not alleged, had Applicant purchased a less

expensive vehicle or one that was not new, he may have had more available income to reduce his very significant debt.

Finally, Applicant offered into evidence a letter, dated June 21, 2001, from an individual who knew Applicant in his professional life (Ex C). He spoke in extremely laudatory terms of him as a hard working employee who “would be an asset to any establishment.”

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 common sense 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 Government has established that Applicant has had a history of financial difficulties and overdue debts.

Regarding the Disqualifying Conditions (DC) under Guideline F, I conclude both DC (a) and DC (c) apply, because of Applicant’s long history of not meeting financial obligations and his inability or unwillingness to satisfy his debts.

I can not find that any Mitigating Condition (MC) applies as Applicant has failed to resolve the vast majority of overdue debts, even those for which the amount is not significant. I, therefore, hold Guideline F against Applicant.

Guideline E, Personal Conduct

With respect to Guideline E, the evidence establishes that Applicant provided incorrect material information to the Government on the SCA that he executed on October 12, 2006. Applicant only identified one debt that was over 180 days overdue in the last seven years prior to his completing the SCA, when clearly there were many more debts he should have identified. However, Applicant testified credibly that he misunderstood the question. By Applicant answering “Yes” to the question and listing at least one overdue debt, he did put the Government on notice that he had some financial difficulties. I find that Applicant did not intend to mislead the Government.

In reviewing the DCs under Guideline E, I conclude that no DC applies against Applicant. I therefore, resolve Guideline E 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) 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 have considered the potentially disqualifying and mitigating conditions under Guidelines F and E, in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above, including Applicant’s history of financial difficulties, his failure to resolve the overdue debts, even the small ones, and his latest vehicle purchase of \$28,000, rather than purchasing a less expensive vehicle and using some of the saving to pay off some of his debts, 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.

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
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
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	Against Applicant
Subparagraph 1.l.:	Against Applicant
Subparagraph 1.m.:	Against Applicant
Subparagraph 1.n.:	Against Applicant
Subparagraph 1.o.:	Against Applicant
Subparagraph 1.p.:	Against Applicant
Subparagraph 1.q.:	Against Applicant
Subparagraph 1.r.:	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 national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge