



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



In the matter of:)	
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)	ISCR Case No. 15-01802
)	
Applicant for Security Clearance)	

Appearances

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

February 29, 2016

Decision

MOGUL, Martin H., Administrative Judge:

On April 18, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F 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 adjudicative guidelines (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

On May 12, 2015, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge (AJ). The case was assigned to this AJ on July 13, 2015. DOHA issued a notice of hearing on July 24, 2015, and the hearing was held as scheduled on September 10, 2015. At the hearing, the Government offered Exhibits 1 through 5, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through I, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on September 21, 2015. 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 reviewed above, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 62 years old. He has been married two times, the first from 1972 to 1973, and the current marriage from 1985 to the present, and he has one son, who is a current member of the United States Marine Corps. Applicant is a high school graduate with one year of college. He is employed by a defense contractor as a truck driver, and he is seeking a DoD security clearance in connection with his employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists three allegations (1.a. through 1.c.) regarding financial difficulties, specifically overdue debts totaling approximately \$31,000, under Adjudicative Guideline F. All of the SOR 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 judgment filed against him in 2009 in the approximate amount of \$17,572. Applicant admitted the allegation in the RSOR.

At the hearing, Applicant testified that this debt was incurred as a result of his purchase of a television and amplifier in February 2005 in the amount of approximately \$8,400. Based on the arrangement, he could hold off making payments for a certain amount of time. He started making payments in August 2006, and after three payments, he received the first past due statement in November 15, 2006. The creditor of this debt now has a lien against his house, and the creditor does make withdrawals from Applicant's bank account if there is an accumulation of funds in his account. (Tr at 33-36, 66-67, Exhibit F.)

1.b. This overdue debt is cited in the SOR for a charged-off account in the approximate amount of \$5,930 for the purchase and subsequent repossession of a vehicle. Applicant admitted the allegation in the RSOR.

At the hearing, Applicant testified that the creditor received a judgment against him for this debt, and it now has a lien on his house. This debt has not been paid. (Tr at 37, Exhibit E.)

1.c. This overdue debt is cited in the SOR for a collection account in the approximate amount of \$7,481. Applicant admitted the allegation in the RSOR.

Applicant testified that this debt was for a credit card, which he obtained to pay off the amount owed on another credit card. Applicant made payments on this debt until he received his first past due notice in July 2007. This debt has not been paid. (Tr at 39.)

Applicant testified that while he has made no payment on any of these three debts for many years, he does intend to eventually pay off all three of these debts. He stated that he has an elderly father, and his wife has elderly parents, and he believes that when they die he and his wife will inherit approximately \$250,000 from each side, and he plans to use these funds to resolve his overdue debts. He has no plans to satisfy the debts before that time because he cannot afford to resolve them. (Tr at 61-62, 72, 76-77.)

Applicant testified that he worked in the grocery business for 22 years, and because the grocery business is physically demanding and damaging, he decided to take an early retirement at age 48. Applicant stated that at that time he owned a home, had excellent credit and was living according to a budget. He went back to work when he was 49 as a truck driver, but he was involved in an accident, and he was off work from approximately December 2002 to December 2003. Applicant started getting involved in investing in the stock market as a day trader from 2004 through 2006, and in 2006 he lost everything but his house. He stated that he was “trading hundreds of thousands of shares of stock each week.” While he enjoyed it very much, he realized that he was “very poor at it,” and he no longer does day trading. Based on Applicant’s testimony and Exhibit G, it appears that Applicant lost approximately \$150,000 in the stock market. Applicant thereafter worked as a driver for a shuttle company from December 2006 to January 2010. (Tr at 41-47.)

Applicant and his wife both suffered injuries, which also hurt their finances. Applicant had two surgeries for a rotator cuff injury, the first in August 2011, and the second in April 2012. His wife had two hip replacement surgeries, the first in 2007, and the second in 2011. (Tr at 55-57, Exhibit D.)

Applicant considered filing for bankruptcy, and he paid \$2,000 to an attorney for that purpose. Ultimately he planned to file Chapter 13 Bankruptcy, but he was not able to because he was informed he was earning too much money. He did receive financial counseling in June 2010 as a requirement for filing for bankruptcy. (Tr at 49-52, Exhibit A.)

Applicant submitted a current budget that shows his net monthly income is \$5,289 and his monthly expenses are \$5,090 leaving him with a monthly net remainder of \$199. (Tr at 53-55, Exhibit C.) He currently does not have any credit cards.

Mitigation

Applicant submitted a very positive character letter from the President and Facility Security Officer of his current employer. He was described as being “trustworthy, professional and the model example of a U.S. citizen who will put national security as his number one priority.” (Exhibit I.) Applicant also submitted his Performance Review for 9/1/2014 to 8/1/2015. His overall rating was, “Consistently Exceeds Expectations.” (Exhibit H.)

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 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 several years ago.

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, some of Applicant's financial difficulties occurred as a result of the injuries suffered by his wife and him, and the periods of unemployment that resulted. However, Applicant lost approximately \$150,000 due to his day trading, of which Applicant should have had control. Also, I cannot find that Applicant has acted responsibly since these debts have been overdue for many years, and Applicant has taken no steps to resolve them. Accordingly, I find that this mitigating condition is not applicable in this case.

Also, ¶ 20(d) could not be argued to be applicable, since Applicant has not taken any action to "initiate a good-faith effort to repay his overdue creditors or otherwise resolve debts," I also do not find any of the other mitigating conditions applicable. Therefore, until Applicant can reduce or resolve a significant amount of his overdue debts, I find Guideline F 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 access to a classified position 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 are applicable and controlling, 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.c.	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