



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-05914
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

January 18, 2008

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on February 2, 2005. On July 12, 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, 1990), 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 August 8, 2007, and requested a hearing before an Administrative Judge. I received the case assignment on October 25, 2007. DOHA issued a notice of hearing on November 16, 2007, and I convened the hearing as scheduled on December 11, 2007, in San Francisco, California. The government offered Exhibits (Ex.) 1 through 8, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through M, without objection. DOHA received the transcript of the hearing (Tr.) on December 19,

2007. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his RSOR Applicant admitted SOR allegations 1.a. and 2.d., and he denied 1.b., 1.c., 1.d., 1.e., 2.a., 2.b., and 2.c. The admitted allegations are incorporated herein as 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 additional findings of fact:

Applicant is 58 years old. He is married, and he has three children and one stepson. He received a Ph. D. degree in Psychology in 1979.

Applicant does work for defense contractors, and he seeks a DoD security clearance in connection with his employment in the defense sector.

The SOR lists 5 allegations regarding financial difficulties under Adjudicative Guideline F. All of the allegations will be discussed in the same order as they were listed in the SOR:

1.a. Applicant petitioned the United States Bankruptcy Court in 2001 for a Chapter 7 bankruptcy, in which he claimed liabilities of \$217,000. His debts were discharged on January 29, 2002. As stated above, Applicant admitted this allegation. He cited several reasons for his financial difficulties, which will be discussed below.

1.b. This overdue debt to Creditor 1 is cited in the SOR in the amount of \$2,090. Applicant testified that this had been a debt of his, but it was discharged in the bankruptcy, cited as 1.a., above. Exhibit C is a letter from Applicant's former attorney, who filed the Chapter 7 bankruptcy with the court on October 23, 2002. The attorney states that all of Applicant's debts were discharged on January 29, 2002, and he attached a Schedule F, listing all creditors holding unsecured nonpriority claims. Since Creditor 1 is listed on Schedule F, I therefore find that this debt was discharged in bankruptcy in 2002, and Applicant no longer owes this debt.

1.c. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$11,502. Applicant acknowledged that this also had been a debt of his, but it was discharged in the bankruptcy. Exhibit C also lists this debt to Creditor 2 on Schedule F. I therefore find that this debt was discharged in bankruptcy in 2002, and Applicant no longer owes this debt.

1.d. This second overdue debt to Creditor 2 is cited in the SOR in the amount of \$14,870. Applicant also acknowledged that this had been a debt of his, but it was discharged in the bankruptcy. Exhibit C also lists this second debt to Creditor 2 on

Schedule F. I therefore find that this debt was discharged in bankruptcy in 2002, and Applicant no longer owes this debt.

1.e. This SOR paragraph alleges that, based on a Personal Financial Statement executed by Applicant on May 30, 2007, his monthly expenses exceed his monthly income, and this does not even include the debts he owes as alleged in 1.b. through 1.d. First, as discussed above, Applicant does not owe debts 1.b. through 1.d., as they have been discharged in bankruptcy.

Applicant cited several factors for his previous financial difficulties. His first wife had been diagnosed with Multiple Sclerosis. He also had been employed as a counselor by a church, which was the primary source of his income. At some point, he experienced a change of outlook and philosophy, and because of this he resigned his position with the church and separated from his wife, both during the same period of time in 1995. His income decreased by 75%, but he continued to support his wife after they separated. Because of his loss of income, his financial situation continued to deteriorate until he filed for bankruptcy in 2001. Applicant's first marriage also ended in dissolution 2001.

Applicant testified that, together with his current wife who earns approximately \$90,000, his finances are in very good order and he does not have any overdue debts. He introduced a credit report, dated August 14, 2007, (Exhibit B), which indicates that he has no current delinquent accounts and that his financial score as of July 28, 2007, was 690, which a very good score. He also testified that he purchased a home in 2007 for \$430,000 with a fixed-rate mortgage of 6.25%, and he stated that he would not have received such a favorable rate if his finances were not in good order.

Finally, Applicant also offered into evidence two letters from individuals who know or have known him for many years in his professional life (Exhibits L and M). One is the president of a company that does background investigations for the United States Government, and who indicated that Applicant has performed over 300 investigations for his company. The other is an individual who is a retired Special Agent in Charge with the United States Department of State and now performs background investigations. They spoke in extremely laudatory terms of his high integrity and ability.

2.a. Applicant executed a signed Security Clearance Application (SCA) on February 27, 2003. Question #38 asks, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Applicant answered "No" to this question. The Government alleges that Applicant should have answered "Yes" to this question and included the debts listed as 1.b. through 1.d., in the SOR. As discussed above, these debts had already been discharged in bankruptcy, and he also averred that before the bankruptcy was filed he had never been overdue on his debt, so Applicant's response was correct.

2.b. Question #39 of the SCA asks, "Are you currently over 90 days delinquent on any debt(s)?" Applicant answered, "No" to this question and again listed no debts.

Again, as these debts had already been discharged in bankruptcy, Applicant's response was correct.

2.c. The Government alleges that during an interview with a Department of Defense investigator Applicant stated that he received income as a result of counseling as a psychologist. However, he was not authorized to do so, since his license to practice as a psychologist had been revoked in August 1999. Applicant testified credibly that since 1999, he has not and does not hold himself out as a licensed psychologist. Rather he performs therapy as a psychotherapist for which no license is required. He also testified that he had not informed the investigator that he practiced psychology.

I find no evidence that Applicant engaged in practicing as a license psychologist without proper authorization. It is far more likely, based on the common substitution of terms, that Applicant did say he practiced psychotherapy, and the investigator recorded it as psychology.

2.d. The Government alleges and Applicant has admitted that in October 1995 he was civilly sued by a female client for Sexual Conduct and Inappropriate Behavior, which resulted in the case being settled out of court, Applicant losing his license to practice psychology, and damages being paid by his malpractice carrier in the amount of \$100,000. Applicant testified that despite the outcome of this case, he was never inappropriate with his client. He averred credibly that this incident was fabricated by an individual who wanted to hurt him. He fought the case but without an attorney, which he felt he could not afford at the time, and he was ultimately unsuccessful.

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 trustworthiness 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 [sensitive] 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 trustworthiness concerns. 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. Applicant accumulated significant delinquent debt and was unable to pay some obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties.

AG ¶ 20 provides conditions that could mitigate security concerns:

(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. Applicant's financial difficulties occurred beginning in 1995, and were resolved in bankruptcy in 2001. Applicant's now has his finances in good order and has no overdue debts, so I find that his previous adverse financial condition does not cast doubt on his current reliability.

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 noted above, some of the financial problems arose from Applicant's loss of employment and ultimately the dissolution of his marriage. Applicant acted responsibly in continuing to take care of his wife who was ill, even after they separated, and ultimately resolving the difficult situation in the legally available, although not preferred method of bankruptcy. I find this potentially mitigating condition is a factor for consideration in this case.

Applicant is now more financially sound and better prepared for future contingencies. I conclude these potentially mitigating conditions apply.

GUIDELINE E, PERSONAL CONDUCT

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, 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.

While AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying, I find that none apply in this case. First as discussed above, Applicant's representations regarding his finances on questions 38 and 39 of the SCA that he completed were in fact correct. Additionally, Applicant's testimony that he has not held himself out as a licensed psychologist, but rather he simply practiced psychotherapy, which he is entitled to do. Finally, It is unclear what actually happened during the incident alleged in 2.d., above, but since more than 12 years has elapsed since this event, and this is the only evidence that has been introduced of misconduct against Applicant, I do not find this allegation to be of security concern.

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 reasons for his previous financial difficulties, his excellent economic condition today, and current his positive status, I find that the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance under the whole person concept. For all these reasons, I conclude Applicant 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul
Administrative Judge