



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-00767
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Le'i, Esquire, Department Counsel
For Applicant: *Pro Se*

January 31, 2008

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on January 31, 2006. On August 13, 2007, the Defense Office of Hearings and Appeals (DOHA) 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 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 replied to the SOR (RSOR) in writing on September 21, 2007, and requested a hearing before an Administrative Judge. I received the case assignment on November 13, 2007. DOHA issued a notice of hearing on December 14, 2007, and I convened the hearing as scheduled on January 8, 2008. The Government offered Exhibits (Ex.) 1 through 7, which were received without objection. Applicant testified on her own behalf and submitted Exhibits A through E, without objection. DOHA received the transcript of the hearing (Tr.) on January 17, 2008. I granted Applicant's request to

keep the record open until January 22, 2008, to submit additional matters. She timely submitted a cover letter, three letters and a copy of checks, which have been marked collectively as Exhibit F, and entered into evidence without objection. The record closed on January 22, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In her RSOR, Applicant admitted all of the SOR allegations with some explanations. 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 RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 48 years old. She is not married and she has two children.

Applicant is employed as an administrative secretary by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector.

The SOR lists 9 allegations (1.a. through 1.k.) 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. This overdue debt to Creditor 1 is cited in the SOR in the amount of \$1,861. Applicant testified she and her sister recently sold the home that they had inherited from their mother, discussed in 1.h., below. On December 19, 2007, the escrow closed on this home, and a payment will be made of \$975 from the escrow proceeds to pay this debt in full.

1.b. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$300. Applicant testified that she had not yet made a payment of settlement on this debt, but was planning to shortly. She testified that her state tax return had been audited in 2005. Exhibit B is a letter from the state tax board to Applicant's employer, dated July 30, 2007, which indicated that Applicant owed \$3,203.98. The result is that Applicant's income has been garnished in the amount of \$150 a week, and she believed that the last garnishment was scheduled to occur on January 17, 2008. Applicant testified that she is not aware of any other garnishments set to be placed on her salary. After her last payment, she will have an additional \$600 of disposable income each month, and will be able to pay off this debt with this additional money and her proceeds from the sale of the home. I find that this debt is still outstanding, but it will be resolved shortly.

1.c. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$169. As discussed in 1.b., above because of her additional income and the proceeds from the sale of her home, Applicant will be able and plans to pay off this debt shortly. I find that this debt is still outstanding, but it will be resolved shortly.

1.d. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$256. At the hearing, Applicant testified that she plans to pay off this debt shortly, because of her additional income and assets. I find that this debt is still outstanding, but it will be resolved shortly.

1.e. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$485. Applicant explained that this debt and the two debts listed directly below as 1.f. and 1.g. are to the same company for credit card debts. In Exhibit F, Applicant indicates that the creditor will settle this account for \$204, and she will start making payments shortly.

1.f. This second overdue debt to Creditor 5 is cited in the SOR in the amount of \$504. In Exhibit F, Applicant indicates that the creditor will eliminate this debt if she resolves the other two.

1.g. This third overdue debt to Creditor 5 is cited in the SOR in the amount of \$1,220. In Exhibit F, Applicant avers that the creditor will settle this account for \$610, and she will start making payments shortly.

1.h. This overdue debt to Creditor 6 for a past due mortgage is cited in the SOR in the amount of \$120,000. As discussed in 1.a., above, Applicant has sold the house upon which this mortgage is based. Exhibit C shows that the property was sold as of December 19, 2007, for \$470,118.07. It further shows that Applicant was scheduled to receive \$21,715.94 for the sale. However, she testified it was her belief that because of additional creditors that were going to be paid, Applicant would ultimately receive a settlement of approximately \$9,000.

I find that this debt for an overdue mortgage has been resolved with the sale of the house.

1.i. This overdue debt to Creditor 7 is cited in the SOR in the amount of \$4,887. Applicant submitted a post hearing letter from this creditor, dated January 21, 2008, (Exhibit F) in which a representative confirms that an agreement has been made wherein Applicant will resolve the debt for the full amount owed, by paying \$50 on the first and the fifteenth of each month until the debt is paid in full.

1.J. This overdue debt to Creditor 8 is cited in the SOR in the amount of \$229. Applicant testified that she was never aware of the address of this creditor, which was a company that came to the location of her previous employer, and from which she purchased jewelry. She is still trying to ascertain how to contact this vendor, and if and when she does, she testified that she will pay this debt.

1.k. Applicant petitioned the United States Bankruptcy Court on January 16, 2003, for a Chapter 13 Bankruptcy, in which she claimed liabilities of \$144,868.04, and assets of \$217,405. Applicant testified that the bankruptcy was dismissed, and the debts were never discharged in the bankruptcy, because she did not want to include her house in the bankruptcy proceedings.

Applicant testified that her financial difficulties primarily began five years ago when her mother died and she inherited the home. The deed to this home had been lost through mortgage loan fraud to a fraudulent attorney for a period from approximately 2002 until 2007, when she was able to regain title. The home payments and the attorney fees involved in trying to gain title back to the house caused most of her financial problems and overdue debts. In addition she was unemployed for a period of approximately four months in late 2005.

Applicant testified that she is not overdue on any of her current debts. She owns one credit card that is not overdue

Applicant submitted a letter from an individual who identified himself as the president of a wealth management group (Exhibit D), and who indicated that he has been working closely with Applicant to try to help her recover the deed to her home. He also indicated that she has spent a great deal of time and effort trying to restore her credit rating.

Finally, Applicant offered into evidence a letter from a woman who has known Applicant for 45 years (Exhibit F). She spoke in extremely laudatory terms, describing her as “trustworthy and a woman of impeccable character.”

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:

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, the financial problems arose primarily from the fraudulent loss of the ownership of Applicant's home and financial requirements necessary for the recovery in addition to Applicant's four month loss of employment. Applicant has acted responsibly by selling her home once she regained title to the home, and ultimately using the proceeds to help pay off her debts. 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 that she has mitigated the financial concerns.

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 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 Mitigating Condition (b) applies, I also 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
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	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