



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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 -----) ISCR Case No. 12-05357
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)
 Applicant for Security Clearance)

Appearances

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

June 6, 2013

Decision

MOGUL, Martin H., Administrative Judge:

On November 29, 2012, the Department of Defense (DoD) 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 adjudicative guidelines (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

On January 12, 2013, Applicant replied to the SOR (RSOR) in writing, and she requested a hearing before an Administrative Judge. I received the case assignment on February 19, 2013. DOHA issued a notice of hearing on March 20, 2013, and I convened the hearing as scheduled on April 10, 2013. The Government offered Exhibits 1 through 9, which were received without objection. Applicant testified on her own behalf and submitted Exhibits A through C at the time of hearing, which were also received without objection. DOHA received the transcript of the hearing (Tr) on April 18, 2013. I granted Applicant's request to keep the record open until April 24, 2013, to submit additional documents, and three additional documents that were received, have

been identified and entered into evidence without objection as Exhibits D through F. 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, including Applicant's RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 47 years old. She has been married from 2011 to the present. Applicant was married two previous times, from 1990 to 1997, and from 1999 to 2007. Applicant has two sons. Applicant is employed by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector.

Paragraph 1 Guideline F, Financial Considerations

The SOR lists 20 allegations (1.a. through t.) regarding overdue debts under Adjudicative Guideline F. Applicant admitted all of the debts in her RSOR with the exceptions of 1.a. and 1.s., which she denied, and 1.r., which she asserted was the same as 1. q. She wrote that each debt would be handled by her debt consolidator. 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 in the amount of \$340. As reviewed above, Applicant denied this allegation in her RSOR. At the hearing, Applicant testified that this debt for a cable box should not be attributed to her. She stated that when she returned the cable box, she was told the number of the box was registered to someone else, but the box was the one she had received from the cable company, so she did not believe she owed anything to the cable company. She disputed the debt with the cable company, but she was told it was her debt. While Applicant does not believe she owes this debt, she did include it with the other debts she forwarded to a credit consulting company, whose services she has engaged. (Tr at 38-41.) I find that Applicant has a good-faith belief that she does not owe this debt.

Applicant testified that she engaged the services of a law firm in late 2011 to help her resolve her debts. (Tr at 47.) Exhibit A is a letter from the law firm confirming that it was hired by Applicant for debt settlement services. Exhibit D consists of post hearing accounting from Applicant's law firm, which shows any payments made by the law firm to the creditors on Applicant's behalf. At this time, the law firm is working to resolve two of Applicant's overdue debts. Those debts will be addressed below.

1.b. This overdue debt is cited in the SOR in the amount of \$1,489. Since this debt has not been addressed by the law firm, I find that this debt remains unpaid. (Exhibit D.)

1.c. This overdue debt is cited in the SOR in the amount of \$594. Since this debt has not been addressed by the law firm, I find that this debt remains unpaid. (Exhibit D.)

1.d. This overdue debt is cited in the SOR in the amount of \$3,402. Exhibit D establishes that the law firm has made three monthly payments of \$50 and then 9 payments of \$76.80 on this debt, but the record does not show how much of this debt remains to be paid. I find that this debt is being resolved by the law firm, although it is not clear how much is still owed.

1.e. This overdue debt is cited in the SOR in the amount of \$347. Exhibit D establishes that the law firm and the creditor have entered into an agreement wherein the law firm will settle the debt on behalf of Applicant by paying 11 monthly payments of \$25 and one final payment of \$47.71. Exhibit D also establishes that the law firm has made the 11 payments of \$25, as of February 5, 2013. I find that this debt is almost settled with one payment of \$47.41 to be made.

1.f. This overdue debt is cited in the SOR in the amount of \$2,171. Since this debt has not been addressed by the law firm, I find that this debt remains unpaid. (Exhibit D.)

1.g. This overdue debt is cited in the SOR in the amount of \$4,477. Since this debt has not been addressed by the law firm, I find that this debt remains unpaid. (Exhibit D.)

1.h. This overdue debt is cited in the SOR in the amount of \$4,000. Since this debt has not been addressed by the law firm, I find that this debt remains unpaid. (Exhibit D.)

1.i. This overdue debt is cited in the SOR in the amount of \$3,320. Since this debt has not been addressed by the law firm, I find that this debt remains unpaid. (Exhibit D.)

1.j. This overdue debt is cited in the SOR in the amount of \$2,072. Since this debt has not been addressed by the law firm, I find that this debt remains unpaid. (Exhibit D.)

1.k. This overdue debt is cited in the SOR in the amount of \$967. Since this debt has not been addressed by the law firm, I find that this debt remains unpaid. (Exhibit D.)

1.l. This overdue debt is cited in the SOR in the amount of \$5,434. Since this debt has not been addressed by the law firm, I find that this debt remains unpaid. (Exhibit D.)

1.m. This overdue debt is cited in the SOR in the amount of \$748. Since this debt has not been addressed by the law firm, I find that this debt remains unpaid. (Exhibit D.)

1.n. This overdue debt is cited in the SOR in the amount of \$360. Since this debt has not been addressed by the law firm, I find that this debt remains unpaid. (Exhibit D.)

1.o. This overdue debt is cited in the SOR in the amount of \$347. Since this debt has not been addressed by the law firm, I find that this debt remains unpaid. (Exhibit D.)

1.p. This overdue debt is cited in the SOR in the amount of \$315. Since this debt has not been addressed by the law firm, I find that this debt remains unpaid. (Exhibit D.)

1.q. This overdue debt is cited in the SOR in the amount of \$198. Since this debt has not been addressed by the law firm, I find that this debt remains unpaid. (Exhibit D.)

1.r. This overdue debt is cited in the SOR in the amount of \$198. Applicant wrote in her RSOR, and testified that this debt is the same as the debt listed as 1.q., above. Since this debt is listed in the same amount and to the same creditor, I find that this debt is a duplicate of 1.q., and since it is only owed once, this debt is not owed.

1.s. This overdue debt is cited in the SOR in the amount of \$106. As reviewed above, Applicant denied this allegation in her RSOR. At the hearing, Applicant testified that she paid this debt, which was for a storage facility, as that was the only way she could retrieve her possessions that had been in storage. (Tr at 41-43.) I find that Applicant has a good-faith belief that she does not owe this debt.

1.t. This overdue debt is cited in the SOR in the amount of \$557. Since this debt has not been addressed by the law firm, I find that this debt remains unpaid. (Exhibit D.)

Applicant testified that the majority of her financial problems occurred because her second husband had been paying all of their bills, and when they got divorced she had trouble paying her bills. She averred that the credit card bills were all in her name. Her current financial position is somewhat tenuous since her current husband, who is a plumber, has very little work. She does not have any credit cards at this time, but she indicated that she has very little money left over after her monthly bills. Applicant testified that she has taken no financial classes to help her manage her finances. (Tr at 83-89.)

Paragraph 2 Guideline E, Personal Conduct

2.a. Applicant executed a Security Clearance Application (SCA) on December 7, 2010. (Exhibit 1.) It is alleged in the SOR that Applicant failed to provide truthful and candid answers to subsection g of Question 26, which asks, "Have you had bills or debts turned over to a collection agency?" Applicant answered "Yes" and listed four debts that were in collection, but Applicant wrote that the debts were paid off. However, it is alleged that the four debts listed were not paid off and are still owing.

2.b. It is alleged in the SOR that Applicant failed to provide truthful and candid answers to subsection g of Question 26, which asks, "Have you had bills or debts turned over to a collection agency?" Applicant answered, "Yes," and listed four debts but Applicant failed to list all of the other debts listed in paragraph 1, which have been reviewed above.

2.c. It is alleged in the SOR that Applicant failed to provide truthful and candid answers to subsection h of Question 26, which asks, "Have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?" Applicant answered, "No" to this subsection. It is alleged in the SOR that she failed to disclose that she was delinquent on all of the accounts set forth in paragraph 1, above.

When Applicant was asked why she only listed four debts in response to Question 26 g, why she listed those four debts as paid, and finally, why she answered "No" to Question 26 h, she testified, "Your Honor, I really can't tell you why." Upon further questioning she was still unable to explain how she arrived at her limited and incorrect responses. When asked about debts from well known stores that Applicant used and should have remembered, she again could give no explanation for not listing those debts in response to the questions. (Tr at 62-65, 92-95.)

Mitigation

Applicant submitted two performance evaluations from her current employer for the period from January 1, 2012, to March 31, 2013. (Exhibits E and F.) They were both positive reviews, and her overall ratings were 3.68 and 3.35 out of 4.0.

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 has accumulated significant delinquent debt.

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 noted above, Applicant testified that her financial problems resulted after her divorce from her second husband, when he stopped paying their bills. While she has acted responsibly

by engaging the services of a law firm, the vast majority of her overdue debts remain unpaid, with the law firm only reducing two of her debts. Therefore, I cannot find that this mitigating condition is a factor for consideration in this case.

I also do not find that AG ¶ 20(c) is applicable since Applicant has received no counseling to help her with her financial problems, and I cannot conclude that her financial problems are “being resolved” or are “under control.”

Finally, I do not find that AG ¶ 20(d) is applicable because even though Applicant has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Based on her current finances, I do not see Applicant being able to resolve these significant overdue debts for many years, if at all.

I conclude that Applicant has not significantly reduced or resolved her overdue debt, nor has she shown that she can maintain financial stability. Therefore, at this time, she has not mitigated the financial concerns of the Government.

Guideline E, Personal Conduct

With respect to Guideline E, I find that even if Applicant did not know all of her overdue debts, she knew or should have known that she had more than the four debts she listed on her SCA. Applicant could give no reasonable explanation for only listing four debts, particularly since some of her other overdue debts were from well-known stores that Applicant knew well.

In reviewing the disqualifying conditions under Guideline E, I conclude that there was “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire” by Applicant. Therefore, I find ¶ 16 (a) applies against Applicant. I do not find any mitigating condition under ¶ 17 is applicable. 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) 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 the mitigating conditions do not apply under both Guidelines, 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
Subparagraphs 1.b., c., f.- q., t.:	Against Applicant
Subparagraphs 1.a., d., e., r., s.:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a.-2.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