



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



In the matter of:)	
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)	ISCR Case No. 12-09681
)	
Applicant for Security Clearance)	

Appearances

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

June 25, 2013

Decision

MOGUL, Martin H., Administrative Judge:

On October 15, 2012, 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 November 7, 2012, Applicant replied to the SOR (RSOR) in writing, and she requested a hearing before an Administrative Judge (AJ). The case was assigned to this AJ on March 25, 2013. DOHA issued a notice of hearing on April 3, 2013, and the hearing was convened as scheduled on May 6, 2013. The Government offered Exhibits 1 through 5, which were received without objection. Applicant testified on her own behalf and submitted Exhibits A through E, which were also admitted without objection. Applicant's husband also testified on her behalf. The record was kept open until May 20, 2013, to allow Applicant to submit additional evidence. The documents that were timely received have been identified and entered into evidence without objection as Exhibits F

through L. DOHA received the transcript of the hearing (Tr) on May 14, 2013. Based upon a review of the pleadings, exhibits, and the testimony of Applicant and her husband, eligibility for access to classified information is granted.

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 her husband, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 52 years old. She is married, and she has a son and two daughters. She earned an Associate of Science Degree in Electronics in 2012. Applicant has been employed by a defense contractor for 11 years, and she seeks a DoD security clearance in connection with her employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists eight allegations (1.a. through h.) regarding financial difficulties, under Adjudicative Guideline F. The allegations 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 \$4,852. Applicant denied this allegation in her RSOR. At the hearing, Applicant testified that this is not her debt. She first learned of the debt when a creditor sought to garnish her wages for a judgement against her for this debt. (Tr at 32-38.) Exhibit 2 includes two letters sent from Applicant to the attorney for this creditor in which she informs the attorney that the address listed is not her address and this is not her debt.

Among the post-hearing documents submitted by Applicant were two letters that Applicant wrote to the credit reporting agencies, informing them that this was not her debt. (Exhibit F.) Also Applicant included an Ex Parte Application to Set Aside Judgement and Dismiss Case filed by the attorney for the creditor for this debt because the judgment was filed against the wrong party, and an Order Setting Aside the Judgement and Dismissing the Case against Applicant, signed by the judge on January 29, 2013. (Exhibit H.) I find that this erroneous debt has been resolved through Applicant's efforts.

1.b. This overdue debt is cited in the SOR in the amount of \$1,790. Applicant admitted this allegation in her RSOR. Applicant testified that this debt is unpaid, but she has contacted the creditor and has agreed to a payment plan. (Tr at 52-53.) Exhibit L includes information from Applicant that she has made an arrangement for a monthly payment to this creditor. I find that this debt has not been resolved, but Applicant has begun the process of paying this debt.

1.c. This overdue debt is cited in the SOR in the amount of \$207,000. Applicant denied this allegation in her RSOR. Applicant testified that this debt was for the first

mortgage of her primary residence. Because she returned to school full-time and her work hours were reduced, she fell behind in paying her mortgage. She attempted to work with the bank in an attempt to modify her loan, including withdrawing \$17,000 from her 401K and paying it to the bank and continually completing all of the forms sent to her by the bank. But despite her best efforts, the bank foreclosed and auctioned off her home. She contacted her Congressman requesting help, and she received a letter back from him indicating he would look into the matter, but her home was not returned. (Tr at 42-50.) (Exhibit A.)

It is Applicant's contention that State Bill (CB) 1178 Section 580b, referred to as the anti-deficiency statute, and referred to by Applicant in her RSOR and during her testimony, would limit the creditor's right to only pursue the value of the property in the foreclosure sale. I find that based on this statute, this debt is no longer owing by Applicant.

1.d. This overdue debt is cited in the SOR in the amount of \$8,881. Applicant denied this allegation in her RSOR. Applicant testified that this debt is for a second mortgage for the same home as 1.c., above. It is Applicant's contention that this debt is not owed for the same reason as that cited in 1.c., and I concur. Based on the statute and the testimony of Applicant and her husband, I find that this debt is no longer owing by Applicant.

1.e. This overdue debt is cited in the SOR in the amount of \$2,216. Applicant admitted this allegation in her RSOR. Applicant testified that this debt has been paid. (Tr at 51-52.) Exhibit C establishes that Applicant has paid off this debt. I find that this debt has been resolved.

1.f. This overdue debt is cited in the SOR in the amount of \$566. Applicant admitted this allegation in her RSOR. Applicant testified that this debt has been paid. (Tr at 53-54.) Exhibit B establishes that Applicant has paid off this debt. I find that this debt has been resolved.

1.g. This overdue debt is cited in the SOR in the amount of \$1,588. Applicant admitted this allegation in her RSOR. She testified that she determined, based on a conversation with the creditor, that this debt is the same as 1.b., above. (Tr at 54-55.) I find that this debt is being resolved, but it is still owed.

1.h. This overdue debt is cited in the SOR in the amount of \$1,073. Applicant admitted this allegation in her RSOR. She testified that she has not been able to contact this creditor. She attempted to ascertain if this company had a phone number, but she was informed from the information operator that there is no listing anywhere in the country for this company. (Tr at 55-56.) I find that Applicant has made a good-faith effort to contact this creditor, but she has been unable to do so.

As reviewed above, Applicant testified that her financial problems occurred because she returned to school full-time and her work hours were reduced. She also had some unanticipated costs for her son. Finally, she sends money to her mother in

the United States and to her family in the Philippines when they need assistance, which has also contributed to their financial problems. (Tr at 42, 61-62.)

Applicant testified that she has two additional debts for student loans, for one she pays \$215 a month and the other she pays \$249 a month. She is current for both of these debts. (Tr at 56-58.) Applicant also testified that she has been renting her current place of living for 18 months, and she has never been behind on her rent. She and her husband own their vehicles outright so there are no payments required, and she pays insurance costs in a timely manner. Applicant also indicated that she took a financial course at her church, consisting of four classes, and that she and her husband now budget their money. She averred that they are now quite frugal in that they rarely eat out of the home or go to the movies. (Tr at 64-74.)

Mitigation

Applicant's husband testified on Applicant's behalf. He is 47 years of age, and he and Applicant have been married since 1990. Applicant confirmed that neither of them was aware of the debt listed as 1.a., until Applicant was contacted at her employment that they were going to garnish her wages. He confirmed that they had never signed a document to indicate that they had received the initial summons and complaint. He also confirmed that he spoke with the creditor and SOR allegation 1.b. and 1.g. are for the same debt.

Additionally, Applicant's husband confirmed that he and Applicant had sent five different completed packets of forms requested by the bank, and his wife withdrew \$17,000 from her company's 401k and send it to the bank, all in an attempt to keep their home. Despite their best efforts and the promises of bank representatives, the home was ultimately foreclosed by the bank. Finally, he testified that they had been informed from real estate attorneys that SB 1178 would cover both their first and second mortgages, so they would not owe anything for their home after it was sold in foreclosure. He also reiterated that they had never been contacted by the bank after their home foreclosure to indicate that they still owed any money. (Tr at 77-88.)

As reviewed above, Applicant submitted a number of post-hearing documents that have been entered into evidence. Exhibit I included eight very positive character letters submitted on behalf of Applicant. She was described as "trustworthy and faithful in her duties," "an upright citizen," and "a woman of great integrity."

Finally, Applicant noted that she graduated from college in 2012, and she had perfect attendance for two years. (Tr at 75-76.) Exhibit J includes Applicant's diploma, signifying that she earned an Associate of Science Degree on March 11, 2012, and a special award that she received for "Perfect Attendance."

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 as a result of her hours being cut at work and her helping her mother and other family members with their finances.

Applicant has been responsible in her attempt to resolve her debts. Her efforts to save her home, by completing five different packets of forms requested by the bank and then taking the step to withdraw \$17,000 from her 401k to pay the bank, have been exemplary and based on the evidence it appears that the failure of the bank to deal fairly with Applicant and her husband is the reason that the home was foreclosed. The first debt listed in the SOR, 1.a., was clearly not Applicant's debt, and based on her efforts, the judgement for that debt has been set aside. Two of the other debts on the SOR, 1.e. and 1.f., have been paid, and Applicant has a payment plan to resolve 1.b, which is a duplicate of 1.g. Finally, Applicant has been unable to contact the creditors for 1.h., despite her best efforts. Therefore, I find that this mitigating condition is a factor for consideration in this case.

AG ¶ 20(c) is also applicable since I find that Applicant "has received counseling for the problem and there are clear indications that the problem is being resolved." Finally, AG ¶ 20(d) applies since I find that Applicant has "initiated a good-faith effort" to "resolve debts," as reviewed above. I find that these three mitigating conditions are all factors for consideration in this case.

Based on Applicant's current financial situation, I conclude that Applicant has mitigated the financial concerns of the Government.

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 mitigating conditions apply, I find that the record evidence leaves me with no significant 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 has 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a. -1h.:	For Applicant

Conclusion

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

Martin H. Mogul
Administrative Judge