



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 -----) ISCR Case No. 12-11225
)
)
 Applicant for Security Clearance)

Appearances

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

August 22, 2013

Decision

MOGUL, Martin H., Administrative Judge:

On February 14, 2013, 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 March 21, 2013, Applicant replied to the SOR (RSOR) in writing, and she requested a hearing before an Administrative Judge (AJ). On March 29, 2013, Applicant also replied by email with a second response to the SOR (RSOR 2). The case was assigned to this AJ on April 30, 2013. DOHA issued a notice of hearing on May 6, 2013, and the hearing was convened as scheduled on May 23, 2013. The Government offered Exhibits 1 through 8, which were received without objection. Applicant testified on her own behalf and submitted Exhibits A through W, which were also admitted without objection. Applicant's aunt also testified on her behalf. The record was kept open until June 6, 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 X through JJ. DOHA received the transcript of the hearing (Tr) on June 6, 2013. Based upon a review of the pleadings, exhibits, and the testimony of Applicant and her aunt, eligibility for access to classified information is granted.

Findings of Fact

After a complete and thorough review of the evidence in the record, described above, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 35 years old. She is currently unmarried, but was previously married from November 2005 to April 2008. She has three children. She earned a Bachelor's Degree in 2000, and two Master's degrees, one in 2004 and the other in 2006. Applicant is employed by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists 27 allegations (1.a. through aa.) regarding financial difficulties, specifically overdue debts totaling approximately \$31,000, 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 \$36. At the hearing, Applicant testified that this debt has been paid in full and Department Counsel also indicated that Exhibit 8, which is the most current credit report, shows that this debt has been resolved. (Tr at 37-39.) Exhibit C also shows that this debt has been paid.

1.b. This overdue debt is cited in the SOR in the amount of \$1,227. Applicant testified that she is paying \$110.85 a month on this debt, and she had thus far made two payments. (Tr at 39-41.) Exhibit B shows Applicant has made two payments. Post hearing Exhibit X shows that Applicant made two payments on June 3, 2013, one of \$60.73 and the other \$58.93 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 \$1,182. Applicant testified that she is paying \$114.46 a month on this debt, and she had thus far made two payments. (Tr at 42.) Exhibit B shows Applicant has made two payments. I find that this debt has not been resolved, but Applicant has begun the process of paying this debt.

1.d. This overdue debt is cited in the SOR in the amount of \$642. Applicant testified that this debt is to the same creditor as 1.b., above, and the amount she pays that has been reviewed under 1.b. goes towards both debts. (Tr at 39-41.) I find that this debt has not been resolved, but Applicant has begun the process of paying this debt.

1.e. This overdue debt is cited in the SOR in the amount of \$998. Applicant testified that she attempted to contact each creditor by phone, often on more than one occasion. If she did not receive a reply she sent a form letter asking the creditor to verify the debt. (Tr at 42-45.) Exhibit D establishes that Applicant attempted to contact this creditor by mail, but according to her testimony she received no reply. I find that this debt has not been resolved, but Applicant has made a good-faith attempt to contact this creditor.

1.f. This overdue debt is cited in the SOR in the amount of \$311. Applicant testified that this debt has been paid in full and Department Counsel also indicated that Exhibit 8 shows that this debt has been resolved. (Tr at 45-46.) Exhibit E also shows that this debt has been paid.

1.g. This overdue debt is cited in the SOR in the amount of \$7,080. Applicant testified that after she sent out her form letter, she was informed that this debt was with a collection agency. She contacted someone from the agency and was told she would receive correspondence, but she has not received anything. She determined, based on a conversation with the creditor, that this debt is the same as 1.b., above. (Tr at 46-47.) I find that this debt has not been resolved, but Applicant has made a good-faith attempt to contact this creditor.

1.h. This overdue debt is cited in the SOR in the amount of \$493. Applicant testified that she has contacted this creditor, but they told her they do not have a record of this debt. (Tr at 47-48.) I find that Applicant has made a good-faith effort to contact this creditor, but she was unable to resolve the debt since the creditor had no record of the debt.

1.i. This overdue debt is cited in the SOR in the amount of \$118. Applicant testified that she did not find this debt on any of the three credit reports that she reviewed so she did not know whom to contact. (Tr at 48-49.) Department Counsel pointed out that this debt was listed on Exhibit 6, but it is listed as a different creditor so it may be the same debt, but listed under another creditor. I find that Applicant was unable to resolve the debt, since she could not find this debt on a credit report and there is some confusion if this is a duplicate of another debt.

1.j. This overdue debt is cited in the SOR in the amount of \$147. Applicant testified that this debt has been paid in full and Department Counsel also indicated that Exhibit 8 shows that this debt has been resolved. (Tr at 49-50.) Exhibit G also shows that this debt has been paid.

1.k. This overdue debt is cited in the SOR in the amount of \$601. Applicant testified that she could not make contact with this creditor by phone. She sent them a form letter, asking the creditor to verify the debt but she received no reply. (Tr at 52.) Exhibit H establishes that Applicant attempted to contact this creditor by mail. I find that this debt has not been resolved, but Applicant has made a good-faith attempt to contact this creditor.

1.l. This overdue debt is cited in the SOR in the amount of \$692. Applicant testified that she could not make contact with this creditor by phone. She sent them a form letter, asking the creditor to verify the debt but she received no reply. (Tr at 53.) Exhibit I establishes that Applicant attempted to contact this creditor by mail. I find that this debt has not been resolved, but Applicant has made a good-faith attempt to contact this creditor.

1.m. This overdue debt is cited in the SOR in the amount of \$271. Post hearing Exhibit AA shows that this debt has been resolved.

1.n. This overdue debt is cited in the SOR in the amount of \$446. Applicant testified that she could not make contact with this creditor by phone. She sent them a form letter, asking the creditor to verify the debt but she received no reply. (Tr at 57.) Exhibit K establishes that Applicant attempted to contact this creditor by mail. I find that this debt has not been resolved, but Applicant has made a good-faith attempt to contact this creditor.

1.o. This overdue debt is cited in the SOR in the amount of \$2,539. Applicant testified that she could not make contact with this creditor by phone. She sent them a form letter, asking the creditor to verify the debt but she received no reply. (Tr at 57.) Exhibit L establishes that Applicant attempted to contact this creditor by mail. I find that this debt has not been resolved, but Applicant has made a good-faith attempt to contact this creditor.

1.p. This overdue debt is cited in the SOR in the amount of \$673. Applicant testified that she could not make contact with this creditor by phone. She sent them a form letter, asking the creditor to verify the debt but she received no reply. (Tr at 57-58.) Exhibit M establishes that Applicant attempted to contact this creditor by mail. I find that this debt has not been resolved, but Applicant has made a good-faith attempt to contact this creditor.

1.q. This overdue debt is cited in the SOR in the amount of \$783. Applicant testified that this debt has been settled based on a demand from the creditor of \$120.35. (Tr at 58-59.) Exhibit N shows that Applicant paid \$120.35 on this debt. I find that this debt has been resolved.

1.r. This overdue debt is cited in the SOR in the amount of \$750. Applicant testified that she had made two monthly payments of \$50 toward this debt, and then she believed she was involved in some kind of a scam. After she had paid \$100 toward this debt, she confronted a person who indicated he represented the creditor. After the confrontation she never heard from anyone representing the creditor again. (Tr at 59-67.) Exhibit B shows she paid \$100 toward this debt. I find that Applicant did attempt to resolve this debt before being involved in some kind of scam from a representative of this creditor.

1.s. This overdue debt is cited in the SOR in the amount of \$332. Applicant testified that she could not make contact with this creditor by phone. She sent them a

form letter, asking the creditor to verify the debt but she received no reply. (Tr at 67-68.) Exhibit P establishes that Applicant attempted to contact this creditor by mail. I find that this debt has not been resolved, but Applicant has made a good-faith attempt to contact this creditor.

1.t. This overdue debt is cited in the SOR in the amount of \$286. Applicant testified that this debt has been paid in full. (Tr at 68.) Exhibit Q also shows that this debt has been paid.

1.u. This overdue debt is cited in the SOR in the amount of \$353. Applicant testified that she has made one payment of \$50.46 on this debt, and she plans to continue making monthly payments of that amount. (Tr at 69-70.) Exhibit R shows Applicant has made one payment. Post hearing Exhibit X shows that Applicant made two payments on May 30, 2013, one of \$15 and the other \$4 to this creditor. I find that this debt has not been resolved, but Applicant has begun the process of paying this debt.

1.v. This overdue debt is cited in the SOR in the amount of \$322. Applicant testified that this debt has been paid in full. (Tr at 72-73.) Exhibit R also shows that this debt has been paid.

1.w. This overdue debt is cited in the SOR in the amount of \$9,208.05. Applicant testified that she is paying \$860 a month toward this debt. (Tr at 73-74.) Exhibit B shows Applicant has thus far made one payment of \$860. I find that this debt has not been resolved, but Applicant has begun the process of paying this debt.

1.x. This overdue debt is cited in the SOR in the amount of \$280. Applicant testified that she has made one payment of \$10 toward this debt, but she plans to increase the monthly payments. (Tr at 75-76.) I find that this debt has not been resolved, but Applicant has begun the process of paying this debt.

1.y. This overdue debt is cited in the SOR in the amount of \$323. Applicant testified that she when she attempted to make contact with this creditor by phone, she was informed that the phone was disconnected . She believed the company must be out of business so she never sent them a form letter. (Tr at 76-77.) The record was kept open to allow Applicant to send a letter to the creditor of this debt. Post-hearing Exhibit II is a form letter that Applicant sent to this creditor, in which she requested verification of her debt. I find that this debt has not been resolved, but Applicant has made a good-faith attempt to contact this creditor.

1.z. This overdue debt is cited in the SOR in the amount of \$406. Applicant testified that she has made one payment of \$30 and one payment of \$15 toward this debt. She does not have a payment plan with this debt but plans to pay the creditors as she can. (Tr at 77-78.) Exhibit T confirms the two payments made by Applicant. I find that this debt has not been resolved, but Applicant has begun the process of paying this debt.

1.aa. This overdue debt is cited in the SOR in the amount of \$535. Applicant testified that she has made one payment of \$64 and one payment of \$15 toward this debt. The first payment of \$64 was requested by the creditor, and then she was to make payments as she was able. (Tr at 78-79.) Exhibit U confirms the two payments were made by Applicant.

Applicant testified that she has been attempting to resolve the smaller debts first, before she tackles the more substantial debts. She indicated that she has two additional loans that she is also attempting to resolve, even though they were not listed on the SOR. (Tr at 79-82.)

Applicant testified that her financial problems began when she was about to get married and her future husband told her he would use money from his 401k to pay for the wedding. When he could not gain access to the money before the wedding, he told her to advance the money and he would pay her back. When he finally received the money, he informed her that he was going to use it to purchase a truck rather than pay her back for the wedding bills. Additionally, she had another child after the marriage so she had to pay for daycare for two and her husband finances were limited because he had money withdrawn from his pay for child support for two children. After he told her he did not want to remain married, she asked him if he would contribute to her daycare bills for their daughter, which were \$524 a month. He refused. She also had another daughter in daycare for a total of approximately \$1,000 a month for daycare. She was receiving \$600 a month for child support from her ex-husband, when he decided that he did not want to pay any more child support so he quit his job. He was unemployed for more than a year. She thereafter had no help with supporting three children. (Tr at 82-86.)

In April 2008, Applicant was laid off. She became employed again in June 2008. In February 2011, Applicant again became unemployed, and she did not begin working again until September 2012. (Tr at 86-87.)

Applicant testified that before she was married her finances were in much better condition. Her credit was good enough that in November 2003, she was able to purchase a home for \$108,000. She now rents out this house. (Tr at 87-90.)

Applicant's current credit has improved. She stated that she is able to pay her rent every month. She also testified that she is current on her water, electric, gas, car insurance, cell phone, grocery, and daycare bills. Her greatest expense remains daycare, but soon one daughter will be going to junior high school, so she will not be attending daycare. This will give Applicant approximately \$500 a month in additional income to help her pay off her past overdue debts. (Tr at 90-91.)

Mitigation

Applicant's aunt testified on Applicant's behalf. She testified that Applicant is a "very highly ethical person," and she has "has a very high work standard." The witness also testified that her niece is very independent and she loves her job. She averred that

Applicant's financial problems occurred in large part when she became unemployed. (Tr at 98-102.)

Applicant offered into evidence very positive and laudatory character letters, submitted on her behalf from the principal, assistant principal, coach and one of the teachers from schools that Applicant attended. (Exhibits A, Y, BB, and FF.) She was praised very highly by all of them.

Applicant also submitted copies of two diplomas, showing that she earned a Master of Business Administration in Technology Management in 2004 and Master of Information Systems in 2006. (Exhibit GG.) Finally, Applicant submitted a program from her graduation in 2006 that showed she received an Outstanding Alumni Engineering Achievement Award. (Exhibit JJ.)

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 periods of unemployment and her marital problems that resulted in divorce.

I find that Applicant has been responsible in her attempt to resolve her debts. Applicant has made an attempt to contact all of the creditors listed on the SOR, initially by telephone, and if she did not get a response, she sent letters to each creditor. She has paid off some of the smaller debts and is making payments toward some of the others. Significantly, she is trying to resolve all of her overdue debts, even those that

are not listed on the SOR. Finally, she is current with her recent debts. Therefore, I find that this mitigating condition is a factor for consideration in this case.

Also, 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 two mitigating conditions are factors for consideration in this case.

Based on Applicant’s current financial situation, and her responsible attempt to resolve her overdue debts, 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, and the positive recommendations about her character, 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. -1aa.:

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