



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



In the matter of:)	
)	
)	ISCR Case No. 13-00090
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: Pro se

September 12, 2013

Decision

MOGUL, Martin H., Administrative Judge:

On February 28, 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 26, 2013, 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 May 13, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 15, 2013, and the hearing was convened as scheduled on June 5, 2013. The Government offered Exhibits 1 through 9, which were received without objection. Applicant testified on her own behalf and submitted Exhibits A through G, which were also admitted without objection. Two additional witnesses testified on behalf of Applicant. The record was kept open until June 12, 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 H through J. DOHA received the transcript of the hearing (Tr) on June 25, 2013. Based upon a review of the pleadings, exhibits, and the testimony of Applicant and the other two witnesses, eligibility for access to classified information is denied.

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 48 years old. She has been involved with a domestic partner for 18 years and she has one son. She earned an Associate of Arts degree in 1992. Applicant served in the United States Air Force from 1983 through 1992, and she earned an Honorable Discharge. She served in the Reserves in 1995 and 1996.

Applicant ended her employment with a defense contractor the day before the hearing, but the company for which she worked is still sponsoring her for a DoD security clearance in connection with her employment in the defense sector. Additionally, Applicant owns her own company, although there is currently no income from her company, and she also sponsored herself for a DoD security clearance.

Guideline F, Financial Considerations

The SOR lists 10 allegations (1.a. through k.) regarding financial difficulties, specifically overdue debts and one bankruptcy, under Adjudicative Guideline F. Applicant filed a Chapter 13 bankruptcy on April 23, 2013, but the bankruptcy was dismissed on May 30, 2013. While all of the debts were listed on the bankruptcy, when Applicant made the decision to dismiss the bankruptcy because she thought it would reflect negatively on her credit, none of the debts were resolved. (Tr at 59-62.) (Exhibits 9, D.) 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 \$14,000. Applicant testified that this debt has not been paid. (Tr at 63-64.) In her post hearing submissions, Applicant wrote that this is a duplicate of the debt listed as 1.f., below. (Exhibit I.) No independent evidence was offered to prove this statement. I find that this debt has not been resolved or reduced.

1.b. This overdue debt is cited in the SOR in the amount of \$100. Applicant testified that this debt has been paid, but she did not have a receipt from the creditor. (Tr at 66-67.)

1.c. This overdue debt is cited in the SOR in the amount of \$11,585. Applicant testified that this debt has not been paid. (Tr at 67-69.) I find that this debt has not been resolved or reduced.

1.d. This overdue debt is cited in the SOR in the amount of \$2,185. Applicant testified that this debt has not been paid. Applicant explained that this debt was from a company that went out of business, and although she had been current on a payment plan, when the company closed its doors, she was contacted by a collection agency to pay the full amount owed. She was unable to pay the full amount. (Tr at 69-70.) I find that this debt has not been resolved or reduced.

1.e. This overdue debt is cited in the SOR in the amount of \$601. Applicant testified that this debt was for the fees charged for a credit card that she had not requested and was not aware she had received. Her attorney advised her that it would cost more to dispute the bill than to pay. It is her plan to pay this debt, but she has not yet done so. (Tr at 70-72.) I find that this debt has not been resolved or reduced.

1.f. This overdue debt is cited in the SOR in the amount of \$18,394. Applicant testified that this debt for tuition for a private school program that her son attended has not been paid. (Tr at 73-74.) I find that this debt has not been resolved or reduced.

1.g. This overdue debt is cited in the SOR in the amount of \$64,153. Applicant testified that she has made nine monthly payments of \$55 toward this debt for her education loans, and that the debt is now no longer considered in default. (Tr at 74-76.) Exhibit F confirms that Applicant has made nine payment of \$55 from October 2012 to May 2013, and that the outstanding balance is \$72,939.32. I find that this debt has not been resolved, but Applicant is making a good-faith effort to resolve this debt.

1.h. This overdue debt is cited in the SOR in the amount of \$1,000. Applicant testified that this debt has not been paid. (Tr at 76-77.) I find that this debt has not been resolved or reduced.

1.i. This overdue debt is cited in the SOR in the amount of \$57,689. Applicant testified that she does not believe that this is a valid debt. This debt comes from the same school that her son attended that was listed on 1.f., and when her son first applied to the school, the school made her a loan in this amount. However, since this was more than she could afford, they cancelled this loan and made the smaller loan listed as 1.f.

Applicant argues that she did not receive this loan so the debt is not valid. (Tr at 77-79.) I find that Applicant has a valid dispute with this debt, although she has not actively challenged the debt with the creditor or the credit reporting agencies.

1.j. This overdue debt is cited in the SOR in the amount of \$2,100. Applicant testified that this debt is the same one as listed as 1.d., above. This debt is listed as the original creditor, and 1.d., is the collection agency that took over the debt after the original company had closed. (Tr at 79-81.) I find that this debt is a duplicate of 1.d., and is only owed once.

1.k. Applicant filed a Chapter 7 bankruptcy on or about July 1, 1996. This bankruptcy was discharged on October 7, 1996. Applicant testified that this allegation is correct. She explained that it occurred when she was 28 years old and recently out of

the military. She met a person who befriended her, and the friend started using Applicant's credit cards for the friend's benefit. The friend was supposed to pay Applicant back, but ultimately the friend departed, and Applicant was left with the bills that she could not afford to pay. (Tr at 81-83.)

Applicant testified that she also owes the Internal Revenue Service approximately \$4,000, and that she was scheduled to start making monthly payments of \$300. However, that was before she became unemployed. (Tr at 116-120.)

Applicant testified that a great deal of her recent financial problems, which resulted in the overdue debts listed on the SOR, began because of the conduct of her son, whom she describes as a "problem child." Her son's problems growing up included a great deal of bad behavior for which he needed doctors and therapists. Also because he was getting into trouble, Applicant determined that they should move away from where they lived to another state, where they had a friend whose son had resolved his serious issues. After they moved, Applicant sent her son to a private school for troubled youth, which as discussed above, cost her \$18,000. She also purchased a new house in the state where she moved. In 2007, Applicant became unemployed for two months. She then moved back to her original state, and in 2008, she sold her house. Additionally, because of Applicant's moves, her partner went through periods of unemployment. (Tr at 83-92.)

Applicant averred that before the problems with her son, moving to a new house and becoming unemployed, she did not have problems with her credit. She also argues that the credit card companies charged her unreasonable and unfair rates for interest and penalties when she fell behind on her payments, which made her overdue debts even worse. (Tr at 87-89.)

Mitigation

The first witness, who testified on behalf of Applicant, is a manager of an equipment laboratory at an Air Force base. This witness hired Applicant as a technician in 1999 and was her supervisor until approximately 2004. She was described as good, hard worker, who worked well with others, and she was very trustworthy. The witness also testified that he hired her again for a short time within the last three or four years, and she was working three jobs at the same time. (Tr at 125-130.)

The second witness was a co-worker with Applicant from 1999 to 2004. They also became friends. When Applicant left the job, their contact diminished. She stated that Applicant had good work habits, and she was never aware of Applicant having any problems at work. (Tr at 133-137.)

Applicant offered into evidence her DD Form 214, confirming that she served in the United States Air Force from 1983 to 1992 and that she received an Honorable Discharge. (Exhibit I.)

Finally, Applicant submitted a positive and laudatory character letter from a former supervisor, who discussed her “dependable professionalism and sensitivity to security requirements,” which were above reproach. (Exhibit B.)

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.

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 some of her financial problems resulted from her periods of unemployment and that of her partner. Also, her problems with her son, which forced her to move and to place him in a private school, were factors to be considered. However, because she failed to resolve the vast majority of her debts, and she dismissed her bankruptcy, which would have been a legal remedy to resolve her debts, I do not find that she acted responsibly under the circumstances. Applicant still has very significant overdue debts that have not been resolved or reduced. Therefore, I cannot find that this mitigating condition is applicable in this case.

Finally, AG ¶ 20(d) also does not apply since I find that Applicant has not “initiated a good-faith effort” to “resolve her debts,” I also find that no other mitigating condition is a factor for consideration in this case. I conclude that Applicant has not 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 disqualifying conditions apply and why the mitigating conditions do not apply, 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 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:	AGAINST APPLICANT
Subparagraphs 1.a., 1.c. -1.f., 1h.:	Against Applicant
Subparagraphs 1.b., 1.g., 1.i. 1.j., 1.k.:	For 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