



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



In the matter of:)
)
-----) ISCR Case No. 14-00097
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

March 9, 2015

Decision

MOGUL, Martin H., Administrative Judge:

On March 7, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. (Item 1.) 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) (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006.

Applicant furnished an undated reply to the SOR (RSOR) in writing. (Item 4.) On September 14, 2014, she requested that her case be decided on the written record in lieu of a hearing. (Item 5.) On October 15, 2014, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered nine documentary exhibits. (Items 1-9.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on November 27, 2014. Applicant did not submit additional evidence. The case was assigned to this

Administrative Judge on February 10, 2015. Based upon a review of the pleadings and exhibits, 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 and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 65 years old. She has been married to her third husband since 1989, and she has two children and a stepson. Applicant is employed as a customer representative by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector. (Item 5.)

Guideline F, Financial Considerations

The SOR lists five allegations (1.a. through 1.e.) regarding financial difficulties, specifically overdue debts. The debts listed on the SOR total more than \$40,000. 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 for a collection account in the amount of \$432. Applicant denied this allegation in her RSOR. She wrote that she had not been with this phone service creditor for eight or nine years, and she had not been notified of past due amounts (Item 4.) A full data credit report, dated November 1, 2013, establishes that this debt is overdue. (Item 9.)

In her Personal Subject Interview (PSI), based on an Investigation of November 4, 2013 to November 25, 2013, Applicant stated that she was unaware of this account. (Item 7.) I do not find any evidence to establish that Applicant took any action to satisfy this debt once she became aware of it. This debt has not been resolved or reduced.

1.b. This overdue debt is cited in the SOR for a medical account in the amount of \$253. In her RSOR, Applicant denied this SOR allegation. She wrote that she had a dispute about this medical bill, but she believed it had been settled. (Item 4.) The full data credit report establishes that this debt is overdue. (Item 9.)

In her PSI, Applicant stated that she was unaware of this account. (Item 7.) I do not find any evidence to establish that Applicant took any action to satisfy this debt once she became aware of it. This debt has not been resolved or reduced.

1.c. This overdue debt is cited in the SOR for a mortgage account that is 120 days or more past due in the amount of \$7,520. In her RSOR, Applicant denied this SOR allegation. She wrote that this debt is for refinancing her loan and she attached a document that she contended showed that there is no longer any past due amount on this debt. The document from the creditor shows a trial modification plan from the mortgage holder with an amount owed of \$10,386.22 and a total amount due under the

modification plan of \$702.07. (Item 4.) The December 17, 2013 CR establishes that this debt of \$7,520 is owed. (Item 6.)

In her PSI, Applicant stated that this debt was for late fees from the creditor for her home mortgage. (Item 7.) In reviewing the document from the creditor I find that there has been an attempt to resolve this debt.

1.d. This overdue debt is cited in the SOR for a collection account in the amount of \$2,501. In her RSOR, Applicant admitted this SOR allegation. She wrote that this debt was from when she lived in an apartment. When she attempted to leave before the lease had expired, she was told by the manager that if she paid her utilities she would not have to pay the entire amount owed. When she learned of the debt, she claimed that she attempted to have it resolved, but the manager was no longer present. (Item 4.)

In her PSI, Applicant stated that she had been in contact with the creditor of this debt, and she was trying to set up a payment plan to resolve the debt. (Item 7.) I do not find any evidence to establish that this debt has been resolved or reduced.

1.e. This overdue debt is cited in the SOR for a charged-off account in the amount of \$39,042. In her RSOR, Applicant admitted this SOR allegation. She wrote that this debt may be from a voluntary repossession of a vehicle owned by her and her husband. She contended that the amount owed may have been for the total value of the vehicle, not considering how much Applicant had already paid for it and what the creditor received when they sold it after the repossession. (Item 4.) The December 17, 2013 CR establishes that this debt is owed. (Item 6.)

In her PSI, Applicant conceded that this debt was for a vehicle that was repossessed. She stated that because she changed her employer, she was earning less money, and could not afford to make payments on the vehicle. (Item 7.) I do not find any evidence to establish that this debt has been resolved or reduced.

Applicant stated in her PSI that she planned to contact the creditors of all her overdue debts to begin a payment plan with each of them. It was her intention to have all of her overdue debts paid off by the end of 2015. (Item 7.) There has been no evidence introduced to show Applicant had contacted any of the creditors, with the exception of allegation 1.c., or made any attempt to resolve or reduce any of her other overdue debts.

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 accumulated significant delinquent debt, which has not been satisfied.

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 reviewed above, Applicant explained her financial difficulties, at least in part, because she earned less money when she changed her employment. The condition that caused her financial problems was within her control. Also, she has only resolved one of her debts. Therefore, I do not find that she has acted responsibly, and I do not find that this mitigating condition is a factor for consideration in this case.

AG ¶ 20(d) is not applicable, since Applicant has not “initiated a good-faith effort to repay overdue creditors or otherwise resolve all of her overdue debts,” but one. I do not find that any other mitigation condition applies to this case.

Finally, no evidence was introduced to establish Applicant will be able to pay off her past debts or keep up to date on her current debts and expenses. Therefore, I find that Applicant has not mitigated the Financial Consideration concerns, which are found 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 no mitigating conditions are applicable, 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. - 1b.:	Against Applicant
Subparagraph 1.c.:	For Applicant
Subparagraphs 1.d. - 1e.:	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