



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



In the matter of:)	
-----)	
)	ISCR Case No. 14-00441
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

October 22, 2014

Decision

MOGUL, Martin H., Administrative Judge:

On March 13, 2014, the Defense Office of Hearings and Appeals (DOHA) 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), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006.

On April 24, 2014, Applicant replied to the SOR (RSOR) in writing, and she requested that her case be decided on the written record in lieu of a hearing. (Item 2.) On June 2, 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 seven documentary exhibits. (Items 1-7.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on July 3, 2014. Applicant did not submit any additional evidence. The case was assigned to this Administrative Judge on

August 8, 2014. 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 33 years old. She has been married since April 2010, and she has two stepchildren who do not reside with her and her husband. She earned a Bachelor's degree in 2003.

Applicant served on active duty in the United States Air Force from December 2003 to June 2009, when she received an Honorable Discharge. She then worked as a Staff Consultant for a private corporation from June 2009 to August 2012. Finally, Applicant has been self-employed as the CEO of her own company since August 2012. At no time since December 2003 has Applicant been unemployed. Applicant seeks a DoD security clearance in connection with her employment in the defense sector. (Item 3.)

Guideline F, Financial Considerations

The SOR lists eight allegations (1.a. through 1.h.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. 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 for a collection account in the amount of \$12,660. In her RSOR, Applicant admitted this SOR allegation, and she wrote that this debt was on an auto loan, for which she co-signed. The person who purchased the vehicle stopped making payments, and while Applicant indicated that she tried to take care of the debt, it is still outstanding. She wrote that she hopes to get this debt resolved soon. (Item 2.)

In her Personal Subject Interview, based on an Investigation of November 4, 2013, through November 12, 2013, Applicant indicated that she has no intent to pay off the loan, and that "she is waiting for the charged off account to fall off of her credit." (Item 7.) I do not find any evidence has been introduced to establish that this debt has been resolved or reduced.

1.b. This overdue debt is cited in the SOR for a collection account in the amount of \$3,000. In her RSOR, Applicant admitted this SOR allegation. She wrote that this debt was from the Department of Veteran Affairs, and that she is receiving benefits that should be applied to this debt, but they have not yet been done so. (Item 2.) I do not find any evidence has been introduced to establish that this debt has been resolved or reduced.

1.c. This overdue debt is cited in the SOR for a collection account in the amount of \$1,107. In her RSOR, Applicant admitted this SOR allegation, and she wrote that this debt had been reduced to \$276.76, and the remainder will be paid on May 3, 2014. (Item 2.) Based on Item 5, the Credit Report (CR), dated May 19, 2014, Applicant still owes \$830 on this debt. I do not find any evidence has been introduced to establish that this debt has been resolved.

1.d. This overdue debt is cited in the SOR for a collection account in the amount of \$581. In her RSOR, Applicant denied this SOR allegation, contending that this debt was paid on April 23, 2014. (Item 2.) Based on Item 6, the CR, dated October 29, 2013, this debt has been due and owing since December 2012. I do not find any evidence has been introduced to establish that this debt has been resolved or reduced.

1.e. This overdue debt is cited in the SOR for a collection account to the same creditor as 1.d., above, but for a different account number, in the amount of \$581. In her RSOR, Applicant denied this SOR allegation, contending that this debt was paid on November 8, 2013.(Item 2.) Item 5 shows this debt was a "PAID COLLECTION GOVERNMENT DEBT." I find that this debt has been resolved.

1.f. This overdue debt is cited in the SOR for a collection account in the amount of \$124. In her RSOR, Applicant denied this SOR allegation, contending that this debt was paid on August 5, 2013. Applicant also submitted copies of two payments of \$149.54 to this creditor. (Item 2.) Item 5 shows this debt was a "CLOSED OR PAID ACCOUNT/ZERO BALANCE." I find that this debt has been resolved.

1.g. This overdue debt is cited in the SOR for a collection account in the amount of \$250. In her RSOR, Applicant denied this SOR allegation, contending that this debt was paid on April 23, 2014. Applicant also submitted a copy showing a payment of \$250 was made to this creditor on April 23, 2014. (Item 2.) I find that this debt has been resolved.

1.h. This overdue debt is cited in the SOR for a collection account in the amount of \$200. In her RSOR, Applicant denied this SOR allegation, contending that this debt was paid on March 4, 2014. Applicant also submitted a copy showing a payment of \$200 was made to this creditor on April 23, 2014. (Item 2.) I find that this debt has been resolved.

Applicant explained that her current financial difficulties began in approximately November 2009, when her fiancée, who is now her husband, became unemployed. This resulted in a decrease in her household income, and Applicant began paying for both his and her bills. (Item 7.)

No evidence was introduced by Applicant as to her current financial situation, including her income and debts, and whether her husband is now employed. Nor was evidence offered to show whether she will be able to resolve her past overdue debts or stay current with her present debts.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised 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 occurred because her former fiancée, now husband, became unemployed. While Applicant has paid off her smaller debts, she has not resolved all of her larger debts, and since she indicated to a Government investigator that she does not intend to pay the largest debt of \$12,660, I do not find that this mitigating condition is a factor for consideration in this case.

AG ¶ 20(d) is arguably applicable, since Applicant "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," by paying off some of the smaller debts. However, as reviewed above, since the largest debts have not been paid, and Applicant indicated to a Government investigator that she does not intend to pay the largest debt of \$12,660, I do not find that this mitigation condition or any other mitigating condition applies to this case.

Finally, since Applicant has not submitted a Personal Financial Statement, nor was any other evidence offered about her current financial stability, I cannot conclude that Applicant will be able to pay off her past debts or keep up to date on her current debts and expenses, especially if any new or unexpected debts are incurred. Therefore, I conclude 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. - 1d.:	Against Applicant
Subparagraphs 1.e. - 1h.:	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