



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



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| In the matter of: |) | |
| ----- |) | |
| |) | ISCR Case No. 14-02549 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel
For Applicant: *Pro se*

May 28, 2015

Decision

MOGUL, Martin H., Administrative Judge:

On July 14, 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), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006.

On August 8, 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 1.) On March 3, 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 three documentary exhibits, which were erroneously identified on the FORM as Items 1, 2, and 4, but were Items 1, 2, and 3. Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on April 11, 2015. Applicant did submit additional evidence, a letter from Applicant, dated November 27, 2015, which has been

marked and entered into evidence as Item A. The case was assigned to this Administrative Judge on April 27, 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 39 years old. She is currently married and she has one stepchild. She was married one previous time. Applicant is a high school graduate (Item 2.)

Applicant has been employed as a brush painter since 2004 by a DoD Contractor. She seeks a DoD security clearance in connection with her employment in the defense sector. (Item 2.)

Guideline F, Financial Considerations

The SOR lists eight allegations (1.a. through 1.h.) regarding financial difficulties, specifically bankruptcy, failing to file tax returns, and overdue debts, under Adjudicative Guideline F. The allegations will be discussed below in the same order as they were listed on the SOR:

1.a. Applicant filed a Chapter 7 bankruptcy on or about July 2005, and her debts were discharged on or about November 2005. Applicant admitted this allegation in her RSOR. (Item 1.)

1.b. Applicant failed to file Federal tax returns for tax years 2011 and 2012. Applicant wrote in her RSOR that she had not filed her 2011 and 2012 tax returns when required, but she had filed them prior to the issuing of the SOR. (Item 1.) In her post-FORM letter, Applicant reiterated that she has filed her tax returns. (Item A.) No independent evidence was submitted to show that Applicant has filed her tax returns for tax years 2011 or 2012.

1.c. This overdue debt is cited in the SOR for a tax lien to the Federal Government, entered in 2012, in the approximate amount of \$16,604. Applicant admitted this allegation in her RSOR, and she wrote that she is on an installment plan to make payments for 300 months to the Internal Revenue Service (IRS). (Item 1.) In her post-FORM letter, Applicant also wrote that she is current on her installment agreement with the IRS. (Item A.) No independent evidence was submitted to show that Applicant has a payment plan in place to make payments to the IRS; how much each payment is to be and the number of payments she is scheduled to make; and finally how many, if any, payments she has made, and if she has been timely with the scheduled payments.

1.d. This overdue debt is cited in the SOR for a collection account in the amount of \$547. Applicant admitted this allegation in her RSOR. (Item 1.) 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 charged-off account in the amount of \$646. Applicant admitted this allegation in her RSOR. (Item 1.) I do not find any evidence has been introduced to establish that this debt has been resolved or reduced.

1.f. This overdue debt is cited in the SOR for a closed account in the amount of \$1,384. Applicant admitted this SOR allegation, and wrote that this account was opened by her wife, and they share the same account. (Item 1.) I do not find any evidence has been introduced to establish that this debt has been resolved or reduced.

1.g. This overdue debt is cited in the SOR for a charged-off account in the amount of \$144. Applicant admitted this SOR allegation. She wrote that she was not sure of the name of this creditor. (Item 1.) I do not find any evidence has been introduced to establish that this debt has been resolved or reduced.

1.h. This overdue debt is cited in the SOR for a charged-off account in the amount of \$645. Applicant admitted this SOR allegation. She wrote that she was not sure of the name of this creditor. (Item 1.) I do not find any evidence has been introduced to establish that this debt has been resolved or reduced.

In her RSOR, dated August 8, 2014, Applicant admitted that she has “encountered some unpaid debt due to financial problems with family members.” Applicant also wrote that “trying to help them [her family] has caused [her] own finances to fall off track.” Finally, she averred that she “is in the process of trying to clean up my credit and unpaid debts.” (Item 1.)

In her post-FORM letter, dated March 27, 2015, Applicant wrote that she admits that she is still working on clearing her debts. Her wife has been out of work for the last eight months, which forced her to be sole income producer to pay for all of the debts in the household. Applicant also wrote that she has been helping her mother, who is taking care of Applicant’s 87 year-old grandfather. This has caused Applicant to delay resolving her own debts. She averred that she and her wife plan to attempt to consolidate their past debts. (Item A.) No evidence was submitted to show that during the more than six months between when she wrote her RSOR and her post-FORM letter, Applicant has contacted her other overdue creditors and attempted to make payment plans to resolve these 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 has accumulated significant delinquent debt, especially to the Federal Government, which has not been satisfied. Additionally, Applicant has had a history of financial problems as evidenced by her bankruptcy that discharged her overdue debts in 2005. AG ¶ 19(g), "failure to file Federal, state or local income tax returns as required" is also applicable in this case as Applicant failed to file timely Federal tax returns for tax years 2011 and 2012.

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 recent financial difficulties occurred in part because her wife was unemployed for eight months, which would allow it to be considered under this mitigating condition. However, Applicant's financial problems also occurred because she was helping her family with their financial obligations. Since this condition was within her control, I do not find that this mitigating condition is a factor for consideration in this case. I also cannot conclude that Applicant has acted responsibly to resolve the overdue debts.

AG ¶ 20(d) is also not applicable. No independent evidence was submitted to establish that Applicant has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," either to the IRS or on the smaller debts that Applicant indicated on her RSOR she planned to resolve. Therefore, I do not find that this mitigating condition or any other mitigating condition applies to this case.

Finally, no evidence was submitted to allow me to 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 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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a. - 1.h.: | 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