



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-03150

Appearances

For Government: Stephanie C. Hess, Esquire, Department Counsel

For Applicant: *Pro se*

June 23, 2015

Decision

MOGUL, Martin H., Administrative Judge:

On October 10, 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.

On October 28, 2014, Applicant furnished a reply 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 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 five documentary exhibits. (Items 1-5.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on May 1, 2015. Applicant did not submit additional evidence. The case was assigned to this Administrative Judge on May

21, 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 60 years old. She is married to her second husband. Applicant is employed as an electronic assembly specialist by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector. (Item 3.)

Guideline F, Financial Considerations

The SOR lists 21 allegations (1.a. through 1.u.) regarding financial difficulties, specifically a bankruptcy and overdue debts. The debts listed on the SOR total more than \$30,000.

1.a. The SOR alleges that Applicant filed a Chapter 7 Bankruptcy on or about April 2006. The bankruptcy discharged Applicant's debts in September 2006. Applicant admitted this allegation in her RSOR. (Item 2.)

1.b.- 1.u. The SOR cites 20 overdue debts owed by Applicant, and as discussed above, totaling more than \$30,000. In her RSOR, Applicant admitted each SOR allegation. She wrote that some of the allegations appear to be duplicates. (Item 2.) However, Applicant failed to provide any evidence to show that any of these debts were duplicates. Credit reports, dated April 9, 2014, and March 20, 2013, establish that each of these debts is overdue. (Items 4, 5.)

In her RSOR, Applicant writes that she takes full responsibility for the debts listed on the SOR. She added that she is not making excuses for not being as financially responsible as she wishes she could be. She added that the overdue debts did not come out of her living beyond her means, "but just by living." Finally, Applicant wrote that she and her husband are working to repair their past financial problems and not repeat past mistakes. (Item 2.) There has been no evidence introduced to show Applicant had contacted any of the creditors, or made any attempt to resolve or reduce any of her 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 AG ¶ 2 describing 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 the applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.

A person who applies for access to classified information seeks to enter 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 adverse 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." Since Applicant provided no explanation for her financial difficulties that would come within this mitigating condition, and no evidence was introduced to show that she has been responsible in resolving her debts, 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. 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. - 1u.: 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