



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04415

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: Ryan C. Nerny, Esquire

September 3, 2015

Decision

MOGUL, Martin H., Administrative Judge:

On October 14, 2014, 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); and the adjudicative guidelines (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

On November 13, 2014, Applicant replied to the SOR (RSOR) in writing, and she requested a hearing before an Administrative Judge (AJ). The case was first assigned to another AJ on February 18, 2015, but it was then reassigned to this AJ on February 24, 2015. DOHA issued a notice of hearing on February 19, 2014, and the hearing was convened as scheduled on March 12, 2015.

At the hearing, the Government offered Exhibits 1 through 5, which were received without objection. Applicant testified on her own behalf and submitted Exhibits A through C, which were also admitted without objection. The record was kept open

until March 27, 2015, to allow Applicant to submit additional evidence. The documents that were timely received have been identified and entered into evidence without objection as Exhibits D through K. DOHA received the transcript of the hearing (Tr) on March 24, 2015. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, 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, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 52 years old. She is not married, and she has no children. Applicant received a Bachelor of Science degree in Nursing in 1985, and a Masters degree in Nursing in 2013. She is employed as a Registered Nurse for one company and as a Medical Data Extraction by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists 10 allegations (1.a. through 1.j.) regarding financial difficulties, specifically bankruptcy and overdue debts, under Adjudicative Guideline F. At the hearing, based on information learned during questioning of Applicant, Department Counsel moved to amend the SOR and add one additional allegation, 1.k., which was granted and will be reviewed below. All of the SOR allegations will be discussed below in the same order as they were listed on the SOR:

1.a. The SOR alleges that Applicant filed a Chapter 7 bankruptcy in May 1998, and that the bankruptcy discharged her debts in 1998. Applicant admitted this SOR allegation in her RSOR, and she wrote that the filing "was a result of catastrophic medical bills and no health insurance."

Applicant testified that she filed her 1998 bankruptcy because she had been in a serious automobile accident, and since she was a student and did not have health insurance she was unable to pay for her medical bills. While she felt terrible filing bankruptcy, the bills were just too large and she could not afford to pay them. The bankruptcy did discharge all of her debts. Applicant could not recall the amount of debt that was discharged in her 1998 bankruptcy. (Tr at 28-30.) Post-hearing Exhibit D gave some information about this bankruptcy, but no information was given about the amount of debt that was discharged.

1.b. The SOR alleges that Applicant filed a Chapter 7 bankruptcy in March 2013, but this bankruptcy was dismissed in 2013. Applicant admitted this SOR allegation in her RSOR, and she wrote she filed the bankruptcy after being unemployed for approximately three years with no job prospects in sight and no savings available to her. Applicant also wrote that because of her extremely negative feelings after filing her

previous bankruptcy in 1998, she decided to dismiss this bankruptcy and attempt to pay off her creditors.

At the hearing, Applicant testified that she became unemployed in 2010, and she was unemployed or underemployed until the end of 2012. For the first two years she was able to use her savings to pay her bills, but by the third year she found it very difficult to pay for her bills, especially her home mortgage, which she was trying to modify. Because of her bad feelings during her previous bankruptcy, she made a decision to voluntarily dismiss this bankruptcy, which she did. (Tr at 30-33.)

1.c. This overdue debt is cited in the SOR for a collection account in the amount of \$160. Applicant denied this SOR allegation in her RSOR, writing that she had engaged the services of the Lexington Law Firm to help her resolve her overdue debts. She also wrote that she was notified that this debt was removed from her Trans Union credit report.

Applicant testified that she denied this allegation in her RSOR because she did not recognize this debt. She confirmed that she has hired the Lexington Law Firm to help her with all of her debts, because there was a great deal on her credit report that she did not recognize. She indicated that at the time of the hearing, the Lexington Law Firm has been helping her since August 2014, and she pays them \$100 a month. Applicant averred that she received an email from the Lexington Law Firm telling her that after they had sent a letter to the creditor asking them to validate this debt, the debt was removed from her credit report. (Tr at 33-35, 50, 67.)

Exhibit 3, a Credit Report, dated August 18, 2014, establishes that this overdue debt has been owed by Applicant. Post-hearing Exhibit J from the Lexington Law Firm indicates that this debt has been removed from the credit reports by Trans Union. However, I do not find that sufficient evidence has been introduced to establish that this debt has been resolved or reduced.

1.d. This overdue debt is cited in the SOR for a collection account in the amount of \$233. Applicant denied this SOR allegation in her RSOR, writing that with the Lincoln Law Firm's help she was informed that this debt was removed from her Trans Union and Equifax credit reports.

Applicant testified that she denied this allegation in her RSOR because she did not recognize this debt, and because the Lexington Law Firm told her that this debt was removed from her credit report after being challenged. (Tr at 36-37.)

Exhibit 3 establishes that this overdue debt has been owed by Applicant. Post-hearing Exhibit J indicates that this debt has been removed from the credit reports by Equifax. However, I do not find that sufficient 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 for a student loan in the amount of \$19,116. Applicant denied this SOR allegation in her RSOR, writing that she had student loans, but she did not believe the amount stated was correct since the loan had originated in 1996, and she had been paying on the loans until she became unemployed in 2010. She wrote that the Lexington Law Firm is trying to help her confirm the origin and amount of this debt.

Applicant testified that, while her credit reports shows three different accounts for student loans that she owes (listed on the SOR as 1.e., 1.f., and 1.i.), she only actually took out one loan. She stated that she had been making payments on this loan for approximately 14 years until she was laid off, and she stopped making payments. She averred, as she had written on her RSOR, that the Lexington Law Firm is trying to help her confirm the origin and amount of this debt. Applicant stated that she did not have any paperwork to establish the actual status of the student loans since she suffered a fire in her home in 2003 that destroyed all of her documents. She confirmed that if the student loan debts were established to be owing, she would be willing to pay these debts. Applicant did testify that she spoke to a representative of these student loans and she was told she has to make some payments for nine months to attempt to rehabilitate these loans. At the time of the hearing, she had made three monthly payments of \$10. (Tr at 41-44, 71-76.)

Exhibit 3 establishes that this overdue debt has been owed by Applicant. Post-hearing Exhibit J from the Lexington Law Firm indicates that this debt has been removed from the credit reports by Equifax. However, I do not find that sufficient 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 collection account for a student loan in the amount of \$25,121. Applicant denied this SOR allegation in her RSOR, writing that she had student loans, but she did not believe the amount stated was correct since the loan had originated in 1996, and she had been paying on the loans until she became unemployed in 2010. She again wrote that the Lexington Law Firm is trying to help her confirm the origin and amount of this debt. (See 1.e., above.)

Exhibit 3 establishes that this overdue debt has been owed by Applicant. No 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 collection account in the amount of \$342. Applicant denied this SOR allegation in her RSOR, writing that the Lexington Law Firm was helping her to resolve her debts.

At the hearing, Applicant testified that she denied this allegation in her RSOR because she did not recognize this debt, and because the Lexington Law Firm told her that this debt was removed from her credit report after being challenged. (Tr at 37.)

Exhibit 3 establishes that this overdue debt has been owed by Applicant. Post-hearing Exhibit J from the Lexington Law Firm indicates that this debt has been removed from the credit reports by TransUnion and Equifax. However, I do not find that

sufficient 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 collection account in the amount of \$4,328. Applicant denied this SOR allegation in her RSOR, writing that the Lexington Law Firm was helping her to resolve her debts.

At the hearing, Applicant testified that she believed that this debt was for an automobile that she purchased approximately seven days before she was laid off. She contended that she made the payments for a while, and retained the car for two years, but then she voluntarily surrendered the vehicle. The vehicle was ultimately sold at auction, and it appears that the amount due is the difference from what she owed when she surrendered the vehicle and the amount sold at auction. Applicant testified that the Lexington Law Firm is attempting to settle with the creditor of this debt, but it has not yet been settled. Applicant confirmed that if the debt is validated by the creditor she would be willing to pay it. (Tr at 38-41.)

Exhibit 3 establishes that this overdue debt has been owed by Applicant. No evidence has been introduced to establish that this debt has been resolved or reduced.

1.i. This overdue debt is cited in the SOR for a past-due account in the amount of \$14,534. Applicant denied this SOR allegation in her RSOR, writing that she had student loans, but she did not believe the amount stated was correct since the loan had originated in 1996, and she had been paying on the loans until she became unemployed in 2010. She once more confirmed that the Lexington Law Firm is trying to help her confirm the origin and amount of this debt. (See 1.e., above.)

Exhibit 2, a credit report, dated March 18, 2014, establishes that this overdue debt has been owed by Applicant. No evidence has been introduced to establish that this debt has been resolved or reduced.

1.j. This overdue debt is cited in the SOR for a collection account in the amount of \$306. Applicant denied this SOR allegation in her RSOR, writing that with the Lexington Law Firm's help she was informed that this debt was removed from her Trans Union credit report.

None of the credit reports submitted by the Government lists this debt. I find that the Government has not established that this debt is due and owing.

1.k. As reviewed above, Department Counsel moved to amend the SOR and add one additional allegation, which was granted. This allegation states that Applicant's home with a mortgage of approximately \$100,000 remaining on the debt was foreclosed in June or July 2012. Applicant admitted this allegation, although she was not certain of the date. (Tr at 57-64.) Post-hearing Exhibit F contains information regarding this foreclosure, but it does not clearly establish if Applicant owes a debt. I do not find that the Government has established that a debt is owed from this foreclosure.

As reviewed above, Applicant testified that her financial difficulties occurred because of a number of years when she was unemployed or underemployed. She stated that at this time she is able to pay all of her current monthly expenses. (Tr at 47.)

Mitigation

Applicant introduced a Certificate of Counseling, showing that she had received financial counseling on March 9, 2013, in connection with the filing for bankruptcy. (Exhibit A.) She also submitted a Personal Financial Statement showing a net monthly remainder of \$866 after her monthly expenses and debts were subtracted from her income, although payments for her other outstanding debts, including for the significant overdue debts of her student loan and her relinquished vehicle, were not included. (Exhibit B.) Applicant also submitted four extremely laudatory characters letter from two friends, a co-worker, and the mother of a patient. She was described as being “a very honest and forthright individual.” (Exhibit K.)

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, most of which has been overdue for several years.

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.” Applicant’s period of unemployment and underemployment could potentially make this condition applicable in this case. However, Applicant took no action to resolve the overdue debts for several years. While she has now engaged the services of a law firm to help her resolve her overdue debts, and there is some evidence that some of the smaller debts have been resolved; her most significant debts, the student loan and auto

debt, have not been settled or reduced. Accordingly, I do not find that Applicant has acted responsibly. Therefore, this mitigating condition is not applicable in this case.

Additionally, I do not find that AG ¶ 20(d) is applicable, since Applicant has not “initiated a good-faith effort to repay the [majority of] overdue creditors or otherwise resolve debts.” Finally, I do not find any other mitigating condition applies to this case. Until Applicant is able to resolve her overdue debts, I find Guideline F 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 access to a classified position 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 the lack of evidence to establish that Applicant has resolved the majority of past-due debts listed on the SOR, 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. - 1.i.:	Against Applicant
Subparagraphs 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