



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-05324
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

June 8, 2016

Decision

MOGUL, Martin H., Administrative Judge:

On March 23, 2015, 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 April 16, 2015, 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 September 29, 2015, Department Counsel issued the Department's written case. On October 5, 2015, a complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered six documentary exhibits. (Items 1-6.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on November 14, 2015. Applicant did submit additional evidence, which has been identified and entered into evidence without objection as Items A and B. The case was assigned to this

Administrative Judge on December 8, 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 43 years old, unmarried, and she has three children. She is employed 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 29 allegations (1.a. through 1.cc.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. Applicant admitted all of the allegations, with the exception of 1.e. and 1.h. in her RSOR (Item 2.) The admitted delinquent debts total \$14,251, and are deemed to be owed by Applicant.

The complete amount of the alleged debts in the SOR total \$14,583. Applicant wrote that she disputed the debt listed as 1.e. in the amount of \$171, because the creditor had not provided the service that had been agreed to. (Item 2.) This bill has been identified on the credit report, dated April 9, 2013, and identified as Item 4, but it shows that the bill has been disputed. I find that this bill has been legitimately disputed by Applicant.

Applicant also wrote on her RSOR that she disputed the debt listed as 1.h. in the amount of \$161 on the SOR because it was for tax year 2000 for State A, but she had moved out of State A in 1999 and paid her state tax for that year to State B. Item 4 identifies that this debt is owed to State A. It does appear that Applicant has a good-faith reason to dispute this debt.

The Government has established all of Applicant's debts through Applicant's RSOR, and the credit report, dated April 9, 2013. (Item 4.) Applicant has established that the debts listed as 1.e., and 1.h. and totaling \$332 have been disputed. However, that still leaves \$14,251 of undisputed outstanding overdue debts. No evidence was introduced to establish that Applicant has contacted any of the creditors, made any payment plans, or resolved or reduced any of these overdue debts.

Applicant wrote in a post-FORM letter that her overdue debts occurred primarily because of medical bills that she incurred due to a number of medical injuries and treatments, including: emergency gallbladder surgery in 2000; back injury and cervical spine surgery in 2003; automobile accident with deep tissue damage in 2010 and 2011; open breast surgery in 2011; ganglion cyst surgery to her daughter in 2013; progressive damage in her cervical spine resulting in another surgery in 2014 and 2015; and

additional medical concerns, including asthma to Applicant and two of her children. (Item A)

Additionally, she has been the single mother of three children since 2001 and prior to that she was the sole working individual for her family. Applicant also wrote that her financial history shows that she has struggled with meeting all of her financial obligations, but her car payments and her student loans have been paid on time. (Item 2.) Applicant offered no independent evidence that with her current financial situation she would be able to resolve her past overdue debts or stay current with her present debts.

Applicant submitted two positive and laudatory character letters submitted on her behalf, one from her supervisor and the other from a co-worker. (Item B.) Her supervisor wrote that Applicant “continuously exhibits exceptional personal integrity and a strong work ethic.”

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, much of it several years old, 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, in large part, because of significant medical issues. However, with the exception of allegations 1.e. and 1.h., no evidence was introduced that Applicant has responsibly contacted any of the creditors, made any payment plans, or resolved or reduced any of these overdue

debts. Therefore, I find that this mitigating condition is not a factor for consideration in this case.

Since there is no evidence that Applicant has taken any kind of counseling to better manage her finances or has initiated a good-faith effort to repay overdue creditors, I do not find that either AG ¶ 20(c) or AG ¶ 20(d) is applicable. Finally, I do not find any other mitigating condition applies to this case, since no evidence was introduced to establish that Applicant's current financial status is stable and that she is able to resolve her past debts or stay current with her recent debts. Therefore, 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 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. - 1.d.:	Against Applicant
Subparagraph 1.e.:	For Applicant
Subparagraphs 1.f. - 1.g.:	Against Applicant
Subparagraph 1.h.:	For Applicant
Subparagraphs 1.i. - 1.cc:	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