



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



In the matter of:)
)
-----) ISCR Case No. 07-09569
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel
For Applicant: B. Daniel Lynch

July 3, 2008

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on June 30, 2006. On February 11, 2008, the Defense Office of Hearings and Appeals (DOHA) 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), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant responded to the SOR (RSOR) in writing on February 28, 2008, and requested a hearing before an Administrative Judge. I received the case assignment on March 27, 2008. DOHA issued a notice of hearing on April 8, 2008, and I convened the hearing as scheduled on April 29, 2008. The Government offered Exhibits 1 through 8, which were received without objection. Applicant testified on her own behalf and submitted Exhibits A through I, without objection. Four additional witnesses testified on behalf of Applicant. DOHA received the transcript of the hearing (Tr) on May 9, 2008.

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and the testimony of Applicant and the additional witnesses, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 30 years old. She is currently remarried, and she has one son. She received a Bachelor of Arts Degree in Natural Science.

Applicant is an employee of a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector.

The SOR lists four allegations regarding overdue debts under Adjudicative Guideline F. All of the allegations will be discussed in the same order as they were listed in the SOR:

Applicant testified that these debts were incurred for an individual (Mr. A), who was very ill with Spina Bifida, and for whom Applicant's mother was acting as a guardian. Although this individual had monetary assets, he did not have the credit history to apply for the loans, upon which all four debts (1.a. through 1.d.) were based. Therefore, Applicant's mother asked Applicant to be a co-signer or signer for each of these debts. It was Applicant's understanding that these debts would be repaid through the estate of Mr. A, since the debts were incurred for his benefit, and that she would not be responsible for repaying these debts. However, since Mr. A died within one year after the purchasing of the items that are the subject of this SOR, and there was a will dispute, the debts were delayed in being paid.

1.a. This overdue debt to Creditor 1 is cited in the SOR in the amount of \$13,302. Applicant testified that this debt was taken out for a loan to purchase an automobile at the request of the guardian for the benefit of Mr. A, not for Applicant who had her own vehicle. The loan was co-signed with the Applicant and Mr. A. Based on the testimony of Applicant's mother, the car was purchased for approximately \$22,000 in 2000, with \$10,000 being paid as a down payment.

Because Mr. A died less than a year after the vehicle was purchased, the vehicle was returned to the dealer within the first year of its purchase in 2001. Applicant's mother testified that she received documentation showing that the account had been paid in full and no further money was due and owing on the vehicle. However, she did not produce any documentation to establish this as she contended that when the estate finally settled in 2005, she discarded or shredded all the documents regarding the estate.

Applicant testified that she has attempted to contact the creditor of this account, and she has followed the trail of different creditors that purchased the initial creditor's interest. According to Applicant, the current creditor has no record of this account so Applicant has no other means to ascertain the current status of this debt (Tr at 145-146). I find that If the vehicle was returned within less than a year after purchase, and a down payment of \$10,000 had been made on this vehicle, the assertion that nothing remains owing on the vehicle after it had been sold at auction, seems reasonable, and that Applicant has acted responsibly to resolve this debt.

1.b. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$7,475. Applicant testified that this debt was incurred when Applicant's mother was purchasing furniture for the home in which Mr. A, Applicant's mother, Applicant and other care givers for Mr. A were going to live. Since this debt did not need a cosigner, Applicant alone signed for this debt, again at the request of Applicant's mother. Applicant introduced documentation to show that this debt was paid in full as of October 27, 2003 (Exhibit D). I find that Applicant no longer owes this debt.

1.c. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$6,162. Applicant no longer owes this debt. Applicant contended that this debt had been signed by her for a loan, again at the request of Applicant's mother when Applicant's mother purchased furniture for the home in which Mr. A and others lived. Applicant introduced documentation to show that this debt was paid in full as of June 16, 2005 (Exhibit F). I find that Applicant no longer owes this debt.

1.d. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$4,880. Applicant argued that this debt is the same as that which is listed as 1.c., above, and has been paid in full. Exhibit F shows that this debt is the same as the debt listed to Creditor 3 in 1.c. Therefore, I find that this debt is the same as 1.c., above. and has been resolved.

Applicant's mother and Applicant testified that there had been a period of estrangement between the two of them beginning in 2001 and lasting for several years. They confirmed that Applicant did request that Applicant's mother send her documentation to show that the debts were being paid and remained current.

Applicant testified that her finances are currently in very good order, and she does not have any overdue debts. In fact, with the exception of her college student loan, for which she is current, she has no debts. She has only one credit card, and she pays the balance of that each month. Her assets include a 401k account and a savings account. Her current husband is also debt free and has some positive assets.

Applicant also offered into evidence the testimony of her father, her mother, and two individuals who know Applicant in her professional life. Applicant's father, who is a military officer and a physician testified "that [Applicant] has always worked hard to try to maintain her own good credit - - to pay her own bills, to be responsible for her own debts. . . She has worked hard to , again, follow the principles I tried to instill in her with honest and responsibility." (Tr at 43).

Applicant's mother confirmed that Applicant signed or cosigned for the debts listed on the SOR at Applicant's mother's request, and all of the items purchased, the vehicle and the furniture, were for the benefit of Mr. A, not for Applicant's benefit. Additionally, Applicant did continue to follow up with her mother to make sure that all of these debts were properly resolved.

The two additional witnesses, who know Applicant primarily in her work setting, spoke in extremely laudatory terms of her hard work, high integrity and ability.

Finally, Applicant submitted 11 awards that she has received from her employer for her excellent work (Exhibit H).

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 common sense 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 trustworthiness 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 [sensitive] 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 trustworthiness concerns. 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. Applicant accumulated three significant delinquent debts in her name and they were not satisfied for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties.

AG ¶ 20 provides conditions that could mitigate security concerns:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment. Applicant’s overdue debts, that are the subject of this case, occurred beginning in 2000, at the request of her mother and for the benefit of someone other than Applicant. Applicant’s current finances are in good order and she has no overdue debts, so I find that her previous adverse financial condition does not cast doubt on her current reliability.

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 noted above, the financial problems arose from Applicant's mother's request that she sign or cosign the loans for the benefit of Mr. A. When he died the estate that was to pay these debts became involved in litigation, and the debts were not paid for an extended period of time, through no fault of Applicant. Applicant did act responsibly under these circumstances by continuing to follow up with her mother to make certain these debts were ultimately resolved. I find this potentially mitigating condition is a factor for consideration in this case.

Applicant is now financially sound and prepared for future contingencies. I conclude these potentially mitigating conditions apply.

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) 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 have considered the potentially disqualifying and mitigating conditions under Guideline F, in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above, including Applicant's reasons for her previous financial difficulties, her excellent economic condition today, her current positive employment status, and the exceptional testimony offered on her behalf by the other witnesses at the hearing, I find that the record evidence leaves me without questions or 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 mitigated the security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

FOR APPLICANT

Subparagraph 1.a:

For Applicant

Subparagraph 1.b:

For Applicant

Subparagraph 1.c:

For Applicant

Subparagraph 1.d:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul
Administrative Judge