



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-12737
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer Goldstein, Esquire, Department Counsel
For Applicant: *Pro Se*

December 1, 2008

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted her Security Clearance Application (SCA), on February 9, 2007. On May 29, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and J 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 July 8, 2008, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on September 15, 2008. DOHA issued a Notice of Hearing on September 16, 2008, and the hearing was convened as scheduled on October 28, 2008, in Santa Barbara, California. The Government offered Exhibits 1 through 10, which were received without objection. Applicant testified on her own behalf and submitted Exhibit A, which was entered without objection. I granted Applicant's request

to keep the record open until November 7, 2008, to submit additional matters. She timely submitted Exhibit B, which has been received and entered without objection. DOHA received the transcript of the hearing (Tr) on November 6, 2008, and the record closed on that date.

Based upon a review of the case file, pleadings, exhibits, and testimony, 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 Answer to the SOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 32 years old. She is not currently married, and she has one son. She received an Associates of Arts Degree in Criminal Justice in 2007.

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

Paragraph 1 Guideline F, Financial Considerations

The SOR lists 22 allegations (1.a. through 1.v.) regarding financial difficulties under Adjudicative Guideline F. All of the allegations will be discussed in the same order as they were listed in the SOR:

1.a. This overdue debt is cited in the SOR in the amount of \$553. Applicant testified that she had paid this bill. Exhibit 8 establishes that this debt has been paid.

1.b. This overdue debt, also to the same Creditor as 1.a., above, is cited in the SOR in the amount of \$272. Applicant testified that she believed that this debt was included under the debt above, but it is listed as a separate debt. Applicant has not established that this debt has been resolved as a separate debt or that it should be included under 1.a., above.

1.c. This overdue debt is cited in the SOR in the amount of \$318. Applicant testified that she has made an agreement to pay \$50 a week until this debt is resolved. Thus far she has not made any payments, so at this time the full amount listed is still owed.

1.d. This overdue debt is cited in the SOR in the amount of \$59. Applicant testified that this debt was discharged in the bankruptcy that she filed in 2004, and which is discussed under 1.v., below. Exhibit 5 establishes that this is one of the creditors that was discharged in bankruptcy.

1.e. This overdue debt is cited in the SOR in the amount of \$451 for a medical provider. Applicant testified that she believed that all of her medical bills had been discharged in bankruptcy. Three medical bills are included on her list of creditors, creditor #7 in the amount of \$365, creditor #12 in the amount of \$243, and creditor #21 in the amount of \$401 (Exhibit 5). Since this debt does not appear to be listed on her bankruptcy, I can not conclude that this debt has been resolved.

1.f. This overdue debt is cited in the SOR in the amount of \$348 for a medical provider. Since this debt also does not appear to be listed on her bankruptcy, I can not conclude that this debt has been resolved.

1.g. This overdue debt is cited in the SOR in the amount of \$475 for a medical provider. Since this debt also does not appear to be listed on her bankruptcy, I can not conclude that this debt has been resolved.

1.h. This overdue debt is cited in the SOR in the amount of \$45. Applicant testified that she had no knowledge of the origin of this debt, and since it arose in April 2006 (Exhibit 7), it could not have been resolved in the bankruptcy, and no evidence was introduced to establish that it has been paid.

1.i. This overdue debt is cited in the SOR in the amount of \$51. Applicant testified that this debt was discharged in the bankruptcy that she filed in 2004. Exhibit 5 establishes that this is one of the creditors that was discharged in bankruptcy.

1.j. This overdue debt is cited in the SOR in the amount of \$724. This debt has not been paid.

1.k. This overdue debt is cited in the SOR in the amount of \$3,290 for a medical provider. Applicant testified that she had no knowledge of the origin of this debt, and no evidence was introduced to establish that it has been resolved in bankruptcy or paid.

1.l. This overdue debt is cited in the SOR in the amount of \$634. Applicant testified that she had no knowledge of the origin of this debt, and she has made no attempt to contact this creditor.

1.m. This overdue debt is cited in the SOR in the amount of \$395 for a medical provider. As reviewed above, Applicant testified that she thought her medical bill were discharged in bankruptcy. This debt does not appear to be listed on her bankruptcy, so I can not conclude that this debt has been resolved.

1.n. This overdue debt is cited in the SOR in the amount of \$2,553 for a medical provider. This debt also does not appear to be listed on her bankruptcy, so I can not conclude that this debt has been resolved.

1.o. This overdue debt is cited in the SOR in the amount of \$2,087 for a medical provider. This debt also does not appear to be listed on her bankruptcy, so I can not conclude that this debt has been resolved.

1.p. This overdue debt is cited in the SOR in the amount of \$614. Applicant testified that she had no knowledge of the origin of this debt, and she has made no attempt to contact this creditor.

1.q. This overdue debt is cited in the SOR in the amount of \$457. Applicant testified that she believed the only debts that she had from this creditor were discharged in bankruptcy. Exhibit 5 establishes that two debts from this creditor were discharged in bankruptcy. It does appear that this debt was discharged in bankruptcy.

1.r. This overdue debt is cited in the SOR in the amount of \$551. This is the second debt to the creditor listed in 1.q., above, and Exhibit 5 seems to establish that this debt was discharged in bankruptcy.

1.s. This overdue debt is cited in the SOR in the amount of \$288. Applicant testified that she has paid this debt.

1.t. This overdue debt is cited in the SOR in the amount of \$90. This is a second debt to the same creditor listed as 1.s., above. Applicant testified that she did not recall this second debt to this creditor.

1.u. This overdue debt is cited in the SOR in the amount of \$364. Applicant testified that she believed that she had paid all but \$20 of this debt. However, she had no documentation to establish that she had paid this debt.

1.v. On October 27, 2004, Applicant petitioned the United States Bankruptcy Court for a Chapter 7 bankruptcy. In February 2005 her debts were discharged in bankruptcy. Her debts totaled \$21,200.

Applicant testified that she has contacted a credit consulting agency (cca) to help her resolve her debts. At the time of the hearing she had not paid any fee to this company, but she testified that she planned to make a payment of \$323 shortly after the hearing. Exhibit B, which Applicant submitted after the hearing, is a document from the cca showing that Applicant was in the process of using their services. However, not only was the cca a different name than that to which Applicant testified at the hearing, but the document indicated that Applicant had yet to make any payments to them to begin their service, although she was scheduled to begin on November 21, 2008. I find that it is far too soon to establish that Applicant will use this company's services, and that they will help her resolve her overdue indebtedness.

Applicant testified that the primary reason for her financial difficulties is that when she was married to her husband, he would not be responsible in his spending habits.

Paragraph 2 (Guideline J - Criminal Conduct)

The SOR lists 3 allegations, 2.a. through 2.c., regarding criminal conduct under Adjudicative Guideline J. All of the allegations will be discussed in the same order as they were listed in the SOR:

1.a. On April 22, 1996, Applicant was arrested and charged with Petty Theft. She pled no contest and was sentenced to serve three years unsupervised probation, 30 days in jail and to pay fines totaling \$285. She also was ordered to stay out of the department store from which she committed the Petty Theft. Applicant admitted that she and a friend had attempted to steal clothing by placing it under her street clothes and leave the store without paying for it.

1.b. On May 16, 1996, Applicant was arrested and charged with Petty Theft. She pled no contest. She served the sentence that has been discussed in 2.a., above as part of the punishment for both criminal acts, including serve three years unsupervised probation and 30 days in jail. She also had to perform 100 hours of community service, and she also was ordered to stay out of the store from which she was convicted of Petty Theft.

At the hearing, Applicant denied that she had committed the act in this store. She claimed that a friend had placed a bag in her shopping cart, and she walked out of the store without realizing that it had not been paid. While Applicant claimed that she did not knowingly engage in this illegal act, the evidenced establishes that she was convicted for Petty Theft and sentenced as reviewed above, and this issue will not be relitigated at this time.

1.c. On January 11, 2004, 1999, Applicant was arrested and charged with Battery. Applicant plead no contest to the lesser offense of Disturbing the Peace by Fighting. She was sentenced to serve two years unsupervised probation, and to pay fines totaling \$645.

At the hearing, Applicant contended that she had been attacked by another woman and only hit her in self defense. However, again, the evidenced establishes that she was convicted of Disturbing the Peace by Fighting, and this issue also will not be relitigated at this time.

Applicant introduced seven letters of recommendation from individuals who have known Applicant in her current position of employment. They spoke in extremely positive terms about Applicant's "good character and a strong and consistent work ethic." There was no indication in the letters as to whether or not the individuals have any knowledge as to the allegations that are described in the SOR.

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 Government has established that Applicant has had a history of financial difficulties and overdue debts.

Regarding the Disqualifying Conditions (DC) under Guideline F, I conclude both DC (a) and DC (c) apply, because of Applicant's long history of not meeting financial obligations and her continuing inability or unwillingness to satisfy his debts.

I can not find that any Mitigating Condition (MC) applies as Applicant has failed to resolve the vast majority of long overdue debts. While she has contacted a credit counseling service, Exhibit B establishes that she had yet to make any payments at the time the document had been submitted. Therefore, it is far too soon to for me to conclude that Applicant has engaged in a systematic effort to resolve her overdue debts. Additionally, while Applicant has been divorced, it does not appear that the divorce contributed to most of her indebtedness. I, therefore, hold Guideline F against Applicant.

Guideline J - Criminal Conduct

The Government has established by substantial evidence that Applicant engaged in criminal conduct, as he was arrested for, and convicted of criminal offenses including: Petty Theft on two occasions in 1996 and Disturbing the Peace by Fighting in 2004.

In reviewing the Disqualifying Conditions (DC) under Guideline J, DC 31. (a), a single serious crime or multiple lesser offenses, applies in this case. Under Mitigation Conditions (MC), I find that MC 32. (d) applies to this Applicant, as there is evidence of successful rehabilitation because the last criminal conduct occurred in 2004, and Applicant has expressed a sincere desire to act in more responsible manner, especially to be a better role model to her son. Applicant has mitigated this allegation. Paragraph 2 is found for 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) 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 Guidelines F and J, in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above, including Applicant's history of financial difficulties, her failure to resolve the overdue debts, and her history of criminal conduct, 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.

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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.v.:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a - 2.c.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge