



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ADP Case No. 07-12933
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro Se*

April 27, 2009

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted her Questionnaire for Public Trust Positions (SF 85P) (Item 5), on March 8, 2006. On March 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) (Item1) detailing the trustworthiness concerns under Guidelines F, E, 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, dated May 7, 2008 (Item 4), in which she requested that her case be decided on the written record in lieu of a hearing.

On January 16, 2009, Department Counsel issued the Department's written case. A complete copy of the File of Relevant Material (FORM) was provided to Applicant on January 22, 2009, and in the FORM, Department Counsel offered 12 documentary exhibits (Items 1-12). Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on February 27, 2009. Applicant submitted an additional response, dated February 6, 2009, and identified as Item 13 . The case was assigned to this Administrative Judge on March 16, 2009.

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to sensitive information is denied.

Findings of Fact

After a complete and thorough review of the evidence in the record, including the FORM, Applicant's RSOR and the other admitted documents, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 32 years old. She seeks to occupy an Information Systems Position, designated ADP-I/II/III to support a defense contractor.

Paragraph 1 (Guideline F- Financial Considerations)

The SOR lists 32 allegations (1.a. through 1.af.) regarding financial difficulties under Adjudicative Guideline F. Applicant admitted all of these allegations, except 1.l., 1.q., 1.y., and 1.z., which she claims are not her debts and 1.p., which she contends has been paid. No evidence was introduced to modify or dispute these allegations and admissions.

On September 26, 2008, Applicant and her husband filed a joint petition for Chapter 7 bankruptcy relief, reporting assets of \$21,031 and liabilities of \$107,321.07 (Items 10,11). The latest notice from the Bankruptcy Court shows that the action was still pending as of December 15, 2008, (Item 12), but no evidence has been submitted that a decision has been issued. In Applicant's reply to the FORM (Item 13) she gives no indication that her debts have been discharged in bankruptcy.

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 \$5,086. No evidence has been introduced to establish that any of this debt has been paid or resolved.

1.b. This overdue debt is cited in the SOR in the amount of \$88. No evidence has been introduced to establish that any of this debt has been paid or resolved.

1.c. This overdue debt is cited in the SOR in the amount of \$60. No evidence has been introduced to establish that any of this debt has been paid or resolved.

1.d. This overdue debt to is cited in the SOR in the amount of \$50. No evidence has been introduced to establish that any of this debt has been paid or resolved.

1.e. This overdue debt is cited in the SOR in the amount of \$55. No evidence has been introduced to establish that any of this debt has been paid or resolved.

1.f. This overdue debt is cited in the SOR in the amount of \$39. No evidence has been introduced to establish that any of this debt has been paid or resolved.

1.g. This overdue debt to is cited in the SOR in the amount of \$30. No evidence has been introduced to establish that any of this debt has been paid or resolved.

1.h. This overdue debt to is cited in the SOR in the amount of \$51. No evidence has been introduced to establish that any of this debt has been paid or resolved.

1.i. This overdue debt to is cited in the SOR in the amount of \$49. No evidence has been introduced to establish that any of this debt has been paid or resolved.

1.j. This overdue debt to is cited in the SOR in the amount of \$45. In her RSOR, Applicant stated that this debt was not hers. However, no evidence has been introduced to establish that this debt was not incurred by Applicant or that it has been resolved.

1.k. This overdue debt to is cited in the SOR in the amount of \$828. No evidence has been introduced to establish that any of this debt has been paid or resolved.

1.l. This overdue debt to is cited in the SOR in the amount of \$526. No evidence has been introduced to establish that any of this debt has been paid or resolved.

1.m. This overdue debt to is cited in the SOR in the amount of \$1,256. No evidence has been introduced to establish that any of this debt has been paid or resolved.

1.n. This overdue debt to is cited in the SOR in the amount of \$90. No evidence has been introduced to establish that any of this debt has been paid or resolved.

1.o. This overdue debt to is cited in the SOR in the amount of \$1,138. No evidence has been introduced to establish that any of this debt has been paid or resolved.

1.p. This overdue debt to is cited in the SOR in the amount of \$1,120 In her RSOR, Applicant stated that this debt was paid. However, no evidence has been introduced to establish that this debt has been resolved.

1.q. This overdue debt to is cited in the SOR in the amount of \$2,447. In her RSOR, Applicant stated that this debt was not hers. However, no evidence has been introduced to establish that this debt was not incurred by Applicant or that it has been resolved.

1.r. This overdue debt to is cited in the SOR in the amount of \$1,106. No evidence has been introduced to establish that any of this debt has been paid or resolved.

1.s. This overdue debt to is cited in the SOR in the amount of \$1,428. In her RSOR, Applicant stated that this debt was not hers. However, no evidence has been introduced to establish that this debt was not incurred by Applicant or that it has been resolved.

1.t. This overdue debt to is cited in the SOR in the amount of \$442. No evidence has been introduced to establish that any of this debt has been paid or resolved.

1.u. This overdue debt to is cited in the SOR in the amount of \$3,296. In her RSOR, Applicant stated that she has thus far paid \$1,300 on this debt, and she is continuing making payments on this debt. However, no evidence has been introduced to establish that this debt has been partially paid or is being paid by Applicant.

1.v. This overdue debt to is cited in the SOR in the amount of \$449. No evidence has been introduced to establish that any of this debt has been paid or resolved.

1.w. This overdue debt to is cited in the SOR in the amount of \$419. No evidence has been introduced to establish that any of this debt has been paid or resolved.

1.x. This overdue debt to is cited in the SOR in the amount of \$121. No evidence has been introduced to establish that any of this debt has been paid or resolved.

1.y. This overdue debt to is cited in the SOR in the amount of \$1,041. In her RSOR, Applicant stated that this debt was not hers, but she has submitted the paperwork to have the bill paid by insurance carrier. However, no evidence has been introduced to establish that this debt was not incurred by Applicant or that it has been resolved.

1.z. This overdue debt to is cited in the SOR in the amount of \$401. In her RSOR, Applicant stated that this debt was not hers, but she has submitted the paperwork to have the bill paid by insurance carrier. However, no evidence has been introduced to establish that this debt was not incurred by Applicant or that it has been resolved.

1.aa. This overdue debt to is cited in the SOR in the amount of \$382. No evidence has been introduced to establish that any of this debt has been paid or resolved.

1.ab. This overdue debt to is cited in the SOR in the amount of \$121. No evidence has been introduced to establish that any of this debt has been paid or resolved.

1.ac. This overdue debt to is cited in the SOR in the amount of \$170. No evidence has been introduced to establish that any of this debt has been paid or resolved.

1.ad. This overdue debt to is cited in the SOR in the amount of \$732. In her RSOR, Applicant stated that she has thus far paid \$400 on this debt, and she is continuing making payments on this debt. However, no evidence has been introduced to establish that this debt has been partially paid or is being paid by Applicant.

1.ae. This overdue debt to is cited in the SOR in the amount of \$12. No evidence has been introduced to establish that any of this debt has been paid or resolved.

1.af. This overdue debt to is cited in the SOR in the amount of \$40,999 for 12 student loans. In her RSOR, Applicant acknowledged that this debt for student loans is hers, but she stated that she is still in school. No evidence has been introduced to establish if this debt is now deferred or what the current status of this debt.

Applicant's primary explanation for her overdue debts is her husband's history of sporadic employment.

Paragraph 2 (Guideline E - Personal Conduct)

2.a. Applicant submitted her Questionnaire for Public Trust Positions (SF 85P) (Item 5), on March 8, 2006. Question 22.b. asked, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Applicant answered "No" to this question, and she listed no debts. The Government alleges that Applicant should have included the debts listed in the SOR under paragraph 1.

Clearly these debts had been delinquent for more than 180 days when Applicant completed and executed the (SF 85P), and they should have been listed in response to question 22.b. In her RSOR, Applicant acknowledged that her answer was incorrect, but claimed that she did not realize that she was required to list all of her delinquent debts (Item 4).

2.b. In October 2004, Applicant's was terminated from her position as a Patient Access Representative at a medical college for failure to follow rules.

2.c. During a period from December 2002 through February 2007, Applicant wrote nine checks that were returned by her bank for insufficient funds. Applicant never repaid the creditors for these "bad" checks.

Paragraph 3 (Guideline J - Criminal Conduct)

The SOR lists 5 allegations, 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:

3.a. On March 22, 2001, Applicant was arrested and charged with Driving with a License Suspended or Revoked. She plead nolo Contendere and was sentenced to 12 months probation and ordered to pay a fine of \$625.

3.b. On September 30, 2003, Applicant was arrested and charged with Failing to Appear. As a result, she paid a fine of \$913.

3.c. On May 18, 2004, Applicant was arrested and charged with a Probation Violation. Applicant was ordered to pay a fine of \$285.

3.d. On October 6, 2004, Applicant was arrested charged with Theft by Taking, a felon. This charge was later nolle prosequi.

3.e. It is alleged in the SOR that Applicant's continued conduct, described in paragraph 2.c., above, are considered misdemeanor offenses under Georgia Code Section 16-9-20.

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 19. (a) and DC (c) apply, because of Applicant’s inability or unwillingness to satisfy her debts, and her long history of not meeting her financial obligations.

I can not find that any Mitigating Condition (MC) applies. While MC 20.(b) could initially be argued to apply since some of Applicants financial problems were as a result of the employment difficulties of her husband, it has not been established that Applicant has acted responsibly under the circumstances, since she has failed to resolve any of her overdue debts, even those debts for which a minimal amount is owing, and she has failed to seek any financial counseling which could help to resolve financial difficulties now and in the future. While she has now filed for bankruptcy, there is no indication that her debts will be discharged, and even if they are ultimately discharged, there is no indication that she will not have financial difficulties in the future. I, therefore, hold Guideline F against Applicant.

Guideline E- Personal Conduct

With respect to Guideline E, the evidence establishes that Applicant provided incorrect material information to the Government on the SF 85P that she executed on March 8, 2006. Applicant identified no debts that were over 180 days overdue in the last seven years prior to her completing the SF 85P, when clearly she should have identified the debts listed on the SOR. I find that Applicant's explanation that it was simply a mistake, as the reason for her failure to put the Government on notice that she had financial difficulties, is not sufficient or credible to consider it as mitigation.

The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts or fails to furnish relevant information to the Government, it is extremely difficult to conclude that she nevertheless possesses the judgment, and honesty necessary for an individual given a clearance. In this case, based on Applicant's overall history, my inability to see the Applicant and judge her veracity in person, and the lack of any witness to provide testimony regarding Applicant's character, I can find no reasonable explanation for Applicant's failure to provide this very significant information to the Government on the SF 85P, and I must conclude that Applicant knowingly and willingly failed to give complete, honest information to the Government.

Her writing of nine insufficient checks over the course of several years, and her failure to resolve these debts, also shows questionable judgement dishonestly and unwillingness to comply with rules and regulations.

In reviewing the DCs under Guideline E, I conclude that DC16. (a) applies because Applicant deliberately provided false and misleading information to the Government in her SF 85P. DC16. (d) also applies because Applicant's issuance of bad checks shows a pattern of dishonesty. No Mitigating Condition applies under this Guideline. As a result of the misinformation that Applicant provided to the Government, and her issuance of bad checks, her conduct exhibits questionable judgement, unreliability, and a lack of candor. I resolve Guideline E against Applicant.

Guideline J - Criminal Conduct

The Government has established by substantial evidence that Applicant engaged in criminal conduct, as she was arrested for, and convicted of criminal offenses from 2001 to 2004, and issued checks with insufficient funds from 2002 to 2007.

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 can not find that MC 32. (d) applies to this Applicant, as there is no evidence of successful rehabilitation, nor have I seen any evidence of sincere remorse. Applicant has not mitigated this allegation. Paragraph 3 is 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) 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, E, 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, even the very small ones, her willful omissions made to the Government, and her criminal conduct, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a sensitive position, under the whole person concept. For all these reasons, I conclude Applicant has not mitigated the trustworthiness 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 through af:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 2.c:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraphs 3.a through 3.e:	Against 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 public trust position. Eligibility for access to sensitive information is denied.

Martin H. Mogul
Administrative Judge