



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-13130
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro Se*

May 5, 2008

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on April 4, 2007 (Item 5). On October 24, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) (Item 1) 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 replied to the SOR (RSOR) in writing on November 16, 2007, (Item 4), in which she requested that her case be decided on the written record in lieu of a hearing.

On December 13, 2007, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant, and she was given the opportunity to file objections and submit material in

refutation, extenuation, or mitigation. A response was due on January 19, 2008. Applicant did not submit any additional evidence. The case was assigned to this Administrative Judge on April 2, 2008.

In the FORM, Department Counsel offered seven documentary exhibits (Items 1-7). No documents were offered by Applicant. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In her RSOR, Applicant denied every SOR allegation.

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

Applicant is 50 years old. She is employed by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector.

The SOR lists eight allegations 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 \$280. Applicant denied that she owed this debt in her RSOR, but two credit reports (Items 6 and 7) establish that this debt has been owed by Applicant. No evidence has been introduced to establish that Applicant has paid this debt or it has been resolved in any way.

1.b. This overdue debt is cited in the SOR in the amount of \$720. Applicant denied that she owed this debt in her RSOR, but two credit reports (Items 6 and 7) establish that this debt has been owed by Applicant. No evidence has been introduced to establish that Applicant has paid this debt or it has been resolved in any way.

1.c. This overdue debt is cited in the SOR in the amount of \$5,192. Applicant denied that she owed this debt in her RSOR, but two credit reports (Items 6 and 7) establish that this debt has been owed by Applicant. No evidence has been introduced to establish that Applicant has paid this debt or it has been resolved in any way.

1.d. This overdue debt is cited in the SOR in the amount of \$3,649. Applicant denied that she owed this debt in her RSOR, but two credit reports (Items 6 and 7) establish that this debt has been owed by Applicant. No evidence has been introduced to establish that Applicant has paid this debt or it has been resolved in any way.

1.e. This overdue debt is cited in the SOR in the amount of \$1,821. Applicant denied that she owed this debt in her RSOR, but two credit reports (Items 6 and 7)

establish that this debt has been owed by Applicant. No evidence has been introduced to establish that Applicant has paid this debt or it has been resolved in any way.

1.f. This overdue debt is cited in the SOR in the amount of \$5,731. Applicant denied that she owed this debt in her RSOR, but two credit reports (Items 6 and 7) establish that this debt has been owed by Applicant. No evidence has been introduced to establish that Applicant has paid this debt or it has been resolved in any way.

1.g. This overdue debt is cited in the SOR in the amount of \$486. Applicant denied that she owed this debt in her RSOR, but two credit reports (Items 6 and 7) establish that this debt has been owed by Applicant. No evidence has been introduced to establish that Applicant has paid this debt or it has been resolved in any way.

1.h. This overdue debt is cited in the SOR in the amount of \$214. Applicant denied that she owed this debt in her RSOR, but two credit reports (Items 6 and 7) establish that this debt has been owed by Applicant. No evidence has been introduced to establish that Applicant has paid this debt or it has been resolved in any way.

In her RSOR, Applicant stated that all of the debts listed in the SOR “went to collections in the spring/summer of 2001” and she explained that her financial difficulties occurred because when she and her husband divorced in 2000, it was her “understanding” that he was to pay off all of these debts. She contended that unbeknownst to her, her husband died in April 2001. She wrote in her RSOR that was prepared on November 16, 2007, that she planned to contact the creditors to “verify the debt.”

No evidence has been introduced to show that Applicant has taken any steps to contact these creditors to make payments on these debts, or in any other way resolve them, since her RSOR was submitted.

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 significant delinquent debt and was unable to pay some obligations 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:

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 seem to have arisen primarily because Applicant's former husband was to make payments on these debts, but he died without her knowledge. However, Applicant became aware of the overdue debts, at least since she received the SOR, sent to her on October 24, 2007. While Applicant indicated on her RSOR that she would contact the creditors, there is no evidence that Applicant did in fact act responsibly by contacting the creditors and paying off these debts. Therefore, this mitigating condition does not apply. I also find that no other Mitigating Condition is applicable in this case.

I can not conclude that Applicant has mitigated the financial concerns or is more financially sound and better prepared for future contingencies.

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 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 no Mitigating Conditions apply, together with no additional information to consider about Applicant's character, 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	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 security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge