



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-03553
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

November 20, 2008

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on October 16, 2007. On June 23, 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 replied to the SOR (RSOR) in writing, and requested a hearing before an Administrative Judge. I received the case assignment on July 28, 2008. DOHA issued a notice of hearing on September 30, 2008, and I convened the hearing as scheduled on October 23, 2008, in La Vegas, Nevada. The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified on her own behalf and submitted no documents at the time of hearing. DOHA received the transcript of the hearing (Tr) on October 31, 2008. I granted Applicant's request to keep

the record open until October 30, 2008, to submit additional documents. She timely submitted an additional document, a one page letter which has been identified and entered into evidence as Exhibit A, and the record closed on October 30, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In her RSOR, Applicant admitted all of the SOR allegations. The admitted allegations are incorporated herein as findings of fact.

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

Applicant is 38 years old. She is currently married and has two children. She has received two Associates of Arts degrees. She served in the United States Air Force from 1998 to 2007.

Applicant was employed by a defense contractor, although she is not currently employed by that company, but she seeks a DoD security clearance in connection with her employment in the defense sector.

The SOR lists eight allegations (1.a. through 1.h.) regarding financial difficulties under Adjudicative Guideline F, with overdue debts totaling \$31,861. As discussed above, in her RSOR Applicant admitted that each allegation in the SOR is correct. At the hearing, Applicant testified that the total amount of each debt is still unpaid. The total owed from each debt will be discussed in the same order as they were listed in the SOR:

1.a. This overdue debt to Creditor 1 is cited in the SOR in the amount of \$6,475. This debt is from credit card charges.

1.b. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$1,226. This debt is from credit card charges.

1.c. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$3,373. This debt is from credit card charges.

1.d. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$1,341. This debt is from credit card charges.

1.e. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$2,379. This debt is from credit card charges.

1.f. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$3,353. This debt was from the repossession for a vehicle, which Applicant purchased in 2001, but had repossessed in 2006.

1.g. This overdue debt to Creditor 7 is cited in the SOR in the amount of \$470. This debt is for telephone charges.

1.h. This overdue debt to Creditor 8 is cited in the SOR in the amount of \$13,244. This debt is from credit card charges.

Applicant testified that her financial difficulties primarily because her family lost their possessions during Hurricane Katrina. However, upon cross examination, Applicant conceded to Department Counsel that since she was in the Air Force at the time of the hurricane, she was compensated under the Claims Act for her and her family's possessions. She eventually had a permanent change of station orders and made a decision to resign from the Air Force, when she became concerned that she may have been deployed and she did not have proper supervision for her children.

I find that the majority of the debts listed on the SOR were incurred prior to Hurricane Katrina. It was because of her loss of income after leaving the Air Force that she became unable to pay off these debts. Hurricane Katrina was not the primary factor that contributed to her financial difficulties.

At this point Applicant is unemployed and only receives unemployment compensation. While her husband still earns an income, she has not been able to resolve any of the debts listed on the SOR, and there is no indication when she would be able to settle these debts.

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 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 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 has been unable to pay any of her 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, while Applicant argued that her financial problems were the result of Hurricane Katrina, which would certainly put this case under this mitigating condition, I find that the financial problems arose primarily from Applicant's personal decision to resign from the Air Force with no significant income available. She was compensated for the personal property that she lost from Hurricane Katrina. Additionally, I can not conclude that Applicant has acted responsibly under these circumstances, because she has failed to contact the creditors of these overdue debts, and she has failed to attempt to seek some kind of financial counseling that might help her to ascertain a way to resolve these overdue debts. Therefore, I do not find that this potentially mitigating condition is a factor for consideration in this case.

Applicant has not resolved any of her overdue debt. I conclude that until she is able to significantly reduce this overdue debt, she has not mitigated the financial concerns of the Government.

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 the Disqualifying Conditions apply and why no Mitigating Condition applies, 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 through 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