



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



In the matter of:)
)
-----) ISCR Case No. 08-05379
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

August 26, 2009

Decision

MOGUL, Martin H., Administrative Judge:

On February 12, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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 March 7, 2009, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on April 16, 2009. DOHA issued a notice of hearing on April 21, 2009, and the hearing was convened as scheduled on May 26, 2009. The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified on her own behalf, and she submitted Exhibit A, which was entered into evidence without objection. The transcript (Tr) was received on June 4, 2009.

I granted Applicant's request to keep the record open until June 9, 2009, to submit additional matters. She timely submitted additional documents, that have been entered into evidence without objection as Exhibits B through M, 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 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 upon due consideration of that evidence, I make the following findings of fact:

Applicant is 38 years old. She is not married, and she has two children. She 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 nine allegations of overdue debts, 1.a. through 1.i., under Adjudicative Guideline F. All of the debts 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 \$625. Applicant testified she was not aware of the origin of this debt, but it has not been paid.

At the hearing, Applicant testified that she was considering filing bankruptcy and had a meeting scheduled to meet with an attorney in that regard. In her post hearing exhibits, Applicant also has consulted with a second credit counseling service (CCS), after she had also consulted with a previous CCS, which had taken no positive steps to resolve her debts (Tr at 40-45). Applicant stated that this debt will be included in the bankruptcy that she plans to file (Exhibit B). She also included a letter from a law firm, dated June 2, 2009, (Exhibit C), which confirmed that they would be representing Applicant "with regard to a Chapter 7 bankruptcy filing."

1.b. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$29,630. Applicant testified that this debt for a vehicle, which Applicant still possessed at the time of the hearing, had not yet been paid. In Exhibit B, Applicant indicated that she would include this debt in her bankruptcy.

1.c. This overdue debt to Creditor 3 for a judgement is cited in the SOR in the amount of \$822. During the hearing, Department Counsel stated that based upon an indication, as reported in Exhibit 2, that the Judgement had been satisfied, the Government would stipulate that this debt had been resolved (Tr at 25-27).

1.d. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$50. Applicant testified that she has paid this debt. Exhibit D establishes that Applicant paid \$71.07 to a collection agency for this debt, and it has been paid in full.

1.e. This second overdue debt to Creditor 4 is cited in the SOR in the amount of \$50 for a medical bill. Applicant testified that she has paid this debt. Exhibit E establishes that Applicant paid \$69.01 to the same collection agency for this debt, which has the same original creditor and may actually be the same debt, but in any event, it has been paid in full.

1.f. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$1,027. Applicant testified that she has not paid this debt, but she is disputing it since she believes it may have been based on identity theft, which Applicant contends she suffered (Tr at 48-50). Exhibit 3 establishes that Applicant did dispute this bill with the credit reporting agency, which began an investigation to determine if the debt was correct and owing. However, no evidence was offered to ascertain the result of the investigation. In Exhibit B, Applicant indicated that she would include this debt in her bankruptcy.

1.g. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$2,452. Applicant testified that she only owed the co-payment requirement of \$50 for this debt for a medical bill, which she has paid. She averred that the rest of the bill should have been paid by her medical insurance carrier. Exhibit G, a letter from the collection agency for this debt, establishes that this debt was resolved.

1.h. This overdue debt to Creditor 7 is cited in the SOR in the amount of \$203. Applicant testified that this debt for a medical bill, should also have been paid by her insurance carrier at the time. Exhibit H, a letter from the Applicant's insurance carrier, seems to establish that this debt was resolved.

1.i. This second overdue debt to Creditor 7 is cited in the SOR in the amount of \$2,460. Applicant testified that this debt for a medical bill from the same health care provider as 1.h., above, should also have been paid by her insurance carrier. Exhibit H, a letter from the Applicant's insurance carrier, also seems to establish that this debt was resolved.

Paragraph 2 Guideline E, Personal Conduct

2.a. Applicant executed a signed Security Clearance Application (SCA) on July 10, 2007 (Exhibit 1). Section 27:d. asked "In the last 7 years, have you had any judgments against you that have not been paid?"; to which she answered "No." In the SOR, the Government alleges that Applicant deliberately failed to list that he had an unpaid judgment filed against her within the last seven years, as set forth in subparagraph 1.c., above.

As reviewed in 1.c., above, based on Exhibit 2 it has been established that this judgement had been resolved, and it was done prior to her completing Exhibit 1.

Therefore, I find that Applicant was correct in responding "No" to this question. After reviewing the allegation and additional evidence at the hearing, Department Counsel indicated that the Government would withdraw this allegation.

2.b. Applicant responded "No" to Section 28:a., which asks, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" She also failed to list any debts. The SOR alleges that Applicant should have answered yes and included the debts listed as 1.a., 1.b., 1.d. through 1.g., as alleged in the SOR.

Applicant testified that at the time she completed the SCA. she had not reviewed a credit report, so she was not aware that she had any overdue debts. Applicant further explained that she had a continuing, contentious relationship with a man, and she lived with him on three separate occasions, and then she moved out of their joint living quarters three times, ultimately completely ending the relationship in 2007. She speculated that she was unaware of her debts, because this individual with whom she lived, may not have been giving her mail to her. She reiterated credibly that if she had been aware of the overdue debts she would have included them in her SCA (Tr at 70-71). She only became aware of these debts after meeting with a Government investigator in March 2008. I find Applicant credible that she did not intend to mislead the Government in her response to Question 28: a.

2.c. Applicant responded "No" to Section 28:b., which asks, "Are you currently over 90 days delinquent on any debt(s)?" She also failed to list any debts. The SOR alleges that Applicant should have answered yes and included the debts listed as 1.a., 1.b., 1.d. through 1.g., as alleged in the SOR.

In response to this allegation, Applicant reiterated that at the time she completed the SCA. she was not aware that she had any overdue debts. I also find Applicant credible that she did not intend to mislead the Government in her response to Question 28:b.

Applicant testified that one of the causes of her financial problems was that her roommate moved out of an apartment, for which both of them were paying rent. Ultimately, she was unable to pay for the rent herself, together with the payments for the truck she had purchased, which resulted in the debt that is reviewed in 1.b., above. The continuing on again, off again relationship with her boyfriend, which has been described above, also contributed to her financial difficulties, since he ejected her from the home where they were both living, and she thereafter was forced to live for a period of time in a hotel. She had also taken out a loan with this man, and she believed the payments were being made out of the proceeds of the loan, which, she later learned, was not correct.

Applicant submitted a report (Exhibit M), showing her current monthly expenses were \$4,533. Unfortunately, she did not include her monthly income in this report, so it is not particularly helpful in giving full insight into her current economic condition. She did testify that outside of the debts reviewed above, she is current on her most recent bills.

Applicant also submitted four character letters from individuals who have known Applicant in an employment capacity (Exhibits A, I, K, and L), Exhibit J is a duplicate of Exhibit A. The letters were all very positive, describing Applicant as “intelligent, enthusiastic and motivated . . . who conscientiously adheres to company standards and guidelines.”

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 history of not meeting financial obligations and her previous inability or unwillingness to satisfy her debts.

However, I find that Mitigating Condition (MC) (d) applies as Applicant, who has engaged the services of two separate CCS companies, paid several off her debts, pursued disputing the debts which she believed were not hers, and met with an attorney to file for bankruptcy to resolve her other debts, has initiated a good-faith effort to repay the overdue creditors or in other ways resolve her debts. I have also considered that she is not overdue on any of her current debts. I, therefore, find Guideline F for Applicant.

Guideline E, Personal Conduct

With respect to Guideline E, I find that Applicant did not provide incorrect material information to the Government on the SCA that she executed on July 10, 2007, regarding Question 27 d. Since Applicant had paid the judgement before competing the SCA, the correct response to that question was no, which was the answer Applicant provided.

I also find that Applicant testified credibly that she did not knowingly provide incorrect material information to the Government on the SCA regarding Questions 28.a. or 28.b. Applicant testified to specific, credible reasons she was unaware of her debts, and that she did not deliberately provide incorrect information the Government.

In reviewing the DCs under Guideline E, I conclude that no DC applies against Applicant. I therefore, resolve Guideline E 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) the 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 E, in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above, including the four character letters and her significant attempt to resolve her overdue debts, I find that the record evidence leaves me with no significant 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

Subparagraphs 1.a. through 1.i.: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraphs 2.a. through 2.c.: 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