



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-05741
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Nichole Noel, Esquire, Department Counsel
For Applicant: *Pro Se*

May 18, 2009

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on June 13, 2006 (Item 4). On May 30, 2008, 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 submitted an undated reply to the SOR (RSOR) in writing on (Item 2), in which she requested that her case be decided on the written record in lieu of a hearing.

On February 17, 2009, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered 10 documentary exhibits (Items 1-

10). Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on April 22, 2009. Applicant submitted timely additional documentary evidence, which has been marked collectively as Item 11, and entered into evidence. The case was assigned to this Administrative Judge on April 17, 2009.

Based upon a review of the case file, pleadings, and exhibits, 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 RSOR, the admitted documents, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 44 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 19 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. It is alleged in the SOR that Applicant filed a Chapter 13 bankruptcy in the U.S. Bankruptcy Court in November 2002, but a court order dismissed the proceeding in February 2004. In Item 11, Applicant admitted this allegation.

1.b. This overdue debt is cited in the SOR in the amount of \$2,051. In a Debt Summary submitted by Applicant (Item 11), Applicant represented that this debt had been settled in full. Letter 1 in Item 11 shows that Applicant had made an arrangement with this creditor to make three payments of \$500 on June, July and August 2008, to settle this debt in full. She also submitted copies of three checks in the amount of \$500 each to this creditor, on the dates specified in the letter. I find that Applicant has resolved this debt.

1.c. This overdue debt is cited in the SOR in the amount of \$181. In Item 11, Applicant represented that this debt had been paid in full. Letter 13 in Item 11 shows that Applicant made a payment of \$185.32 on July 8, 2008 to pay this debt in full. I find that Applicant has resolved this debt.

1.d. This overdue debt is cited in the SOR in the amount of \$3,131. In Item 11, Applicant represented that this debt had been settled in full. Letter 2 in Item 11 shows that Applicant had made an arrangement with this creditor to make four payments of \$411.60 to this creditor, on June, July, August, and September 2008, to settle this debt in full. She also submitted copies of four checks in the amount of \$411.60 each, on the dates specified in the letter. I find that Applicant has resolved this debt.

1.e. This overdue debt is cited in the SOR in the amount of \$1,615. In Item 11, Applicant represented that this debt had been settled in full. Letter 3 in Item 11 shows that Applicant had made an arrangement with this creditor to make four payments of \$212.05 on June, July, August, and September 2008, to settle this debt in full. She also submitted copies of four checks in the amount of \$212.05 each to this creditor, on the dates specified in the letter. I find that Applicant has resolved this debt.

1.f. This overdue debt is cited in the SOR in the amount of \$588. In Item 11, Applicant represented that this debt had been settled in full. Letter 4 in Item 11 shows that Applicant had made an arrangement with this creditor to make one payment of \$450 to settle this debt in full. The letter confirms that she made the payment of \$450 and there is \$0 balance owed. Applicant also submitted a copy of a payment in the amount of \$450 to this creditor. I find that Applicant has resolved this debt.

1.g. This overdue debt is cited in the SOR in the amount of \$515. In Item 11, Applicant represented that this debt is the same as the debt listed as 1.l., below. Letter 16 in Item 11 shows that this is the same debt as 1.l., and it will be reviewed below.

1.h. This overdue debt is cited in the SOR in the amount of \$514. In Item 11, Applicant represented that this debt is the same as the debt listed as 1.m., below. Letter 16 in Item 17 shows that this is the same debt as 1.m., and it will be reviewed below.

1.i. This overdue debt is cited in the SOR in the amount of \$579. In Item 11, Applicant represented that this debt had been settled in full. Letter 5 in Item 11 shows that Applicant had made an arrangement with this creditor to make one payment of \$450 to settle this debt in full. Applicant submitted a copy of a payment in the amount of \$450, and a subsequent letter from the creditor showing that the outstanding balance on this debt is \$0. I find that Applicant has resolved this debt.

1.j. This overdue debt is cited in the SOR in the amount of \$185. In Item 11, Applicant represented that this debt has been paid in full. Letter 6 in Item 11 shows that this debt was paid on June 23, 2008, and the balance is \$0. Applicant also submitted a copy of a check in the amount of \$139.37 to this creditor. I find that Applicant has resolved this debt.

1.k. This overdue debt is cited in the SOR in the amount of \$575. In Item 11, Applicant represented that this debt has been paid in full. Letter 7 in Item 11 shows that this debt was paid on June 23, 2008, and the balance is \$0. Applicant also submitted a copy of a check in the amount of \$375.87 to this creditor. I find that Applicant has resolved this debt.

1.l. This overdue debt is cited in the SOR in the amount of \$957. In Item 11, Applicant represented that this debt had been settled in full. Letter 11 in Item 11 shows that Applicant had made an arrangement with this creditor to make one payment of \$621.50 to settle this debt in full. Applicant submitted a copy of a payment in the amount

of \$621.50, dated July 9, 2008, to this creditor. I find that Applicant has resolved this debt.

1.m. This overdue debt is cited in the SOR in the amount of \$955. In Item 11, Applicant represented that this debt had been settled in full. Letter 12 in Item 11 shows that Applicant had made an arrangement with this creditor to make one payment of \$621.50 to settle this debt in full. Applicant submitted a copy of a payment in the amount of \$621.50, dated August 4, 2008, to this creditor. I find that Applicant has resolved this debt.

1.n. It is alleged in the SOR that Applicant had a real estate mortgage that was foreclosed and the collateral sold on or about April 2003. In Item 11, Applicant represented that this debt had been assigned to her husband in their divorce decree.

1.o. This overdue debt is cited in the SOR in the amount of \$5,776. In Item 11, Applicant represented that she has been protesting this balance with the creditor. Letter 8 in Item 11 includes a letter from Applicant to the creditor in which she avers that this account was inadvertently charged to her rather than to her husband, and it has now been transferred so the balance under her name should show \$0. In her letter, she further stated that she has disputed this bill with all three credit reporting agencies. A subsequent letter from the creditor also states that Applicant does not have an account with this creditor. I find that Applicant has made a good faith attempt to resolve this debt.

1.p. This overdue debt is cited in the SOR in the amount of \$169. In Item 11, Applicant represented that this debt had been paid in full. Letter 9 in Item 11 shows that Applicant has a balance of \$0 to this creditor. I find that Applicant has resolved this debt.

1.q. This overdue debt is cited in the SOR in the amount of \$18,951. In Item 11, Applicant represented that she has been protesting this balance with the creditor. Letter 10 in Item 11 includes a letter from Applicant to the creditor in which she states that a vehicle that she had allowed to be voluntarily repossessed in April 2002. Was ultimately sold at auction for \$19,530, more than \$18,951, which was the amount that had been owed on the vehicle at that time. A subsequent letter from the creditor states that Applicant has a balance of \$0 with this creditor. I find that Applicant has resolved this debt.

1.r. This overdue debt is cited in the SOR in the amount of \$488. In Item 11, Applicant represented that this debt is the same as the debt listed as 1.c., above. Letter 15 in Item 11 shows that this is the same debt as 1.c., and as reviewed above, I find that Applicant has resolved this debt.

1.s. It is alleged in the SOR that Applicant had a net monthly remainder of \$4,408 as of April 2008. In Item 11, Applicant points out that this remainder occurred fairly recently, as of the time she received a promotion that increased her income and her

monthly payments on her mortgage decreased. She also states that she has always accepted her debts and was looking for the best method to resolve them.

I find that Applicant has done an outstanding job in contacting her creditors and resolving all of her debts. I also want to commend Applicant for her thorough and efficient written presentation of the steps she took to resolve each debt.

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: Mitigating Condition (d) is applicable and controlling since Applicant has made a good faith effort to resolve and repay her overdue debts, and due to her excellent efforts, it appears that they have all now been resolved.

I conclude that Applicant has mitigated the financial concerns and 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 the reasons cited above as to why Mitigating Condition (d) applies, together with a review of the thoroughness of Applicant’s presentation and resolution, 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. - 1.s.:	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