



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-06334
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel
For Applicant: *Pro Se*

September 21, 2009

Decision

MOGUL, Martin H., Administrative Judge:

On March 2, 2009, 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 responded to the SOR (RSOR), in writing on March 20, 2009, and initially requested that a decision be made without a hearing before an Administrative Judge. Thereafter a request was made to have a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on April 13, 2009. DOHA initially issued a notice of hearing on April 23 2009, and the hearing was scheduled to be heard on June 24, 2009, in Honolulu, Hawaii. Because of scheduling issues, the hearing was rescheduled, and a second notice of hearing was issued on May 14, 2009. The hearing convened on July 21, 2009, in Honolulu, Hawaii.

The Government offered Exhibits 1 through 12, which were received without objection. Applicant testified on her own behalf, and she submitted Exhibits A through C, which were entered into evidence without objection. The transcript (Tr) was received on August 7, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

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 married, and she has three children. She is employed by a defense contractor, but she is currently on leave from this employer. She seeks a DoD security clearance in connection with her employment in the defense sector.

Paragraph 1 Guideline F, Financial Considerations

The SOR lists 10 allegations of overdue debts, 1.a. through 1.j., and three allegations regarding criminal conduct, 1.k. through 1.m., 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 \$942. At the hearing, Applicant testified that she believed that she had paid this bill. She last talked to a representative of this creditor in 2005, but she has taken no action since that time. At this time, she does not know the status of this debt, but she indicated that she intends to pay it (Tr at 27-31). I find that this debt has not been resolved.

1.b. This overdue debt is cited in the SOR in the amount of \$128. Applicant testified that she has not paid this debt. While she claimed she did not think that she incurred this debt, there was no evidence of Applicant filing any dispute (Tr at 31-32). I find that this debt has not been resolved.

1.c. This overdue debt is cited in the SOR in the amount of \$208 to the same creditor as 1.b., above. Applicant testified that she has not paid this debt. I find that this debt has not been resolved.

1.d. This overdue debt is cited in the SOR in the amount of \$1,336. Applicant testified that this debt for her husbands credit card has not been paid (Tr at 33). I find that this debt has not been resolved.

1.e. This overdue debt is cited in the SOR in the amount of \$114. Applicant testified that she has paid this debt (Tr at 33). Exhibit A shows that this debt has been paid.

1.f. This overdue debt is cited in the SOR in the amount of \$174. Applicant testified that this debt has not been paid (Tr at 35-36). I find that this debt has not been resolved.

1.g. This overdue debt is cited in the SOR in the amount of \$7,643. Applicant testified that she plans to dispute this debt for housing. However, her dispute is with the Army for not paying this debt. She did concede that this creditor is entitled to be paid (Tr at 36-39). I find that this debt has not been resolved.

1.h. This overdue debt is cited in the SOR in the amount of \$56. Applicant testified that she has paid this debt (Tr at 39-40). Exhibit B shows that this debt has been paid.

1.i. This overdue debt is cited in the SOR in the amount of \$357. Applicant testified that she has paid this debt (Tr at 41-42). Applicant was unable to locate a receipt that established that she has paid this debt. Exhibit C shows that she made one payment of \$106.84, but it does not establish that it was for this debt, nor does it establish that this debt has been resolved.

1.j. This overdue debt is cited in the SOR in the amount of \$390. Applicant testified that she believes this debt was paid through an offset, but she is not sure and she has not introduced evidence to substantiate that this debt was paid. (Tr at 52-43). I cannot find that this debt has been paid.

1.k. The SOR alleges that in or about 1995, during a United States Marine Corps (USMC) criminal investigation, Applicant admitted to using an ATM card belonging to another person, without authorization. Exhibit 8 consists of the records from the USMC criminal investigation. Applicant was accused of theft from the bank account of another individual. The records seem to indicate that Applicant withdrew \$350 in total, on three separate occasions, with the ATM card of a friend of hers that was given to her by someone else, and without the owner's authorization. However, no conclusion is reached in Exhibit 8, and Applicant's testimony is limited, so I do not find that this allegation gives any specific insight in this case.

1.l. The SOR alleges that in or about 1997, Applicant was charged in State A, with (1) Forgery of a Personal Check, (2) Larceny of Government Funds, and (3) Larceny of Private Property. Applicant received a Letter of Debarment from all Army installations in State A, effective April 3, 1997. Applicant's explanation of this event is that she was simply with someone else and was unaware of the checks until confronted by the Military Police. Exhibit 9, the records from an investigation into this matter by the Department of the Army, terminated the investigation without coming to a conclusion. Exhibit 12 is a Letter of Debarment issued to Applicant on April 3, 1997. It states [the victim] "declined to prosecute the subject due to insufficient evidence to support a conviction." I do not find that this allegation gives any insight in this case.

1.m. The SOR alleges that in or about 1999, Applicant was arrested and charged with (1) Financial Card Theft, a felony, and (2) Financial Card Fraud. Applicant plead

guilty to Count (2) and was sentenced to 30 days confinement, 12 months probation, and ordered to pay costs in the amount of \$86 and restitution in the amount of \$241.75. Count (1) was dismissed. Applicant denied that she ever served any time in confinement as a result of this incident (Tr at 70). No other evidence was submitted regarding this allegation.

Applicant testified that because of the pending security clearance hearing, she has been suspended without pay from her current employment since March 9, 2009, and she has not sought any other employment since that time (Tr at 71). She attributed her financial difficulties to “irresponsibility on my part” (Tr at 97). Applicant averred that she has stopped writing checks, with the exception of those to her daughter’s school, because of the number of checks with insufficient funds that she has written, and which are part of the reason for her overdue debts.

In her responses to interrogatories, signed by Applicant on August 25, 2008, she promised to pay off most of her debts “within the next 3-6 months.” However, by the time of the hearing, only two debts had been proven to be resolved, and those were in the amounts of \$114 and \$56.

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.

The guideline notes several conditions that could raise security 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 most of her obligations for a considerable period of time. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

Under AG ¶ 20 there are certain conditions that can be considered mitigating. However, since Applicant has had a history of financial difficulties and there was no evidence introduced to establish that Applicant has resolved most of these overdue debts, I do not find that any mitigating condition is applicable to minimize the Government’s concern with Applicant’s financial situation. I resolve Guideline F 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) 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 Guideline F, in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above regarding Applicant's history of overdue debts, and her failure to resolve the majority of her debts, I find that the record evidence leaves me with 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 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 -d, f, g, i, j:	Against Applicant
Subparagraphs 1.e, h, k, l, m:	For 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