



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-08990
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

September 21, 2009

Decision

MOGUL, Martin H., Administrative Judge:

On February 6, 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 February 23, 2009, and requested a hearing before an administrative judge. The case was assigned to this Administrative Judge on April 6, 2009. DOHA initially issued a notice of hearing on April 6, 2009, and the hearing was scheduled to be heard on April 29, 2009, in Las Vegas, Nevada. At the request of Applicant, the hearing was rescheduled in Reno, Nevada, for June 17, 2009. Applicant thereafter requested another continuance until after June, when she would return from Iraq. On July 6, 2009, a third notice of hearing was issued, and the hearing finally convened on August 14, 2009, in Las Vegas, Nevada.

The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified on her own behalf, and she submitted Exhibits A through J, which were entered into evidence without objection. Two additional witnesses testified on behalf of Applicant. The transcript (Tr) was received on August 20, 2009.

I granted Applicant's request to keep the record open until August 28, 2009, to submit additional matters. She timely submitted four additional documents that have been entered into evidence without objection as Exhibits K through N. 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 the other witnesses, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 43 years old. She served in the U.S. Army from 1983 to 1991. She is employed by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector.

This SOR had a number of mistakes that have been amended to make the appropriate corrections, and will be revealed as they are reviewed in this decision. First, the name that is listed on the SOR is backwards, in that the first name is listed first, rather than last as is proper. I have amended and corrected it so the last name is listed first, consistent with DOHA procedures.

Paragraph 1 Guideline F, Financial Considerations

The SOR lists 18 allegations of overdue debts, and two allegations regarding bankruptcy, under Adjudicative Guideline F. The SOR has two 1.f and 1.g. allegations, so the SOR goes from 1.a. through 1.g, and then starts with 1.f. through 1.t. The second 1.f. and 1.g. allegations will be identified as 1.f.(2) and 1.g.(2). Also there is no 1.p. allegation listed in the SOR, so none will be addressed in this decision. 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 \$9,259 for a medical bill. At the hearing, Applicant testified that this medical bill was incurred because of treatment she received in a hospital, and she believed that it should have been paid by her Veterans Administration (VA) health coverage, but thus far it has not been paid (Tr at 40-43). Exhibit N is a letter from a Regional Representative of one of Applicant's U.S. Senators, dated August 26, 2009, who indicated that he has submitted an inquiry to the VA regarding this debt for a medical claim after it was initially denied, and he is awaiting a response. Unless the VA reverses its earlier ruling, the debt is still owed.

1.b. This overdue debt is cited in the SOR in the amount of \$36 for a medical bill. Applicant testified that she believed that this debt should have been paid by the VA, but thus far it has been denied. She also indicated that she thought she might have made a payment on this debt, so the record remained open to offer evidence of payment of this debt. No evidence was submitted to show this debt has been paid (Tr at 45).

1.c. This overdue debt is cited in the SOR in the amount of \$44 for a medical bill. Applicant testified that she believed that this debt should also have been paid by the VA, but thus far it has been denied. No evidence was submitted to show this debt has been paid.

1.d. This overdue debt is cited in the SOR in the amount of \$458 for a medical bill. Applicant testified that she believed that this debt should also have been paid by the VA, but thus far it has been denied. No evidence was submitted to show this debt has been paid.

1.e. This overdue debt is cited in the SOR in the amount of \$4,183. Applicant testified that she has not paid this debt (Tr at 49).

1.f. This overdue debt is cited in the SOR in the amount of \$710. Exhibit F, the most current credit report, dated August 5, 2009, shows that this debt has been resolved.

1.g. This overdue debt is cited in the SOR in the amount of \$498. Unfortunately, it was not discovered at the hearing that there were two allegations of 1.f. and 1.g., so only one of each was addressed. This debt was not reviewed at the hearing, but Exhibit 6 shows that Applicant is disputing this debt. Exhibit L, a credit report, dated August 24, 2009, shows that this debt has been deleted.

1.f.(2) This overdue debt is cited in the SOR in the amount of \$6,195. This debt was also not reviewed at the hearing, but Exhibit 6 shows that this debt was paid.

1.g.(2) This overdue debt is cited in the SOR in the amount of \$444. Applicant testified that she still owes this debt. She is in the process of making some kind of payment arrangement with this creditor, although no agreement has yet been reached (Tr at 49).

1.h. This overdue debt is cited in the SOR in the amount of \$4,183. I find that this is the same debt as 1.e., above, and it has been reviewed above.

1.i. This overdue debt is cited in the SOR in the amount of \$4,183. I find that this is the same debt as 1.e. and 1.h., above, and it has been reviewed above.

1.j. This overdue debt is cited in the SOR in the amount of \$595. Applicant testified that she has not made a payment on this debt, but she is disputing it (Tr at 51-52). Exhibit 6 shows that this debt is still outstanding, but it does not show that it is being disputed. I find that this debt is still owed.

1.k. This overdue debt is cited in the SOR in the amount of \$2,510. Applicant testified that she has resolved this debt. After reviewing Exhibit 3, page 12, and Exhibit H, this debt has been moved to different collection agencies, but it appears that it has been resolved.

1.l. This overdue debt is cited in the SOR in the amount of \$565. Applicant testified that she has not made a payment on this debt, but she is disputing it (Tr at 55-56). Exhibit 6 shows that this debt is still outstanding, but it does not show that it is being disputed. I find that this debt is still owed.

1.m. This overdue debt is cited in the SOR in the amount of \$5,578. Applicant acknowledged that she owes this debt, but she has not yet made a payment arrangement, although she expects the debt to be significantly reduced (Tr at 56-59).

1.n. This overdue debt is cited in the SOR in the amount of \$2,797. The credit report dated August 5, 2009, shows that this debt has been resolved (Exhibit F).

1.o. This overdue debt is cited in the SOR in the amount of \$9,259. I find that this is the same debt as 1.a., above, and it has been reviewed above.

1.q. This overdue debt is cited in the SOR in the amount of \$503. The credit report dated August 5, 2009, shows that this debt has been resolved (Exhibit F).

1.r. This overdue debt is cited in the SOR in the amount of \$498. Applicant testified that she had disputed this bill. Upon review, I find that this is the same debt as 1.g., above, and it has been reviewed.

1.s. The SOR alleges that in May 2000, Applicant filed for Chapter 7 bankruptcy in the United States Bankruptcy Court. Applicant testified that she filed bankruptcy to discharge all of her debts, except her home mortgage and an automobile loan, on both of which she continued making payments. She had financial problems at that time, because she went through a period when she was a full time student, as a result of which she had to resign her employment and relocate (Tr at 63-64).

1.t. The SOR alleges that in October 2006, the petition, that Applicant filed for Chapter 7 bankruptcy in the United States Bankruptcy Court, was discharged. Applicant testified that she only filed for that was alleged in 1.s., above. Based on the evidence introduced at the hearing, which showed that the date of October 2006 was in error, the SOR was amended to the correct date that Applicant's debts were discharged in bankruptcy, which was August 2000 not October 2006.

Paragraph 2 Guideline E, Personal Conduct

2.a. The SOR alleged that Applicant "did not list that [her] security clearance and SCI access was (*sic*) revoked before been (*sic*) terminated from the U.S. Army on April 1, 1991." The SOR does not identify where Applicant failed to list this information, but the assumption is that it was in the SCA.

Applicant testified that she did not believe her security clearance or SCI access were terminated, because when she was completing her SCA, she had her security manager run her background through the Government computer, and it returned a response of "undetermined" regarding her security status. It is her belief that her security clearance was never "revoked, terminated or suspended." (Tr at 67). I do not find that the Government established that Applicant knowingly furnished false information on the SCA, regarding her previous security clearance status.

2.b. The SOR listed this second allegation under Guideline 2 as also 2.a., so it was amended to be 2.b. The SOR alleged that Applicant responded "No" to: Section 28: a., of a Security Clearance Application (SCA) that Applicant executed on January 9, 2008 (Exhibit 1), which asks, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Applicant answered "No" to this question, and she failed to list any debts. The SOR alleges that Applicant should have disclosed the debts listed as 1.a., through 1.t. Clearly 1.s. and 1.t. are not debts, so they should not have not been disclosed, but at least some of Applicant's debts should have been listed on the SCA, in response to 28.a.

Applicant testified that at the time she completed the SCA. she had not reviewed a credit report, so she was not aware what her financial status was regarding overdue debts. Applicant submitted Exhibit J, which was her handwritten SCA. In response to question 28:a., she initially wrote "Yes" and then it appears that she put a line through it and answered "No". When asked to list the names and addresses of creditors, she wrote "unclear at this time unemployment and relocation." Applicant stated that she initially answered yes, but after she had a further discussion with her security manager, she decided that "if [she] didn't know, that [she] should go ahead and answer 'No.'" (Tr at 73).

Upon further questioning about why Applicant answered no to question 28.a., she could give no definitive reason for why she failed to identify on the SCA, at a minimum, that she had overdue debts, even if she did not know all of them or to whom they were owed (Tr at 92-94). Applicant testified that she previously completed SCAs in 1983 and 1988. Based on her lack of an explanation for her failure to identify on her SCA that she even had any overdue debts, and the fact that she had two previous experiences competing security applications, I do not find Applicant credible that she did not intend to mislead the Government in her response to Questions 28: a.

Also, while it was not alleged on the SOR, I have noted that Applicant responded "No" to Section 28: b., of the SCA, which asks, "Are you currently over 90 days delinquent on any debt(s)?" She also failed to list any debts. I find that Applicant should have identified the same debts in response to this question.

Applicant testified that after her debts were discharged in bankruptcy in 2000, she "cleaned up her act" until 2004, when she incurred the majority of her debt. Her mother became ill with cancer, and she resigned her job and moved to another state to be with her. At that time she attempted to operate a landscape business, and it was not as successful as Applicant had hoped it would be. Applicant was also in a domestic

partnership with another individual, and this led to financial difficulties including alleged identity theft of Applicant's credit cards by this person (Tr at 76-79).

Applicant testified that currently she has sufficient income at the end of the month to pay off the SOR debts that have not yet been resolved (Tr at 88-89), but no evidence was submitted to establish the status of Applicant's current financial situation.

Two witnesses testified in very positive terms on behalf of Applicant, describing Applicant as "patriotic" with "a very good character" (Tr at 26-38). Additionally, Applicant submitted four letters, three from individuals who have known Applicant either in an employment or personal capacity (Exhibits D and K). The three letters were very positive, describing Applicant as "caring and giving" and having "strong core values and integrity." The fourth letter was from the Facility Security Officer of Applicant's current employer, dated August 24, 2009, in which he stated that he felt that Applicant "did not intentionally exclude information from her security clearance questionnaire. In speaking with [Applicant] through the questionnaire process, she felt that all of her answers were to the best of her knowledge at the time of submission."

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 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 (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, Applicant’s financial problems were largely because of the illness of her mother, the lack of success of her business, and the alleged identity theft by her former domestic partner. She also has been responsible by making some attempts to resolve her overdue debts. However, since Applicant has had a history of financial difficulties including a bankruptcy in 2000 and accumulating significant debts thereafter, and there was no evidence introduced to establish that Applicant’s current finances are stable, I do not find that this potentially mitigating condition is sufficient to minimize the Government’s concern with Applicant’s financial situation. I resolve Guideline F against Applicant.

Guideline E, Personal Conduct

With respect to Guideline E, I find that the Government has not established that Applicant knowingly provided incorrect material information to the Government, regarding her previous security clearance status.

However, I do not find that Applicant testified credibly that she did not knowingly provide incorrect material information to the Government on the SCA regarding her overdue debts. While I note the letter submitted by the Facility Security Officer (Exhibit K), in which he indicated that he did not believe Applicant would intentionally exclude information from her SCA, I find that Applicant clearly was aware that she had overdue debts, and I can find no reasonable explanation for her failure to identify, in any way, that she had debts that were overdue for more than 180 days.

In reviewing the DCs under Guideline E, I conclude that DC15 (a) “deliberate omission, concealment, of falsification of relevant material facts from any personnel security questionnaire” applies against Applicant. I do not find that any MC applies under this guideline. I therefore, resolve Guideline E 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 Guidelines F and E, 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 furnish accurate information about 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.f, g, f(2), h, i, k, n, o, q, r:	For Applicant
Subparagraphs 1.a -e, g,(2), j, l, m, s, t:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	For Applicant
Subparagraph 2.b.:	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