



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-09362
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

November 12, 2009

Decision

MOGUL, Martin H., Administrative Judge:

On March 24, 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 May 6, 2009, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on June 3, 2009. DOHA issued a notice of hearing on June 8, 2009, and the hearing convened on July 23, 2009, in Honolulu, Hawaii.

The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified on her own behalf, and she submitted Exhibits A through R, which were entered into evidence without objection. The transcript (Tr) was received

on August 12, 2009. I granted Applicant's request to keep the record open until August 7, 2009, to submit additional documents. She timely submitted additional documents, which have been identified and entered into evidence collectively as Exhibit S. 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 29 years old. She is married, and she and her husband have two children. Applicant is employed as a supply clerk 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 15 allegations of overdue debts, 1.a. through 1.o., 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 \$1,047. At the hearing, Applicant testified that she believed that she made two online payments on this debt in the amounts of \$75 and \$50 (Tr at 31-33). While Exhibit I has a hand written notation from Applicant showing a payment of \$50 on this debt, it does not establish that any payments have been made. Exhibit S includes a further notation from Applicant that indicates she made a payment of \$100 on July 27, 2009, to this creditor. I find no evidence that a payment was made, and the majority of this debt is still outstanding.

1.b. This overdue debt is cited in the SOR in the amount of \$226. Applicant testified that she has made some payments to a collection agency on this debt, and on other debts that she owes to this creditor (Tr at 33-35). Exhibit E shows Applicant has made payments of \$148.84 and \$225.98 to this creditor, but there is no evidence as to which debts these payments were applied. I cannot find that this debt has been resolved.

1.c. This overdue debt is cited in the SOR in the amount of \$409. Applicant testified that she has not paid this debt (Tr at 35-36). I find that this debt has not been resolved.

1.d. This overdue debt is cited in the SOR in the amount of \$83 with a total balance of \$683. Applicant testified that she has not paid this debt (Tr at 36-38). I find that this debt has not been resolved.

1.e. This overdue debt is cited in the SOR in the amount of \$1,319. Applicant testified that she has not paid this debt (Tr at 38). I find that this debt has not been resolved.

1.f. This overdue debt is cited in the SOR in the amount of \$121 with a total balance of \$546. Applicant testified that this debt has not been paid (Tr at 38). I find that this debt has not been resolved.

1.g. This overdue debt is cited in the SOR in the amount of \$24 with a total balance of \$574. Applicant testified that she has not paid this debt (Tr at 38-39). I find that this debt has not been resolved.

1.h. This overdue debt is cited in the SOR in the amount of \$733. Applicant testified that she has not paid this debt (Tr at 39-40). I find that this debt has not been resolved.

1.i. This overdue debt is cited in the SOR in the amount of \$4,933. Applicant testified that she has not paid this debt although she plans to include it as part of a payment plan through her consumer credit counseling service (CCCS) (Tr at 40). However, during her later testimony, Applicant claimed that this had been a debt of her husband before they were married, and it had been resolved, so in either case the debt should not be assessed against her (Tr at 51-53). No evidence was introduced to show that this debt was either resolved or was not hers. Therefore, I cannot find that this debt has been resolved.

1.j. This overdue debt is cited in the SOR in the amount of \$147. Applicant testified that she has paid this debt (Tr at 40-41). Exhibit D is a notation from Applicant in which she writes that she has made a payment of \$123.20 to pay this debt in full. I do not find that any independent evidence has been submitted to establish that this debt has been resolved.

1.k. This overdue debt is cited in the SOR in the amount of \$1,766. Applicant testified that she has made some payments to a collection agency on this debt and on other debts that she owes to this creditor (Tr at 33-35,41-43). As reviewed in 1.b., above, Exhibit E shows Applicant has made payments of \$148.84 and \$225.98 to this creditor, but there is no evidence as to which debts these payments were applied. I cannot find that this debt has been resolved.

1.l. This overdue debt is cited in the SOR in the amount of \$404. This is the third debt, with 1.b. and 1.k, above, to which Applicant has made some payments to a collection agency. Again, because there is no evidence as to which debts these payments were applied. I cannot find that this debt has been resolved.

1.m. This overdue debt is cited in the SOR in the amount of \$118. Applicant testified that she has paid this debt along with 1.n., below (Tr at 44-45). Attached to Applicant's RSOR is a notation by Applicant that she made a payment of \$231, which she testified was to resolve this debt and 1.n., below. Exhibit S includes a letter from

this creditor, dated April 17, 2009, which indicates that they received a payment of \$137.07 and that the current balance is \$0. However, based on Exhibit 3, it appears that this applies to 1.n, below. I find that this debt has not been resolved.

1.n. This overdue debt is cited in the SOR in the amount of \$113. While Applicant claimed she paid this debt along with 1.m, above, Exhibit S only establishes that one of the debts has been paid. I find that this debt has been resolved.

1.o. This overdue debt is cited in the SOR in the amount of \$1,175. Applicant testified that she has made one payment towards this debt, but the amount now owed has actually increased to \$1,446.90 (Tr at 45-46).

Applicant testified that the majority of her debts are as a result of medical bills that her family has accrued over the years. These have included multiple knee surgeries for her husband, and hospital bills because her older daughter had severe stomach pain and had to spend a few nights in the hospital. She contended that they had always had medical insurance, and she has never received an proper explanation for why the medical bills of her family were not covered adequately. Applicant did concede that some of her debt was as a result of credit cards (Tr at 54). I find that the record indicates that the majority of the debts listed on the SOR were actually for credit card debt, rather than medical bills. Additionally, Applicant's husband has been unemployed since May 2009, although Applicant does not attribute most of her financial difficulties to that fact (Tr at 63).

Applicant testified that on April 28, 2009, she and her husband consulted a CCCS advisor, but they were told that since the plan she and her husband had created put them seriously over their budget, they should try to reduce their debts by themselves, over the next 90 days, and then they should return when they can consult with the CCCS advisor (Tr at 55-57). In Exhibit S, Applicant indicated that she plans to develop a Debt Management Plan in the near future, but at this point she has not yet done so. Currently Applicant and her husband do not have any credit cards in an attempt to be more fiscally responsible. In Exhibit B, the records generated from Applicant's consultation with the CCCS, there is a budget created for Applicant and her husband, which shows that after their expenses are deducted from their net income, they have a net remainder of minus \$230 a month.

Mitigation

Applicant submitted two very positive character letters from co-workers (Exhibit A). Applicant is described as "intelligent, capable, dedicated, and personable" and "a valuable asset to [Applicant's] organization."

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 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 little evidence introduced to establish that Applicant has resolved most of these overdue debts, plus a great deal of her debt is from overuse of credit cards, I do not find that any mitigating condition is applicable to minimize the Government's concern with Applicant's financial situation. Based on Applicant's financial history and her current lack of a stable economic outlook, 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, her failure to resolve the majority of her debts, and her current tenuous financial situation, 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 -.1.m., 1.o.:	Against Applicant
Subparagraphs 1.n:	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