



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-11127
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Allison O’Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

August 25, 2009

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on May 20, 2008 (Item 5). On February 18, 2009, 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 replied to the SOR (RSOR) in writing on March 17, 2009, (Item 4A). She thereafter filed a supplemental answer on April 9, 2009, (Item 4B), in which she requested that her case be decided on the written record in lieu of a hearing.

On May 12, 2009, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant, and she was given the opportunity to file objections and submit material in refutation,

extenuation, or mitigation. A response was due on June 18, 2009. Applicant did not submit any additional evidence. The case was assigned to this Administrative Judge on August 5, 2009.

In the FORM, Department Counsel offered eight documentary exhibits (Items 1-8). No documents were offered by Applicant. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In her RSOR, Applicant admitted every SOR allegation. The admitted allegations are incorporated herein as 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 additional findings of fact:

Applicant is 41 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 13 allegations regarding overdue debts totaling approximately \$156,400, under Adjudicative Guideline F. As stated above, Applicant has admitted that she owed each debt listed in the SOR. There is no indication from the evidence that any of these debts has been completely resolved or that any payments have been made on any of these debts. All of the allegations will be reviewed 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 \$623.
- 1.b. This overdue debt is cited in the SOR in the amount of \$264.
- 1.c. This overdue debt is cited in the SOR in the amount of \$121.
- 1.d. This overdue debt is cited in the SOR in the amount of \$640.
- 1.e. This overdue debt is cited in the SOR in the amount of \$6,301.
- 1.f. This overdue debt is cited in the SOR in the amount of \$148.
- 1.g. This overdue debt is cited in the SOR in the amount of \$121,000 for a defaulted mortgage.
- 1.h. This overdue debt is cited in the SOR in the amount of \$20,552.
- 1.i. This overdue debt is cited in the SOR in the amount of \$1,290.

- 1.j. This overdue debt is cited in the SOR in the amount of \$37.
- 1.k. This overdue debt is cited in the SOR in the amount of \$60.
- 1.l. This overdue debt is cited in the SOR in the amount of \$412.
- 1.m. This overdue debt is cited in the SOR in the amount of \$4,984.

In her RSOR, Applicant explained that she had several reasons for her indebtedness. In October 2005, she was forced to resign from full time employment because her mother, who was watching Applicant's children, also had to care for Applicant's grandparents, who were ill, and it became too much of a strain on her mother. She took a part time position which decreased her income, and because of a business slowdown, she was ultimately laid off from her part time job in October 2008. Additionally, she and her husband separated in 2007, ultimately divorcing, and she was left with a mortgage for her home that he was unable to afford, along with additional bills that were overdue. Finally, she attempted to sell her home for over one year, but she was not able to find a buyer for her home, and it was foreclosed in June 2007.

Applicant wrote in her RSOR, "When I first saw the credit report, I attempted to contact some of the creditors, but was not successful in getting their assistance . . . I look forward to the day when I am able to repay them."

According to Applicant's Personal Financial Statement, she has had a net monthly remainder of \$340, since at least December 2008 (Item 6). However, no evidence has been introduced to show that Applicant has taken any steps to work with any of these creditors to make payments on these overdue debts, to contact any credit counseling organization, or taken any other action to resolve her financial difficulties.

In her RSOR, Applicant submitted three very positive character letters from individuals, who have known her in her employment capacity.

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 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 she has unable to resolve any of her financial obligations for several years. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

AG ¶ 20 provides includes examples of conditions that could mitigate security concerns arising from financial difficulties:

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, the financial problems seem to have arisen primarily because of Applicant’s underemployment and unemployment, and the separation from her husband, problems beyond her control. However, there is no evidence that Applicant has acted responsibly by contacting the creditors since she has had her current employment position and attempting to pay off these debts, nor has there been any indication that she has attempted to obtain financial counseling to help her become more fiscally solvent. Therefore, this mitigating condition does not apply. I also find that no other Mitigating Condition is applicable in this case.

I cannot conclude that Applicant has mitigated the financial concerns of the SOR or 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) 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above as to why no Mitigating Conditions apply, together with extremely limited information to consider about Applicant’s character, 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge