



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-01061
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

April 30, 2010

Decision

MOGUL, Martin H., Administrative Judge:

On September 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 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.

On September 15, 2009, Applicant replied to the SOR (RSOR) in writing, and she requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on October 5, 2009. DOHA issued a notice of hearing on October 23, 2009, and I convened the hearing as scheduled on December 8, 2009, in Las Vegas, Nevada. The Government offered Exhibits 1 through 8, which were received without objection. Applicant testified on her own behalf and submitted Exhibits A through F at the time of hearing, which were also admitted without objection. I granted Applicant's request to keep the record open until December 22, 2009, to submit

additional documents. She timely submitted three additional documents, which have been identified and entered into evidence collectively as Exhibit G. DOHA received the transcript of the hearing (Tr) on December 23, 2009. Based upon a review of the case file, pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

Findings of Fact

In her RSOR, Applicant admitted and denied, in part, SOR allegations 1.a. and 1.b. After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 44 years old. She is unmarried and has no children. Applicant 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 2 allegations (1.a. and 1.b.) regarding financial difficulties under Adjudicative Guideline F. Both allegations will be discussed below in the same order as they were listed on the SOR:

1.a. This overdue debt is cited in the SOR in the amount of \$20,817. In her RSOR, Applicant admitted that there is a debt to the creditor listed on the SOR, but she did not agree that the amount stated on the SOR was correct. At the hearing, Applicant testified that she believed that amount owed on this debt for vehicle that was repossessed was less than \$5,000. She conceded that the creditor stated that the amount owed is \$12,590.69 (Exhibit E), but that her attorney is still arguing with the creditor over the amount that is actually owed. (Tr at 30.)

Applicant testified that she had purchased a vehicle at the time when she had a full-time job that was paying her \$85,000 a year. However, after she learned that her mother had cancer, she resigned from her job so that she could be a full-time caregiver for her mother. She sold her condominium and lived off of the proceeds of that sale. (Tr at 31-35.) She was unemployed for a period from August 2001 until April 2002. Thereafter, when she went back to work, her income was significantly reduced (Tr at 77-78.) (Exhibit B.)

Applicant went on to explain that after communicating with the company that gave her the auto loan that she was having problems with the payments, a representative of the company sent her an alternative payment plan. After making payments for nine months according to this new schedule, she was contacted by this company and she was told that the representative, who made the offer, was not authorized to do so. She continued making payments while attempting to contact the company. After being late for two weeks in making one payment, the company repossessed her vehicle. She was told she would have to pay them \$5,000, and then she could begin making regular payments again. At that point she informed them that they could keep the vehicle, and she would just pay whatever it took to resolve the debt.

She testified that the creditor never told her an amount to pay, despite her asking over a two year period what it would take to resolve the debt. (Tr at 37-42.)

1.b. This overdue debt is cited in the SOR in the amount of \$2,014. Applicant testified that this debt was incurred from an apartment complex in which she lived from September 2005, through December 2006. When she took in her niece, it was necessary for her to move to a larger apartment. She told the manager of her apartment that she needed a larger apartment, and since there was none available in that building, she planned to move out. The manager told her it would be necessary to pay \$632 for carpet damage, but she would not have to pay the two months remaining on her lease. After she moved out, she received a bill both for the carpet and the rental amount owed, which Applicant has disputed. (Tr at 42-46.)

Applicant testified that in October 2007, she engaged the services of an attorney to dispute and try to resolve these two debts. She testified that her attorney has also had a great deal of difficulty getting these two creditors to respond to him to try to resolve these debts. Exhibit E contains the last correspondence received from the creditor to Applicant's attorney, regarding the debt listed as 1.a., above, which was on September 16, 2009. The attorney sent a follow up letter on September 25, 2009, but according to Applicant no further letter from the creditor was ever received. The attorney sent a letter to the creditor from 1.b. on November 5, 2007, (Exhibit 3 at 173), but has never received a response from that creditor. Applicant testified that after she turned these two debts over to her attorney, she has left it to him, and made no efforts herself to contact these creditors. (Tr at 47-48.) Applicant has filed a notice with the credit reporting agencies, disputing each of these two debts. (Tr at 86-87.)

On cross examination, Applicant conceded that she has had problems with other apartments, because after she has moved out she has been told there was an amount still owing, although when she has moved out she always believed that she had paid what was owed. When she became aware that there was still an outstanding balance, she has always paid off these other debts as soon as possible. (Tr at 58-59.)

Mitigation

Applicant testified that she is not overdue on any of her other debts. She purchased another vehicle for \$17,000, and she is current on the monthly payments of \$478 on that vehicle. She has not been late in paying her credit cards. (Tr at 50-51.) She purchased a home in September 2008, and has made the payments of \$2,300 a month, since that time. She has not been late on any house payments. (Tr at 78-79.)

Applicant prepared a Personal Financial Statement (Exhibit 3 at 162), which shows that she has a net monthly remainder of approximately \$380. She testified that she could make payments on these two debts, but she testified credibly that she wants to make sure they will be resolved before she starts making payment to these creditors. (Tr at 74.)

Applicant's attorney submitted a letter on behalf of Applicant. (Exhibit G.) He confirmed that he has been engaged by Applicant to contest these two debts. He stated that Applicant "believes with good cause that the amounts claimed as owing and placed in collections and appearing on her credit report are debts that are not actually owed by her or are not properly accounted for." It is his plan to continue negotiating to attempt to satisfactorily resolve these debts.

Finally, Applicant submitted two positive character letters in Exhibit G, from individuals who know her in her current employment. She was described by a retired United States Air Force Colonel as someone who is "responsible and trustworthy. I would have absolutely no reservations in recommending her for a position of trust." The Facility Security Officer of her current employer wrote that Applicant "has unquestioned loyalty, integrity, trustworthiness and reliability."

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 security 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 security concerns and could potentially apply in this case. 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. I find that both of these disqualifying conditions apply to Applicant in this case. The evidence has established that Applicant accumulated two significant delinquent debts.

AG ¶ 20 provides conditions that could mitigate security concerns 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, Applicant testified that her financial problems resulted in part from the period when she was unemployed due to the illness of her mother, and her reduced income thereafter. Since then the only two debts that remain unresolved appear to be because of legitimate and good-faith disputes that Applicant has with the creditors. By engaging the service of an attorney to help resolve these debts, after she could not do it by herself, I find that Applicant has acted responsibly. Therefore, I find that this mitigating condition is a factor for consideration in this case.

Applicant is current on all of her debts with the exception of two that she is disputing. Therefore, I conclude that Applicant has mitigated the financial concerns of the Government.

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 the Mitigating Condition applies, together with the very strong recommendations on her behalf, 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. and 1.b.:	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