



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 09-05962
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)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank Jr., Esquire, Department Counsel
For Applicant: *Pro Se*

January 28, 2011

Decision

MOGUL, Martin H., Administrative Judge:

On June 15, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F, J, and E for Applicant (Item 1). 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 submitted an undated response to the SOR (RSOR) in writing. (Item 2). She requested that her case be decided on the written record in lieu of a hearing.

On September 28, 2010, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to

Applicant. In the FORM, Department Counsel offered eight documentary exhibits (Items 1-8). Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on November 7, 2010. Applicant submitted a two page letter, which has been marked as Item A. The case was assigned to this Administrative Judge on December 1, 2010.

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

After a complete and thorough review of the evidence in the record, including the FORM, Applicant's RSOR and the other admitted documents, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 43 years old. She works for a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector.

Guideline F- Financial Considerations

The SOR lists 24 allegations (1.a. through 1.x.) regarding overdue debts under Adjudicative Guideline F. In her RSOR, Applicant agreed with every allegation under Guideline F, except 1.b., for which she wrote that this debt has been satisfied in full. (Item 2.) The total amount of debt alleged in the SOR is \$40,388. Applicant admits to owing \$33,362. 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 \$8,017, for a judgment filed against Applicant. Applicant admitted this debt in her RSOR (Item 2), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.b. This overdue debt is cited in the SOR in the amount of \$7,026, for a tax lien to the Internal Revenue Service (IRS). In her RSOR Applicant contended that this debt has been satisfied in full. (Item 2.) During her Personal Interview, Applicant averred that she had a stimulus check seized by the IRS, and that the remainder due would be paid out of the next tax refund. (Item 5.) No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.c. This overdue debt is cited in the SOR in the amount of \$486. Applicant admitted this debt in her RSOR (Item 2), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.d. This overdue debt is cited in the SOR in the amount of \$33. Applicant admitted this debt in her RSOR (Item 2), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.e. This overdue debt is cited in the SOR in the amount of \$210. Applicant admitted this debt in her RSOR (Item 2), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.f. This overdue debt is cited in the SOR in the amount of \$36. Applicant admitted this debt in her RSOR (Item 2), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.g. This overdue debt is cited in the SOR in the amount of \$5,769 Applicant admitted this debt in her RSOR (Item 2), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.h. This overdue debt is cited in the SOR in the amount of \$1,813. Applicant admitted this debt in her RSOR (Item 2), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.i. This overdue debt is cited in the SOR in the amount of \$581. Applicant admitted this debt in her RSOR (Item 2), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.j. This overdue debt is cited in the SOR in the amount of \$260. Applicant admitted this debt in her RSOR (Item 2), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.k. This overdue debt is cited in the SOR in the amount of \$141. Applicant admitted this debt in her RSOR (Item 2), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.l. This overdue debt is cited in the SOR in the amount of \$260. Applicant admitted this debt in her RSOR (Item 2), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.m. This overdue debt is cited in the SOR in the amount of \$258. Applicant admitted this debt in her RSOR (Item 2), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.n. This overdue debt is cited in the SOR in the amount of \$636. Applicant admitted this debt in her RSOR (Item 2), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.o. This overdue debt is cited in the SOR in the amount of \$216. Applicant admitted this debt in her RSOR (Item 2), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.p. This overdue debt is cited in the SOR in the amount of \$181. Applicant admitted this debt in her RSOR (Item 2), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.q. This overdue debt is cited in the SOR in the amount of \$190. Applicant admitted this debt in her RSOR (Item 2), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.r. This overdue debt is cited in the SOR in the amount of \$31. Applicant admitted this debt in her RSOR (Item 2), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.s. This overdue debt is cited in the SOR in the amount of \$141. Applicant admitted this debt in her RSOR (Item 2), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.t. This overdue debt is cited in the SOR in the amount of \$11,544. Applicant admitted this debt in her RSOR (Item 2), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.u. This overdue debt is cited in the SOR in the amount of \$90. Applicant admitted this debt in her RSOR (Item 2), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.v. This overdue debt is cited in the SOR in the amount of \$151. Applicant admitted this debt in her RSOR (Item 2), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.w. This overdue debt is cited in the SOR in the amount of \$1,920. Applicant admitted this debt in her RSOR (Item 2), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.x. This overdue debt is cited in the SOR in the amount of \$398. Applicant admitted this debt in her RSOR (Item 2), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

Applicant averred in the SCA that she signed on May 19, 2009, (Item 4), that she was planning to contact the creditors and set up a payment plan to resolve all of her debts. She also indicated that she would pay some of her medical bills within 14 days, and she would try to pay all of her medical bills within 30 days. In her response to Interrogatories, signed by Applicant on March 8, 2010, she stated that she had been "attempting to clear up a lot of these debts. I am now on several payment plans and hope to have them all paid within 6 years." (Item 5.) Applicant also claimed during her subject interview (Item 5) that she was planning to obtain the help of a debt consolidation company to investigate the debts, and she intended to contact the creditors to establish payment plans.

Applicant submitted a letter in response to the FORM, dated November 5, 2010. (Item A.) She wrote that she has been attempting to pay her debts for years, but that it was difficult because she is a single mother trying to raise three children on minimum wage. She also contended that her credit reports only show the debts she has not paid,

not the ones that she has paid. She also claimed that the credit reports show debts that should be considered as belonging to her children's father. Finally, she indicated that she had foot surgery in June 2010, and will be on disability until December 7, 2010.

No evidence was submitted to establish that Applicant had contacted any of the creditors or that any payment plans had been created, or that any of the debts listed on the SOR were resolved or even reduced. Additionally, nine of the debts totaled less than \$200 each. Yet no evidence was introduced to show that even any of these had been resolved.

Guideline J- Criminal Conduct

2.a. The SOR alleges that as of at least December 4, 2009, Applicant was a suspect in an ongoing criminal investigation.

Guideline E- Personal Conduct

3.a. The SOR alleges that sometime in June 2007, Applicant was terminated from her place of employment after an accusation was made that she embezzled money from her employer.

In the FORM, Department Counsel wrote, "The Government elects to submit no evidence concerning the allegations in paragraph 2, Guideline J (Criminal Conduct) or paragraph 3, Guideline E (Personal Conduct)."

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 significant delinquent debt.

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 indicated that her financial problems resulted from her underemployment and the costs of raising her children. However, since no evidence was introduced to establish that she has repaid or resolved any of her considerable overdue debt, I cannot find that she has acted responsibly. Therefore, I do not find that this potentially mitigating condition is a factor for consideration in this case.

I conclude that until Applicant is able to significantly reduce her overdue debt, and show that she can maintain financial stability, she has not mitigated the financial concerns of the Government.

Guideline J- Criminal Conduct

Since Department Counsel chose not to introduce any evidence to establish allegation 2.a., this allegation has not been proven. I do not find that any disqualifying conditions that could raise security concerns apply in this case under AG ¶ 31.

Guideline E- Personal Conduct

Department Counsel also chose not to introduce any evidence to establish allegation 3.a., and therefore, this allegation has not been proven. I do not find that any disqualifying conditions that could raise security concerns apply in this case under AG ¶ 16.

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 Disqualifying Conditions apply and no Mitigating Condition applies under Guideline F, 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. through 1.x.: Against Applicant

Paragraph 2, Guideline J: FOR APPLICANT

 Subparagraphs 2.a.: For Applicant

Paragraph 3, Guideline E: FOR APPLICANT

 Subparagraphs 3.a.: For Applicant

Conclusion

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

Martin H. Mogul
Administrative Judge