



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-08465
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: *Pro Se*

October 28, 2010

Decision

MOGUL, Martin H., Administrative Judge:

On May 7, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant (Item 2). 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 7, 2010. (Item 4.) She requested that her case be decided on the written record in lieu of a hearing. On August 2, 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 nine documentary exhibits (Items 1-9). Applicant

was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on September 10, 2010. Applicant did submit additional evidence, which has been marked collectively as Item A. The case was assigned to this Administrative Judge on September 23, 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 44 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 11 allegations (1.a. through 1.k.) regarding overdue debts 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 \$6,196, for a judgment filed against Applicant. Applicant admitted this debt in her RSOR (Item 4), 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 \$7,168, for a judgment filed against Applicant. Applicant admitted this debt in her RSOR (Item 4), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.c. This overdue debt is cited in the SOR in the amount of \$125. Applicant admitted this debt in her RSOR (Item 4), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.d. This overdue debt is cited in the SOR in the amount of \$349 for medical account number 114157569. Applicant admitted this debt in her RSOR (Item 4), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.e. This overdue debt is cited in the SOR in the amount of \$349 for medical account number 10955576. Applicant denied this debt in her RSOR (Item 4), and wrote that it was a duplicate of 1.d., above. Both of these debts are listed separately with different account numbers on Item 7, the credit report of March 1, 2010. However,

since they are both medical debts, with the exact same amount owed, 1.e. may be a duplicate of 1.d.

1.f. This overdue debt is cited in the SOR in the amount of \$315. Applicant admitted this debt in her RSOR (Item 4), 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 \$451. This debt was not addressed in the RSOR. However, Item 7 states that this debt was a charged off account and closed by the creditor. I find that this debt has not been paid.

1.h. This overdue debt is cited in the SOR in the amount of \$11,421. Applicant denied this debt in her RSOR (Item 4), and wrote that it was a duplicate of 1.a., above. Both 1.a. and 1.h. list the same named creditor. Item 7 shows the amount owed to this creditor is \$11,421.

1.i. This overdue debt is cited in the SOR in the amount of \$550. Applicant admitted this debt in her RSOR (Item 4), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.j. This overdue debt is cited in the SOR in the amount of \$5,552. Applicant admitted this debt in her RSOR (Item 4), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.k. This overdue debt is cited in the SOR in the amount of \$349. Applicant denied this debt in her RSOR (Item 4), and wrote that it was a duplicate of 1.d., above. Both 1.k. and 1.d. list the same amount owed. Item 7 cites only debt 1.d., and Item 8, a credit report dated September 24, 2009, only lists 1.k., so it appears that 1.k. is a duplicate of 1.d.

In her RSOR, Applicant stated,

I have been living with one income for some time and my husband has been in and out of work for the last six years. He has currently been unemployed since 2008 but just recently finished his driving school to attain his CDL license and has been looking for work but has not been able to find any.

I have 2 children as well that I am supporting as well, we make payments on what is necessary, jurors, electricity, water and other utilities. We have cut back on all expenses such as cell phones and cable but we still have car payments that need to be made as well. (*sic*)

We do receive assistance from our families when it is needed which is most of the time.

Applicant submitted a cover letter and additional documents in response to the FORM. (Item A.) She reiterated that her husband and she have struggled with their finances for some time, and both of them lost their jobs. She did not state when this occurred. She had been earning \$51,000 a year, and her husband was making less than \$19,000 a year. Her new job pays her considerably less, and her husband is unemployed.

Applicant does not own credit cards. She filed bankruptcy 15 years ago, and she does not want to do it again. She states that her husband is consistently seeking employment. Her mother-in-law has assisted them by paying some of their larger bills such as car insurance and other bills. Finally, Applicant submitted some receipts in Item 1 to establish that they have paid the bills for their vehicles.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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 unemployment and that of her husband. 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 more financial stability, she has not 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 Disqualifying Conditions apply and no Mitigating Condition applies, 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.d.:	Against Applicant
Subparagraphs 1.f, 1.g., and 1.i.:	Against Applicant
Subparagraphs 1.e., 1.h., and 1.k.:	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