



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 -----) ISCR Case No. 10-01517
)
)
 Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

April 9, 2012

Decision

MOGUL, Martin H., Administrative Judge:

On August 11, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On August 23, 2011, Applicant replied to the SOR (RSOR) in writing, and she requested that her case be decided on the written record in lieu of a hearing. (Item 3.) On January 4, 2012, Department Counsel issued 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 13 documentary exhibits. (Items 1-13.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on February 10, 2012. Applicant submitted no additional response. The case was assigned to this Administrative Judge

on March 5, 2012. Based upon a review of the 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 Applicant's RSOR, the admitted additional documents, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 45 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.

Guideline F, Financial Considerations

The SOR lists six allegations (1.a. through 1.f.) under Adjudicative Guideline F. The allegations will be discussed below in the same order as they were listed on the SOR:

1.a. Applicant filed a Chapter 13 Bankruptcy in United States Bankruptcy Court in or about July 2009. Applicant admitted this allegation in her RSOR. (Item 3.)

1.b. Applicant filed a Chapter 7 Bankruptcy in United States Bankruptcy Court in or about July 2008. This bankruptcy was discharged in or about January 2009. Applicant admitted this allegation in her RSOR. (Item 3.)

1.c. Applicant filed a Chapter 13 Bankruptcy in United States Bankruptcy Court in or about October 2002. This bankruptcy was discharged in or about December 2002. Applicant admitted this allegation in her RSOR. (Item 3.)

1.d. Applicant filed a Chapter 13 Bankruptcy in United States Bankruptcy Court in or about March 2000. This bankruptcy was dismissed in or about January 2001. Applicant admitted this allegation in her RSOR. (Item 3.)

1.e. Applicant filed a Chapter 13 Bankruptcy in United States Bankruptcy Court in or about June 1997. This bankruptcy was dismissed in or about April 1998. Applicant admitted this allegation in her RSOR. (Item 3.)

1.f. Applicant filed a Chapter 13 Bankruptcy in United States Bankruptcy Court in or about March 1996. This bankruptcy was dismissed in or about February 1997. Applicant admitted this allegation in her RSOR. (Item 3.)

In her Personal Subject Interview (PSI), which Applicant verified in Item 5, Applicant stated that she has been a single parent and she has struggled financially because she could not find steady employment that provided enough of an income for her to meet her needs. Over the past 10 years she has worked several temporary and part-time jobs, and these jobs have not been stable enough to pay her bills. Applicant also indicated in her Security Clearance Application (SCA) that she was unemployed from August 1998 to August 2004, and again from July 2005 to January 2006. (Item 4.) As a result of these periods of unemployment and underemployment, Applicant filed the bankruptcies listed on the SOR.

Applicant stated in her PSI that her current financial situation, "is still weak." She has to cut back on household needs in order to make ends meet. Applicant's net monthly salary is \$1,522 and her monthly expenses, including a car payment of \$490, are \$1,550, leaving her with a monthly shortfall of \$27.00 per month. She borrows money from family members to make up the difference.

Applicant also indicated that she owes on at least two debts that she has not been paying, but she planned to pay them off when she received her 2010 income tax return. (Item 5.) No indication was ever given as to whether Applicant has paid off these current debts.

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 commonsense 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, on several occasions over at least the past 13 years.

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

reviewed above, Applicant explained her financial difficulties occurred because of unemployment and underemployment over many years, which made it extremely difficult for Applicant to satisfy her debts. Evidence was introduced to establish that she acted responsibly by attempting to resolve her overdue debts through the legally available remedy of bankruptcy, on six occasions from 1996 to 2009. Therefore, I find that this potentially mitigating condition is a factor for consideration in this case.

Additionally, I find that AG ¶ 20 (d) is applicable, since Applicant has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant’s filing of bankruptcies has been an attempt to resolve her debts through the legally available remedy of bankruptcy.

However, I cannot find that these mitigating conditions are controlling in this case. No evidence was introduced to establish that Applicant’s long standing and continuing financial difficulties are now resolved or are being resolved. As reviewed above, Applicant stated that her current financial situation, “is still weak.” After considering Applicant’s net monthly salary and her monthly expenses, she is left with a monthly shortfall of \$27.00 per month. She borrows money from family members to make up the difference. Applicant also has at least two current overdue debts. (Item 5.) No evidence was introduced to show that they had been resolved.

I conclude that until Applicant is able to establish that her current financial situation is more stable and secure, 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, including all of the reasons cited

above as to why the Disqualifying Conditions apply and why the Mitigating Conditions, while applicable, are not controlling. Also, since this case is an Administrative Determination, I have not had the opportunity to assess the credibility of the Applicant in person, nor has any independent evidence concerning Applicant's character been submitted. Therefore, 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a. through 1.f.: Against 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