



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 11-00587
)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro se*

September 12, 2012

Decision

MOGUL, Martin H., Administrative Judge:

On October 31, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F, B, and C 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), effective within the Department of Defense for SORs issued after September 1, 2006.

On November 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. Thereafter, Department Counsel requested that this case be converted a hearing before an Administrative Judge. I received the case assignment on April 13, 2012. DOHA issued a notice of hearing on May 1, 2012, and I convened the hearing as scheduled on May 16, 2012. The Government offered Exhibits 1 through 13, which were received without objection. Applicant testified on her own behalf and submitted Exhibits A through N at the time of hearing, which were also admitted without objection. Applicant's husband

also testified on Applicant's behalf. DOHA received the transcript of the hearing (Tr) on May 31, 2012. I granted Applicant's request to keep the record open until June 8, 2012, to submit additional documents, and the additional documents that were received have been identified and entered into evidence without objection as Exhibits O through T. Based upon a review of the pleadings, exhibits, and the testimony of Applicant and her witness, 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 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 married, and she has two children. Applicant received a Master's Degree in 1996. She is employed by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector.

Paragraph 1 (Guideline F, Financial Considerations)

The SOR lists 13 allegations (1.a. through 1.m.) regarding overdue debts under Adjudicative Guideline F. In her RSOR, Applicant admitted that all of the debts listed on the SOR were still due and owing, with the exception of allegation 1. j., which Applicant avers was paid by her through wage garnishment. The allegations will be reviewed 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 \$6,313. Applicant testified that she plans to file a bankruptcy. (Tr at 51.) Applicant plans to list this debt as part of her bankruptcy. I find that this debt has not yet been resolved.

1.b. This overdue debt is cited in the SOR in the amount of \$10,000. Applicant plans to list this debt as part of her bankruptcy. I find that this debt has not yet been resolved.

1.c. This overdue debt is cited in the SOR in the amount of \$23,000. Applicant plans to list this debt as part of her bankruptcy. I find that this debt has not yet been resolved.

1.d. This overdue debt is cited in the SOR in the amount of \$7,172. Applicant plans to list this debt as part of her bankruptcy. I find that this debt has not yet been resolved.

1.e. This overdue debt is cited in the SOR in the amount of \$7,838. Applicant plans to list this debt as part of her bankruptcy. I find that this debt has not yet been resolved.

1.f. This overdue debt is cited in the SOR in the amount of \$11,000. Applicant testified that she had paid \$123.73 to settle this debt. (Tr at 56-67.) Exhibit K establishes that this debt was paid on November 11, 2011.

1.g. This overdue debt is cited in the SOR in the amount of \$183,000. Applicant plans to list this debt as part of her bankruptcy. I find that this debt has not yet been resolved.

1.h. This overdue debt is cited in the SOR in the amount of \$4,688. Applicant plans to list this debt as part of her bankruptcy. I find that this debt has not yet been resolved.

1.i. This overdue debt is cited in the SOR in the amount of \$10,000. Applicant plans to list this debt as part of her bankruptcy. I find that this debt has not yet been resolved.

1.j. This overdue debt is cited in the SOR in the amount of \$28,116. In her RSOR, Applicant denied this allegation. She testified that she had paid this debt by means of a wage garnishment. (Tr at 48-50.) Exhibit J shows that Applicant's wages were garnished from June 2010 until October 2011, and the debt was paid. I find that the debt was paid in full.

1.k. This overdue debt is cited in the SOR in the amount of \$135. At the hearing, Applicant testified that she paid this debt in full. (Tr at 45-48.) She did not have any documentation at the time of the hearing to prove that this debt had been paid, so the record remained open until June 8, 2012, to give her an opportunity to prove that this bill had been paid. Exhibit T establishes that this debt was paid in full by June 5, 2012.

1.l. This overdue debt is cited in the SOR in the amount of \$72. Applicant testified that she paid this debt in full. (Tr at 45-48.) The record remained open to give her an opportunity to prove that this bill had been paid. Exhibit R establishes that this debt was paid in full by June 5, 2012.

1.m. This overdue debt is cited in the SOR in the amount of \$116. Applicant testified that she paid this debt in full. (Tr at 45-48.) The record remained open to give her an opportunity to prove that this bill had been paid. Exhibit S establishes that this debt was paid in full by December 6, 2011.

Applicant submitted a letter from an attorney, in which he indicated that he has been retained to file a Chapter 13 bankruptcy petition for Applicant and her husband. (Exhibit M.) Applicant stated that she first started working with this attorney in 2009, but he advised that since she and her husband were going through a loan modification on their home loan they should wait until that was resolved before they file the bankruptcy. They paid \$2,000 to the lawyer in 2009 and additional \$1,000 in 2011. (Tr at 51-53.) In her post hearing submission, Applicant wrote that she and her husband are still working with the attorney on the bankruptcy, but thus far the bankruptcy has not been filed.

(Exhibit O.) I find that the debts listed on the SOR as 1.a. through 1.e., and 1.g. through 1.i. totaling \$252,011 are still due and owing and have not been resolved.

Applicant testified that in November 2004, her husband lost his job and with the obligation of supporting five family members, including Applicant's husband's son from a previous marriage, it just became extremely difficult to pay their bills. She testified that they were paying the minimum on all of their credit card bills when they consulted a credit counseling company (CCC) in 2008, which advised them to stop making payments to all of the bills so they could try to renegotiate a payment plan. Applicant averred that since they began working with this CCC, they have not used any credit cards to pay their bills. (Tr at 56-58.)

Applicant's husband testified that after he lost his job in 2004, he became a real estate agent. He estimated that his income in total from 2005 to the present was between \$12,000 and \$20,000. Thereafter, he and two partners purchased a 13 unit apartment building as an investment. Applicant and her husband's investment was \$130,000. Ultimately, because of a tornado that struck the area where the apartment was located, plus other problems, the property was foreclosed on October 27, 2011. Applicant's husband testified that he was not certain what he will owe on this property, and this is one of the problems delaying the filing of the bankruptcy. (Tr at 107-111.)

Paragraph 2 (Guideline B - Foreign Influence)

The SOR lists one allegation regarding Foreign Influence, under Adjudicative Guideline B:

2.a. It is alleged in the SOR that Applicant's brother is a citizen and resident of Romania. Applicant admitted this allegation in her RSOR. Applicant testified that her 49 year old brother has never worked for the Romanian Government and he works selling shoes. They communicate once a month. She last saw her brother in 1991 when she went to visit Romania with her daughter and stepson. (Tr at 60-62.)

Applicant was born in Romania in 1967. She came to the United States in 1994 and became a United States citizen in 1998. Her two children are United States citizens. She indicated that she is willing to renounce her Romanian citizenship, but she is not certain what is required. Applicant's Romanian passport expired in December 1999, (Exhibit 2) and she stated that she has no desire to renew it. Applicant's mother has a green card and she lives with Applicant in the United States. (Tr at 62-66.)

Paragraph 3 (Guideline C - Foreign Preference)

The SOR lists one allegation regarding foreign preference under Adjudicative Guideline C:

1.a. It is alleged in the SOR that Applicant was once a member of the Communist party in Romania. Applicant admitted this allegation in her RSOR. She further wrote that she was a member for only a few months, and she joined when she was a student as it

was required to get a job. Applicant testified that she had been a member of the Communist party from June to August 1989. She averred that she never took part in any meetings during the period that she was a member. When the Communist party was gone from Romania in December 1989, she simply cut up her Communist party card and she had no further contact with the party since that time. (Tr at 67-70.)

Mitigation

Applicant submitted a Personal Financial Statement, which shows that her net monthly income is \$7,068, and her total monthly expenses and payments are \$2,227 and \$2,400, respectively. She is left with a net monthly remainder of \$2,441. (Exhibit N.) However, the only debts she shows owing are for a mortgage and an auto loan. No other debts are listed.

Exhibit L shows that Applicant and her husband underwent required financial counseling on June 25, 2010, and again on May 10, 2012. Applicant also submitted her Performance Review from her current employer for 2011. (Exhibit E.) Her ratings were either "Meets or Exceeds Expectations."

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 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 has 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 testified that her financial problems resulted from the long period of unemployment of her husband. I find that Applicant has acted responsibly by trying to resolve the debts in bankruptcy, which is a legal remedy. However, at this time, the

bankruptcy has not been filed and there is no indication that the debts will be discharged in bankruptcy so I cannot find that this remedy can be considered. Additionally, a considerable part of Applicant's debt was for a purchase of the apartment building by Applicant's husband with his two partners. I do not find the actions of her husband resulted in a financial problem that was largely beyond the person's control, but rather poor judgement. Therefore, I find that this mitigating condition is not a factor for consideration in this case.

Also, AG ¶ 20(c) is initially mitigating since Applicant has "received counseling for the problem." However, I do not find that "there are clear indications that the problem is being resolved [and] is under control." Finally, AG ¶ 20(d) is not applicable since most of Applicant's significant debt has not been resolved so I cannot find that she has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

I conclude that Applicant has many very large overdue debts that have not been resolved. Until the debts have been resolved in bankruptcy, or by payment, I cannot find that Applicant has mitigated the financial concerns of the Government.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding Foreign Influence. AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. Those that could be applicable in this case include the following: AG ¶ 7 (a) "contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." Applicant's brother, who is a citizen and resident of Romania, make AG ¶ 7(a) a concern to the Government.

AG ¶ 8 provides conditions that could mitigate security concerns. I find that AG ¶ 8(b) "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest," is applicable to this Applicant and controlling for the following reasons:

Applicant came to the United States in 1994 and became a United States citizen in 1998. Her two children and her husband are United States citizens. Applicant's Romanian passport expired in December 1999, and she has no desire to renew it. Applicant's mother has a green card and she lives with Applicant in the United States. Applicant's brother has never worked for the Romanian Government and she has limited contact with him. I therefore conclude Guideline B for Applicant.

Guideline C, Foreign Preference

Under AG ¶ 9 the security concern involving foreign preference arises, "[W]hen an individual acts in such a way as to indicate a preference for a foreign country over

the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.” I do not find that Applicant’s membership in the Romanian Communist party for a few months in 1989, raises foreign preference concerns under any disqualifying condition under AG ¶ 10. After considering all of the evidence of record under Guideline C, I conclude Guideline C for Applicant.

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 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 whole-person 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.e.:	Against Applicant
Subparagraphs 1.g through 1.i.:	Against Applicant
Subparagraphs 1.f., 1.j through 1.m.:	For Applicant

Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant
Paragraph 3, Guideline C:	FOR APPLICANT
Subparagraph 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