



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 11-02976
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

January 17, 2012

Decision

MOGUL, Martin H., Administrative Judge:

On July 26, 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 1, 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 2.) On August 25, 2011, 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 12 documentary exhibits. (Items 1-12.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on October 21, 2011. Applicant submitted several documents, which have been entered into evidence without objection,

as Items A through F. The case was assigned to this Administrative Judge on November 2, 2011.

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

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 35 years old. She was separated from her husband on October 2010, is now divorced, and she has three children. Applicant's received an Associates degree in 2005, and she has taken some additional courses since then. Applicant is employed as a financial analyst 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 5 allegations (1.a. through 1.e.) regarding financial difficulties under Adjudicative Guideline F. In her RSOR, Applicant admitted each SOR allegation with additional information regarding 1.e. In post FORM Item A, Applicant furnished additional information regarding her debts. The debts will be discussed below in the same order as they were listed on the SOR:

1.a. Applicant filed a Chapter 7 Bankruptcy on or about December 2004, and she listed liabilities totaling approximately \$57,984. The bankruptcy was discharged in March 2005.

1.b. This overdue debt is cited in the SOR for a home equity line of credit account that is past due in the amount of \$7,070 on a total balance of \$23,910. In her RSOR, Applicant admitted this SOR allegation. I do not find that this debt has been resolved.

1.c. This overdue debt is cited in the SOR for a charged off account in the amount of \$3,267. In her RSOR, Applicant admitted this SOR allegation, but indicated that she had made one payment of \$100, following a payment schedule of \$100 a month. Item D shows that a Complaint was filed in a state Superior Court by the creditor of this debt, and Item E shows that the creditor would accept a payment of \$100 a month to pay off this debt. While Applicant hand wrote on Item D that she has "currently paid off \$2,100" on this debt, no independent evidence was introduced to show how much of this debt is still owed. I find that this debt is still unresolved although Applicant is making payments on this debt.

1.d. This overdue debt is cited in the SOR for a charged of account in the amount of \$1,368. In her RSOR, Applicant admitted this SOR allegation. In Item F, Applicant wrote that this debt is for a phone owned by her ex-husband. She has contacted the

creditor who gave her the name of the collection agency for this debt, who was going to send Applicant a payment plan. Applicant indicated that she never received anything, but that she has contacted the agency again, but they cannot send her a plan until they negotiate with the phone company as to monthly payment amount allowed. Applicant did indicate that she wants to pay off this debt. I find that this debt has not been resolved, but Applicant has made a good faith effort to resolve it.

1.e. This overdue debt is cited in the SOR on a mortgage account in the amount of \$42,051 on a total balance of approximately \$259,000. This mortgage is in foreclosure, and it has not yet been resolved.

In Item A, Applicant wrote that in October 2003, she married a man who suffers from Bipolar Manic Depression. One of his symptoms was that he went on a spending spree with her credit cards and hid it from her. When she learned of the extent of the debt, which she could not afford to pay, she consulted a counselor who advised her to file for bankruptcy. The bankruptcy was discharged in March 2005. After that she paid the bills until 2007, when, with the advice of her husband's psychiatrist, her husband began paying the bills with her as part of his therapy.

Applicant stated that in 2008, her husband stated spending money again without informing her until January 2009, when he told her they were behind on some credit card debts and their first and second mortgage. She contacted a credit counseling agency, who informed her that they would help her renegotiate a contract, but she had to stop making mortgage payments. Eventually because of continued conflict with her husband, she and her children moved out of the house. Applicant wrote in Item A that she tried to sell her house in a short sale, but her now ex-husband listed the property in his bankruptcy, and the house is now in foreclosure.

Applicant explained an additional reason for her financial difficulties was that in October 2008, her father was diagnosed with cancer, and she helped her mother with his care.

Applicant submitted post Form Items B through G, which establish that she has paid off three debts, and is making payments on two other debts. Only one of these debts was listed on the SOR, 1.c., which has been reviewed above. In Item A, Applicant concluded that since her divorce, "I am getting all my finances in order and working to pay off debt that should never have accumulated the way that it did. I am working with all credit card companies and debt collectors to ensure that I arrange some type of payment plan so that I can pay off all my debt."

In a Personal Subject Interview of Applicant, dated November 2, 2010, Applicant also alleged that her husband did not pay their debts, and did not inform her that these debts were overdue. She also confirmed that at the time, she and her husband were in the process of obtaining a divorce, and once a divorce was reached, she would be able to live within her means for all future debts. (Item 5.)

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.

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 her husband accumulating significant debt without informing her, her subsequent divorce, and the illness to her father. I find that sufficient evidence was introduced to establish that she has acted responsibly by resolving three of her overdue debts that were not listed on the SOR, paying down debt 1.c., and contacting the creditor and the collection agency in an attempt to resolve 1.d. While she has not been able to resolve the debts for her home mortgage, she did work with a credit counseling service in an attempt to resolve these debts. Therefore, I find that this 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." I conclude that Applicant's debts were the result of the conduct of her ex-husband, and she has attempted and is continuing to attempt to reduce her overdue debt. Without the problems of her now ex-husband, it is not likely that she would have financial problems in the future, and she 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, including all of the reasons cited above as to why the Mitigating Conditions are applicable. Therefore, I find that the record evidence leaves me with no 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 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:	FOR APPLICANT
Subparagraphs 1.a. - 1.e.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul
Administrative Judge