



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 11-04489
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)
Applicant for Security Clearance)

Appearances

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

December 10, 2012

Decision

MOGUL, Martin H., Administrative Judge:

On May 21, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F 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 July 15, 2012, Applicant replied to the SOR (RSOR) in writing, and she requested a hearing before an Administrative Judge. I received the case assignment on September 4, 2012. DOHA issued a notice of hearing on September 10, 2012, and the hearing was convened as scheduled on October 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 F, which were also admitted without objection. The record was kept open until November 9, 2012, to allow Applicant to submit additional evidence. The documents that were timely received have been identified and entered into evidence without objection as Exhibits G through J. DOHA

received the transcript of the hearing (Tr) on October 24, 2012. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, 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 documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 45 years old. She was married from 1989 to 2007, and she has a son and a daughter. She earned a Bachelor of Science degree in Criminal Justice Administration in 1992. Applicant 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 four allegations (1.a. through d.) regarding financial difficulties, specifically bankruptcies, under Adjudicative Guideline F. The allegations will be discussed below in the same order as they were listed on the SOR:

1.a. It is alleged in the SOR that Applicant filed a Chapter 13 Bankruptcy in the United States Bankruptcy Court in November 2008, and that this bankruptcy was dismissed in February 2009. Applicant admitted this allegation in her RSOR with an explanation. At the hearing, Applicant testified that previous to her filing this first bankruptcy in 2008, she had been involved in litigation and the dissolution of her marriage, which will be discussed in more detail, below. As a result of this litigation, her funds were exhausted and she was forced to file for bankruptcy. Because she had no available funds to hire an attorney, she filed the bankruptcy pro se. The bankruptcy petition was ultimately dismissed because she had filed the bankruptcy schedules incorrectly (Tr at 33-36.)

1.b. It is alleged in the SOR that Applicant filed a Chapter 13 Bankruptcy in the United States Bankruptcy Court in June 2010, and that this bankruptcy was dismissed in October 2010. Applicant admitted this allegation in her RSOR with an explanation. Applicant testified that she made a second attempt at filing a bankruptcy, again without the benefit of counsel, which she could not afford. She was informed by the bankruptcy trustee that again she had not filed the bankruptcy schedules correctly, and that the case was going to be dismissed.

The trustee advised Applicant to retain the services of an attorney, so she found and hired an attorney that she located through her employer's network services. This attorney recommended to her that rather than re-file the bankruptcy, they keep the existing case and simply amend the schedules. However the case was dismissed. (Tr at 33-36.)

1.c. It is alleged in the SOR that Applicant filed a Chapter 13 Bankruptcy in the United States Bankruptcy Court in October 2010, and that this bankruptcy was dismissed in April 2011. Applicant admitted this allegation in her RSOR with an explanation.

At the hearing, Applicant testified that the law firm she hired assigned one of their associates to handle refiling the bankruptcy, now for the third time. This associate made a recommendation to Applicant about how to file the bankruptcy which resulted, unbeknown to Applicant, in an objection by one of the creditors. Applicant was informed after five months of an emergency meeting before the bankruptcy judge because the case had not been confirmed. Applicant was then informed that the associate had left the firm, and no action had been taken on the case for five months. The judge then dismissed this third bankruptcy. Applicant had paid this law firm \$1,300 for the first bankruptcy in which they had been involved, listed as 1.b., above, and \$1,400 for the second bankruptcy in which they were involved, 1.c. (Tr at 58.)

Applicant stated that because of the negligence of these attorneys, she has filed a State Bar Complaint against this law firm. She also informed her company's network of this law firm's actions, and after the company interviewed the attorneys from the firm, Applicant has had some satisfaction in seeing that her employer no longer recommends this law firm on their network. (Tr at 58-61.)

1.d. It is alleged in the SOR that Applicant filed a Chapter 13 Bankruptcy in the United States Bankruptcy Court in June 2011 and that this bankruptcy filing disclosed liabilities totaling \$827,632, including \$75,794 in liability for creditors holding unsecured nonpriority claims, which had not been resolved at the time that the SOR was drafted, May 21, 2012. Applicant denied the value of the debt in her RSOR with an explanation.

Applicant testified that her company did find her another law firm, and this firm has been handling her case properly. This law firm will be charging \$3,500 in fees to resolve her bankruptcy. Applicant also paid this law firm an additional fee of \$4,000 to save her home in an unlawful detainer action, but she was unsuccessful, and she lost her home. (Tr at 44-64.)

Since there is no longer a home involved in the bankruptcy, Applicant's attorney filed a motion to convert the bankruptcy to a Chapter 7, which would discharge all of her debts. Applicant testified that if there are no objections, her debts will be discharged. (Tr at 65-66.)

The record was left open to allow Applicant to submit the most current documents concerning the status of the bankruptcy. Exhibit G is a letter from Applicant's counsel, dated October 23, 2012. The attorney writes that the Notice of Conversion to Chapter 7 was filed on July 30, 2012, and there has been no objection raised to the conversion. A 341 (a) meeting is set for December 7, 2012, and the attorney expects that after the hearing, Applicant's case and her debts will be discharged.

Applicant testified that her financial problems occurred because she was engrossed with her husband in litigation that involved both divorce and child custody from September 2005 through March 2009. She testified that her husband has been diagnosed as an alcoholic, and she was the object of spousal abuse, of which there was evidence. In 2006, Applicant was ordered to refinance her home to buy out her husband's share of the home. This transaction required her to pay \$86,500 to refinance the home. She also had to pay thousands of dollars in attorney's fees during this protracted and contentious litigation. She estimated that the total cost for everything was significantly more than \$100,000. In 2008, there was a trustee sale placed on Applicant's home, and this is when she filed the first of four bankruptcy petitions. She reiterated that, since her funds were exhausted she could not hire an attorney, she filed the first and second bankruptcies in pro se. (Tr at 44-46.)

Mitigation

Applicant submitted the documents to establish that she has filed a complaint with the State Bar against her former attorneys for what appears to be legal malpractice, which ultimately caused her second and third bankruptcies to be dismissed. (Exhibit C.) Applicant also submitted letters from her current employer confirming she has received raises, promotions, and awards because of her fine work. (Exhibit F.)

As reviewed above, Applicant submitted a number of post-hearing documents that have been entered into evidence. Exhibit H included three very positive character letters submitted on behalf of Applicant. She was described as "a woman of great integrity dedicated to her family and work and is entirely peace-loving," and "a person of good moral character." Exhibit I is Applicant's current Personal Financial Statement, showing she has a net monthly remainder of \$637.

Finally, Applicant submitted her complete most recent bankruptcy filing, establishing that apparently all of her overdue creditors are listed and that this bankruptcy was filed by her current attorneys. (Exhibit J.)

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 and contentious divorce and child custody litigation.

Applicant has been responsible and made four attempts to resolve her overdue debts by the legal remedy of bankruptcy. Based on her tenuous financial situation, she first attempted to file the bankruptcy by herself, in pro se. When that was dismissed she filed again, trying to correct the errors, but again she was unsuccessful. She thereafter engaged the services of a law firm, paying them approximately \$2,700, but it appears, through no fault of Applicant, their representation was negligent, and bankruptcy filings two and three were dismissed. Finally, Applicant hired a second law firm, paying them \$9,500 for bankruptcy and to try to save her home. This firm seems to be properly representing Applicant, and based on their information, Applicant’s fourth bankruptcy and debts should be discharged shortly. Therefore, I find that this mitigating condition is a factor for consideration in this case.

AG ¶ 20(d) is also applicable since I find that Applicant has “initiated a good-faith effort” to “resolve debts,” and all of her overdue debts should be resolved shortly in bankruptcy. I find that this mitigating condition is also a factor for consideration in this case.

Based on Applicant’s current financial situation, as reviewed in her Personal Financial Statement, and the soon to be resolution of her past debts in bankruptcy, I conclude that Applicant 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. Based on all of the reasons cited above as to why the mitigating conditions apply, I find that the record evidence leaves me with no significant questions or 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 under the whole-person concept.

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: FOR APPLICANT

Subparagraphs 1.a. -1d.: 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