



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 11-06460
)
)
Applicant for Security Clearance)

Appearances

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

May 29, 2012

Decision

MOGUL, Martin H., Administrative Judge:

On October 13, 2011, 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 November 12, 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 February 16, 2012. DOHA issued a notice of hearing on the date it was received, and I convened the hearing as scheduled on March 6, 2012. The Government offered Exhibits 1 through 8, which were received without objection. Applicant testified on her own behalf and submitted Exhibits A through Q at the time of hearing, which were also admitted without objection. DOHA

received the transcript of the hearing (Tr) on March 14, 2012. I granted Applicant's request to keep the record open until April 6, 2012, to submit additional documents, and the additional documents that were received, have been identified and entered into evidence without objection as Exhibits R through DD. 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 30 years old. She is unmarried, but she has a partner and three children. Applicant received a Bachelors of Science Degree in 2005. 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 12 allegations (1.a. through 1.i.) regarding overdue debts under Adjudicative Guideline F. 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 for a judgement filed against Applicant in the amount of \$23,278. Applicant testified that judgement for the repossession of a vehicle has been settled. She paid \$5,000 in February 2012 to settle this debt in full. (Tr at 44-50.) Exhibit F establishes that the creditor would accept \$5,000 in settlement, and Exhibit S shows that the creditor has accepted the payment for the amount agreed upon. I find that this debt has been resolved.

1.b. This overdue debt is cited in the SOR in the amount of \$119. Applicant testified that she paid this debt in full and also the debt listed as 1.d., below, which are both to the same creditor, on November 14, 2011. (Tr at 51.) Exhibit G establishes that she paid \$224.33 to pay this debt and the debt listed as 1.d., in full. I find that this debt has been resolved.

1.c. This overdue debt is cited in the SOR in the amount of \$274. Applicant testified that this debt had not yet been paid. (Tr at 52.) In her post hearing documents, Applicant indicated that she had not yet been able to settle this debt, but she has scheduled to pay it off in April 2012. (Exhibit R.) Based on Applicant's history of resolving her debts, it appears that Applicant will settle this debt in April, but it has not yet been resolved.

1.d. This overdue debt is cited in the SOR in the amount of \$56. As referenced in 1.b., above, I find that this debt has been resolved.

1.e. This overdue debt is cited in the SOR in the amount of \$809. Applicant testified that she had not yet made payment toward this medical debt. (Tr at 56-57.) In Exhibit R, Applicant averred that she had paid \$692 to settle this debt. I find, and Exhibits T and U confirm, that this debt has been settled in full for \$692.

1.f. This overdue debt is cited in the SOR in the amount of \$135. 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 \$7,884. Applicant testified that this debt has been cancelled by the creditor, although she did not know why. (Tr at 58-61.) Exhibit L consists of a 1099-C from the creditor indicating that the debt was cancelled. I find that this debt has been resolved.

1.h. This overdue debt is cited in the SOR in the amount of \$11,575. Applicant testified that she had discussed a negotiated settlement with the creditor of this debt, but at the time of the hearing, no payment had been made on this debt. (Tr at 62-64.) Exhibits V and W confirm that Applicant has contacted the creditor, and confirmed the payment plan first proposed by the creditor. In Exhibit R, Applicant indicated that she had not yet been able to settle this debt, but she plans to save enough money to make one payment in September 2012 to settle this debt in full. I find that this debt has not yet been resolved, but Applicant is making a good faith effort to save enough money to settle this debt by September 2012.

1.i. This overdue debt is cited in the SOR in the amount of \$887. Applicant testified that she had discussed a negotiated settlement with the creditor of this debt, but at the time of the hearing, no payment had been made on this debt. (Tr at 64-68.) Exhibit X confirms that the creditor has proposed a settlement plan with Applicant of one payment of \$206.66 due on March 26, 2012, and four payments of \$103.33, due on April 6 and 20 and May 4 and 18, 2012, after which the debt would be paid in full. I find that this debt has not yet been resolved, but Applicant is making a good faith effort to settle this debt by May 18, 2012.

1.j. This overdue debt is cited in the SOR in the amount of \$20,451. Applicant testified that this debt for some appliances, which she had purchased for approximately \$10,000, and the rest was added as interest and penalties. She had discussed a negotiated settlement with the creditor of this debt, but at the time of the hearing, she had only made one payment of \$75 to show good faith. (Tr at 68-72.) The creditor had told her that if she would make a down payment of \$2,300, she could then make monthly payments of \$475, or she could have the option of making one payment of \$10,225. (Exhibits V and W.) In Exhibit R, Applicant avers that her plan is to save her money until she has accumulated enough to make the one lump payment of \$10,225. Applicant anticipates that she will be able to make the single payment in June 2013. I find that this debt has not yet been resolved, but Applicant has a good faith plan to settle this debt by June, 2013.

1.k. This overdue debt is cited in the SOR in the amount of \$99. Applicant testified that she paid this debt in full. (Tr at 72-73.) Exhibit P establishes that this debt was paid in full on November 11, 2011.

1.l. This overdue debt is cited in the SOR in the amount of \$171. Applicant testified that she paid this debt in full. (Tr at 73.) Exhibit Q establishes that this debt was paid in full on November 11, 2011.

Applicant testified that after she purchased a home for \$465,000, gave birth to her second child, and added the appliances that are the subject of the debt listed as 1.j., above, she was laid off from her employment. She had a difficult time finding employment, so she worked as an unpaid intern to get experience, until she finally was hired at another company. Applicant lost her job in June 2007, and did not receive a new paying job until October 2009. (Tr at 74-81.)

Mitigation

Applicant submitted a Personal Financial Statement, which shows that her net monthly income is \$4,553, and her total monthly expenses and payments are \$1,610 and \$1,835, respectively. She is left with a net monthly remainder of \$1,088. (Exhibit AA.) Applicant took a course, consisting of two four hour sessions, to help her manage her finances better. Exhibit E includes an action plan for what she learned in the course and a certificate, indicating that she completed the course on February 28, 2012.

Applicant also submitted three very positive character letters from her current manager, her long-time friend, and the man with whom she lives who is the father of her children. All of them were extremely laudatory of her. (Exhibit C.) Finally, Applicant submitted her Performance Review from her current employer from April 1, 2010, to March 31, 2011. Her Overall Performance Rating was "High Meets," and she was praised for her "attention to detail and ability to gain support from other groups."

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 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 her long period of unemployment, shortly after she had purchased a home, had a baby and purchased some items to improve her home. I find that Applicant has acted responsibly, since she has paid eight of the debts listed on the SOR, and made some arrangement or payment plans with the other creditors to resolve the additional debts. Therefore, I find that this mitigating condition is a factor for consideration in this case.

AG ¶ 20(c) is mitigating since Applicant has “received counseling for the problem and/or there are clear indications that the problem is being resolved [and] is under control.” Finally, AG ¶ 20(d) is also applicable since Applicant has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

I conclude that Applicant has significantly reduced or resolved her overdue debts, with a plan to resolve the remaining outstanding debt, and she has shown that she can maintain future financial stability. Therefore, 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. Based on all of the reasons cited above

as to why the Mitigating Conditions apply, together with the positive character letters and the Performance Evaluation Applicant received, 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.

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 through 1.l.: 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