DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 11-10243
	)	
	)	
Applicant for Security Clearance	)	

Appearances

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

April 4, 2013

Decision

MOGUL, Martin H., Administrative Judge:

On October 8, 2012, in accordance with Department of Defense (DoD) Directive 5220.6, the DoD 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; DoD 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 after September 1, 2006.

On November 6, 2012, 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 January 10, 2013, 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 nine documentary exhibits. (Items 1-9.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on February 28, 2013. Applicant did not submit a response. The case was assigned to this Administrative Judge on March 14, 2013.

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, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 46 years old. She is married and has one daughter. Applicant is employed as an Administrative Assistant 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.) regarding financial difficulties under Adjudicative Guideline F. The allegations will be discussed below in the same order as they were listed on the SOR:

1.a. This overdue debt is cited in the SOR for an overdue account in the amount of $9,536. Applicant admitted this SOR allegation in her RSOR, and added that she had "just received a trial modification from bank." (Item 2.) Applicant also included with her RSOR a one page letter, dated September 21, 2012, which indicated that if Applicant and her husband contacted the mortgage bank by October 12, 2012, and began making payments by November 1, 2012, under a trial period of a federal Home Affordable Modification Program (HAMP), any foreclosure action on their home would be suspended. No documentary evidence was introduced to establish that Applicant has accepted this offer and made any payment under the HAMP plan. I do not find that this debt has been resolved or reduced.

1.b. This overdue debt is cited in the SOR for a judgement in the amount of $4,201. Applicant admitted this SOR allegation in her RSOR. She also wrote that the debts listed as 1.b through 1.f are currently being addressed by her bankruptcy attorney. (Item 2.) Since allegation 1.f., concerns a bankruptcy that was filed in 2001, it appears that 1.f. should not have been listed as a debt to be addressed by her current bankruptcy attorney. Applicant averred in her Personal Subject Interview (PSI), made on July 12, 2011, that she was in the process of filing Chapter 7 bankruptcy. (Item 4.) However, no evidence was introduced to establish that the debts listed as 1.b. through 1.e. have been resolved in bankruptcy or even that a bankruptcy has been filed. I find that this debt is still due and owing and has not been resolved or reduced in any manner.

1.c. This overdue debt is cited in the SOR for a charged off account in the amount of $3,001. Applicant admitted this SOR allegation in her RSOR. (Item 2.) I find that this debt is still due and owing and has not been resolved or reduced in any manner.

1.d. This overdue debt is cited in the SOR for a charged off account in the amount of $2,562. Applicant admitted this SOR allegation in her RSOR. (Item 2.) I find that this debt is still due and owing and has not been resolved or reduced in any manner.

1.e. This overdue debt is cited in the SOR for a charged off account in the amount of $448. Applicant admitted this SOR allegation in her RSOR. (Item 2.) I find that this debt is still due and owing and has not been resolved or reduced in any manner.

1.f. It is alleged in the SOR that Applicant filed a Chapter 7 bankruptcy in May 2001, and her debts were discharged in September 2001. Applicant admitted this SOR allegation in her RSOR. (Item 2.)

Applicant indicated in her PSI that her financial difficulties occurred because her husband became unemployed on two occasions. (Item 4.) Applicant also explained in her Response to Interrogatories that she was first employed at her current employer in 1984, but was laid off from 1993 until 2000. However, she has been employed there from 2000 to the present. In a Personal Financial Statement, dated August 27, 2012, Applicant wrote that her monthly net remainder was negative $512. (Item 9.)

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 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."

Applicant's explanation of periods of unemployment for her husband as the reason for her financial difficulties could potentially make this mitigation condition applicable.

However, no evidence has been introduced to establish that Applicant has attempted to resolve her debts. Applicant first indicated that she was going to file bankruptcy in her PSI on July 12, 2011, and then reiterated her intention on her RSOR on November 6, 2012; yet no evidence was submitted to show a bankruptcy has been filed. I do not find that Applicant has acted responsibly, and therefore, this mitigating condition is not applicable in this case.

Additionally, I do not find that AG ¶ 20(d) is applicable, since Applicant has not "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," Finally, I do not find that any other mitigating condition applies to this case. Therefore, I find Guideline F against 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 the lack of evidence to establish that Applicant has made any attempt to resolve the past-due debts listed on the SOR, 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 under the whole-person concept.

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. - 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