



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 -----) ISCR Case No. 12-00677
)
)
 Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

November 19, 2013

Decision

MOGUL, Martin H., Administrative Judge:

On April 15, 2013, 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 May 9, 2013, 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 4.) On August 27, 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 eight documentary exhibits. (Items 1-8.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on October 16, 2013. Applicant did submit a response, and the documents have been identified and entered into evidence

as Items A, B, and C. The case was assigned to this Administrative Judge on October 30, 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, the FORM, and the additional documents offered into evidence by Applicant, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 36 years old, and she is unmarried. She graduated high school and has taken some community college classes. Applicant is employed as a painter 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 nine allegations (1.a. through 1.i.) 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 a charged off account in the amount of \$7,305. Applicant admitted this SOR allegation in her RSOR, and added that this debt was "charged off." (Item 4.) In Applicant's responses to interrogatories, she wrote that this debt is "charged off, being removed 4/2013." (Item 6.) I find that this debt is still due and owing and has not been resolved or reduced in any manner.

1.b. This overdue debt is cited in the SOR for a collection account in the amount of \$219. Applicant admitted this SOR allegation in her RSOR and added that she was "arranging payments within next 30 days." (Item 4.) No evidence has been introduced to show that any payments have been made. 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 collection account in the amount of \$97. Applicant admitted this SOR allegation in her RSOR and added that she was "arranging payments within next 30 days." (Item 4.) No evidence has been introduced to show that any payments have been made. 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 collection account in the amount of \$6,913. Applicant admitted this SOR allegation in her RSOR. (Item 4.) Department Counsel wrote in the FORM that this debt is the same as the debt listed in 1.a., above, and I concur. I find that this debt is only owing as listed on 1.a., above.

1.e. This overdue debt is cited in the SOR for a collection account in the amount of \$1,192. Applicant admitted this SOR allegation in her RSOR, and added that this debt was “charged off.” (Item 4.) In a Personal Subject Interview (PSI), Applicant indicated that she has been making payments toward this debt and only owes \$574. (Item 6.) However, a full data credit report shows that this is a charged off account with \$1,192 still owing. (Item 7.) I find that this debt is still due and owing and has not been resolved or reduced in any manner.

1.f. This overdue debt is cited in the SOR for a collection account in the amount of \$4,725. Applicant admitted this SOR allegation in her RSOR, but wrote that she is “disputing claim. Medical charge from a Dr. I have never been a patient of.” (Item 4.) In Applicant’s responses to interrogatories, she also wrote that she has “been disputing [this debt] Never was a patient.” However, in a PSI, Applicant indicated that she believed that “this is a dentist bill which has been paid off.” (Item 6.) Because of the conflicting representations from Applicant about this debt, and the lack of evidence to establish that Applicant has disputed this debt to the creditor, I find that this debt is still due and owing and has not been resolved or reduced in any manner.

1.g. This overdue debt is cited in the SOR for a collection account in the amount of \$279. Applicant admitted this SOR allegation in her RSOR, and added that this debt was “charged off.” (Item 4.) I find that this debt is still due and owing and has not been resolved or reduced in any manner.

1.h. This overdue debt is cited in the SOR for a collection account in the amount of \$215. Applicant denied this SOR allegation in her RSOR and wrote that she is “going to dispute” this debt. (Item 4.) No evidence has been introduced to show Applicant has disputed this debt. I find that this debt is still due and owing and has not been resolved or reduced in any manner.

1.i. This overdue debt is cited in the SOR for a collection account in the amount of \$218. Applicant admitted this SOR allegation in her RSOR and added that she was “arranging payments within next 30 days.” (Item 4.) No evidence has been introduced to show that any payments have been made. I find that this debt is still due and owing and has not been resolved or reduced in any manner.

Applicant indicated in her PSI that her financial difficulties occurred because of her “lack of full time employment,” and she “is now capable of meeting her financial obligations as she will begin her full time position shortly.” (Item 6.) However, she has been employed at her current position since September 2011, and no evidence has been submitted to show that any of Applicant’s debts have been resolved, reduced, or disputed. (Item 5.)

Applicant did submit documents showing that she has paid one debt of \$276.35 that was not listed on the SOR (Item A) and that she is making payments on a car loan that was also not listed on the SOR. (Item B.)

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 as the reason for her financial difficulties could potentially make this mitigation condition applicable.

Applicant indicated she is now capable of meeting her financial obligations "as she will begin her full time position shortly." However, she has been employed at her current position since September 2011, and no evidence has been submitted to show that any of Applicant's debts have been resolved, reduced, or disputed. 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.c.; 1.e.-1.i.:	Against Applicant
Subparagraph 1.d.:	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