



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 12-01265
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

January 30, 2014

Decision

MOGUL, Martin H., Administrative Judge:

On June 5, 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. 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 June 26, 2013, Applicant replied to the SOR (RSOR) in writing, and she requested a hearing before an Administrative Judge. I received the case assignment on August 20, 2013. DOHA initially issued a notice of hearing on August 27, 2013, to hold the hearing on September 19, 2013. At the request of Department Counsel, the hearing was continued. A new notice was sent out on September 25, 2013, and the hearing was convened as scheduled on October 17, 2013. The Government offered Exhibits 1 through 9, which were received without objection. Applicant testified on her own behalf and submitted Exhibits A through M, which were also admitted without objection. One additional witness testified on Applicant's behalf. The record was kept open until

November 1, 2013, to allow Applicant to submit additional evidence. The documents that were timely received have been identified and entered into evidence collectively without objection as Exhibits N through S. DOHA received the transcript of the hearing (Tr) on October 25, 2013. Based upon a review of the pleadings, exhibits, and the testimony of Applicant and her witness, eligibility for access to classified information is denied.

Findings of Fact

After a complete and thorough review of the evidence in the record, as described above, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 52 years old. She was married from 1981 to 2006, and she is currently divorced. Applicant has three children. She graduated high school and has taken some college classes. 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 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 to the Internal Revenue Service (IRS) for unpaid taxes for tax years 2010 through 2012 is cited in the SOR in the amount of \$35,225. Applicant admitted this SOR allegation in her RSOR, and added that this debt also included tax year 2013.

At the hearing, Applicant testified that she submitted a collection information statement to the IRS for review, and that she has been receiving a monthly statement from the IRS, but the matter has not been resolved and the IRS has not informed her of the amount she must pay. (Tr at 33-40.) Applicant submitted a post-hearing document, which includes letters from the IRS, confirming that the matter has not been resolved, and the IRS has not yet determined the amount Applicant must pay to them. (Exhibit P.) 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 \$15,037. Applicant admitted this SOR allegation in her RSOR and added that she believed this debt was charged off. She also wrote that she would immediately be making monthly payments of \$30 toward this debt, and eventually plans to pay larger amounts toward this debt.

Applicant testified that she wrote two letters to this creditor attempting to make a payment plan, the first on June 18, 2013, for which she received no response. She

wrote the second letter on August 26, 2013, with a payment of \$30. (Exhibit L.) While she has not yet received a response to the second letter, Applicant testified that the creditor did cash her check, although they had communicated to Applicant that they wanted payment of \$1,200 a month to pay off this debt. (Tr at 43-47.) Exhibit R includes a letter from Applicant, in which she acknowledges that the creditor was willing to enter into a settlement arrangement where Applicant would make five monthly payments of \$2,721.72 to resolve the debt, and Applicant countered with offering to make monthly payments of \$30. With the letter Applicant made a second payment of \$30. I find that this debt is still due and owing and has not been resolved, nor has a payment plan been arranged, but the debt has been reduced by \$60.

1.c. This overdue debt is cited in the SOR for a collection account in the amount of \$5,468. Applicant admitted this SOR allegation in her RSOR and added that she had contacted this creditor, but had been unable to set up a payment plan. She also wrote that she would immediately be making monthly payments of \$25 toward this debt, and eventually plans to pay larger amounts toward this debt.

Applicant testified that she wrote two letters to this creditor attempting to make a payment plan, the first on June 20, 2013, for which she received no response. She wrote the second letter on August 26, 2013. Each letter was sent with a check in the amount of \$25. (Exhibit K.) While she has not yet received a response to the letters, the creditor did cash both \$25 checks. (Tr at 47-49.) Exhibit Q includes a letter from Applicant in which she acknowledges that the creditor informed her monthly payments of \$25 to resolve this debt are unacceptable, and Applicant requested an installment plan that was within her budget. With the letter Applicant made a second payment of \$25. I find that this debt is still due and owing and has not been resolved, nor has a payment plan been arranged, but the debt has been reduced by \$50.

1.d. This overdue debt is cited in the SOR for a charged off account in the amount of \$9,544. Applicant admitted this SOR allegation in her RSOR, and added that she has made a payment plan with the creditor to make monthly payments of \$25, and eventually plans to pay larger amounts toward this debt.

Applicant testified that she has made a settlement plan with this creditor to pay monthly payments of \$25, and thus far, she has made three payments for a total of \$75. (Tr at 49-50.) Exhibit M confirms this payment plan, and Exhibit S establishes that she is now making monthly payments of \$40, and the current balance on this debt is \$9,454.31. I find that this debt is still due, but Applicant has been making payments under a settlement plan with the creditor, and the debt has been reduced by \$90.

1.e. This overdue debt is cited in the SOR for a charged off account in the amount of \$13,236. Applicant admitted this SOR allegation in her RSOR, and added that she has been attempting to contact this creditor telephonically and by mail, but has not yet been able to do so. She also wrote that on June 18, 2013, she made an initial payment of \$25.

Applicant testified that she wrote two letters to this creditor attempting to make a payment plan, the first on June 18, 2013, for which she received no response. She wrote the second letter on August 26, 2013, with a payment of \$25, which was cashed by the creditor. (Tr at 52-53.) (Exhibit J.) I find that this debt is still due and owing and has not been resolved, nor has a payment plan been arranged, but the debt has been reduced by \$25.

1.f. Three overdue debts are cited in the SOR for three collection accounts to the same creditor for city parking in the amounts of \$389, \$121, and \$475, for a total of \$985. Applicant admitted this SOR allegation in her RSOR, and wrote that these debts were incurred by her daughter while driving a vehicle owned by Applicant. Applicant also added that she will be paying \$40 a month toward this debt, and eventually plans to pay larger amounts toward this debt.

Applicant testified that she has made five monthly payments of \$40 toward these debts. (Tr at 55-56.) Exhibit O confirms that Applicant has been making payments toward these debts, and the current balance on these three debts is \$1,266.20. I find that these debts are still due, but had Applicant has been making payments under a settlement plan with the creditor. However, for some reason, the total debt has increased by \$285 over what was listed on the SOR

Applicant testified that her financial difficulties occurred after her divorce, when her husband quit claimed the deed of their home to her. Additionally, her father became ill in October 2010, and then died in November 2010. Her mother, who had been married to him for more than 50 years, had a very difficult time coping after his death and became very ill. In September 2011, Applicant's put all of her possessions in storage and moved in with her mother to help her. She lived with her from September 2011 to October 2012. During that period she was unable to file her tax returns, although she did file requests for extensions. (Tr at 35-40.) Applicant also testified that she has never taken any financial counseling course. She drives a 2008 Lexus that her mother helped her purchase for \$39,000. (Tr at 76-80.)

Mitigation

Applicant's ex-husband testified on Applicant's behalf. He stated that they had been married for 22 years, and they were divorced "six or seven years ago." He averred that while they were married they never had any financial problems or late payments of bills. As they began the divorce process in 2006, they decided that Applicant should keep their home, and she would pay him \$260,000 for it. Applicant took an adjustable rate loan on the home, and as the economy bottomed out, Applicant became unable to make the payments on the house. Thereafter, Applicant had the problems with the death of her father and the illness of her mother, which also contributed to financial difficulties. (Tr at 81-90.)

Applicant submitted two character letters on her behalf. (Exhibit N.) One was by a Senior Security Administrator for Applicant's current employer. She wrote that she knows Applicant "to be extremely cautious with all classified materials in her

possession, and understanding of the importance of protecting sensitive information.” The second letter is from Applicant’s sister. She confirmed that their mother had a very difficult time coping after the death of their father, and that Applicant moved in with their mother in September 2011 to care for her. Applicant moved out in October 2012, after the mother made an excellent recovery.

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 her divorce, the downturn in the economy, and the death of her father and illness of her mother, as the reasons for her financial difficulties could potentially make this mitigation condition applicable.

However, Applicant has barely reduced any of her long overdue debts, and she has only shown that she began making an effort to resolve the debts after the SOR was issued in June 2013. Therefore, I do not find that Applicant has acted responsibly, and this mitigating condition is not applicable in this case.

Additionally, because Applicant has only paid a very small amount towards these very significant debts, I find that AG ¶ 20(d), which states Applicant has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” is not applicable in this case. Finally, since Applicant has not received any financial counseling, I do not find that AG ¶ 20(c) or 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 all of the reasons cited above as to why the disqualifying conditions apply and the mitigating conditions do not apply, and considering Applicant's minimal effort 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 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