



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 12-03074
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: Amy Broderick, Esquire

February 21, 2014

Decision

MOGUL, Martin H., Administrative Judge:

On September 10, 2013, the Department of Defense (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; 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 October 2, 2013, Applicant replied to the SOR (RSOR) in writing, and she requested a hearing before an Administrative Judge (AJ). The case was assigned to this AJ on November 19, 2013. DOHA issued a notice of hearing on November 21, 2013, and the hearing was convened as scheduled on December 19, 2013. The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified on her own behalf and submitted Exhibits A through L, which were also admitted without objection. The record was kept open until January 3, 2014 to allow Applicant to submit additional evidence. The documents that were timely received have been identified and entered into evidence without objection as Exhibits M through

Q. DOHA received the transcript of the hearing (Tr) on January 2, 2014. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, 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 admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 43 years old. She has been married since 2004, and she has two children. Applicant received a Bachelor of Science degree in Business Administration in 1993. 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 32 allegations (1.a. through 1.ff.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. In her RSOR, admitted all of the SOR allegations with the exception of 1.s., 1.d., 1.ee., and 1.ff., which she denied. The admitted debts are deemed to be owed by Applicant. All of the SOR debts 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 to the Internal Revenue Service (IRS) for past due Federal income tax for tax years 2009 through 2012 in the amount of \$12,122.96. As reviewed above, Applicant admitted this SOR allegation in her RSOR. Applicant testified that she reached an accord and satisfaction with the IRS in June 2013. She stated that she is scheduled to make monthly payments of \$650, and she had made a payment of \$2,000 in December 2013, to cover four months, although she had not paid timely in October or November 2013 as scheduled. Applicant testified that while she filed a tax return every year, she did not have the money to pay the taxes that she owed to the IRS. (Tr at 67-70.)

Applicant estimated that she owed approximately \$8,000 to the IRS. (Tr at 89.) Exhibits O, P and Q are copies of Applicant's tax transcripts for tax years 2009, 2010, and 2011 respectively. Exhibit O shows Applicant currently owes \$2,752.76 for tax year 2009. Exhibit Q shows Applicant currently owes \$5,039.06 for tax year 2010. Exhibit P shows Applicant does not owe any debt for tax year 2011. I do not find that this debt has been resolved, but Applicant has made some payments to the IRS, and the debt has been reduced.

1.b. This overdue debt is cited in the SOR for a medical account in the amount of \$55. Applicant admitted this SOR allegation in her RSOR. At the hearing, Applicant averred that some of her medical bills were billed twice, and that she does not owe them. These are debts for which she was first billed in approximately 2004. However, Applicant conceded that she has never filed a dispute about any of these bills that she claims are double bills. She testified that she did not dispute the bills because she was

focusing on the larger IRS bills that are addressed in 1.a., above. Applicant also stated that she has not contacted any of the creditors listed on her credit reports because she has been focused on settling her IRS debts. (Tr at 64-67.) I do not find that this debt has been resolved or reduced.

1.c. This overdue debt is cited in the SOR for a collection account in the amount of \$719. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.d. This overdue debt is cited in the SOR for a medical account in the amount of \$100. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.e. This overdue debt is cited in the SOR for a collection account in the amount of \$619. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.f. This overdue debt is cited in the SOR for a medical account in the amount of \$419. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.g. This overdue debt is cited in the SOR for a medical account in the amount of \$254. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.h. This overdue debt is cited in the SOR for a medical account in the amount of \$44. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.i. This overdue debt is cited in the SOR for a charged off account in the amount of \$130. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.j. This overdue debt is cited in the SOR for a collection account in the amount of \$473. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.k. This overdue debt is cited in the SOR for a collection account in the amount of \$562. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.l. This overdue debt is cited in the SOR for a collection account in the amount of \$1,975. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.m. This overdue debt is cited in the SOR for a medical account in the amount of \$30. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.n. This overdue debt is cited in the SOR for a medical account in the amount of \$171. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.o. This overdue debt is cited in the SOR for a medical account in the amount of \$727. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.p. This overdue debt is cited in the SOR for a medical account in the amount of \$594. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.q. This overdue debt is cited in the SOR for a medical account in the amount of \$374. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.r. This overdue debt is cited in the SOR for a collection account in the amount of \$261. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.s. This overdue debt is cited in the SOR for a collection account in the amount of \$129. Applicant denied this SOR allegation in her RSOR. Applicant testified that this debt was for two traffic tickets and that she has paid this debt. (Tr at 86.) Exhibit M establishes that Applicant paid \$682 on July 9, 2013, which included the debts to this city for the two traffic tickets. I find that this debt has been resolved.

1.t. This overdue debt is cited in the SOR for a medical account in the amount of \$241. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.u. This overdue debt is cited in the SOR for a medical account in the amount of \$479. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.v. This overdue debt is cited in the SOR for a medical account in the amount of \$477. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.w. This overdue debt is cited in the SOR for a medical account in the amount of \$832. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.x. This overdue debt is cited in the SOR for a medical account in the amount of \$143. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.y. This overdue debt is cited in the SOR for a collection account in the amount of \$42. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.z. This overdue debt is cited in the SOR for a medical account in the amount of \$42. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.aa. This overdue debt is cited in the SOR for a collection account in the amount of \$1,409. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.bb. This overdue debt is cited in the SOR for a repossessed vehicle in the amount of \$4,000. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.cc. This overdue debt is cited in the SOR for a past due account in the amount of \$81.58. Applicant denied this SOR allegation in her RSOR. Applicant testified that this debt to a trash disposal company has been paid and the company is still picking up her trash. (Tr at 86-87.) Exhibit N establishes that this debt was paid by Applicant in the amount of \$105.65 on March 28, 2013. I find that this debt has been resolved.

1.dd. This overdue debt is cited in the SOR for a past due account in the amount of \$321.04. Applicant admitted this SOR allegation in her RSOR. I do not find that this debt has been resolved or reduced.

1.ee. This overdue debt is cited in the SOR for a past due account in the amount of \$682. Applicant denied this SOR allegation in her RSOR. Applicant testified that she has paid this debt to the superior court. (Tr at 88-89.) Exhibit M establishes that this debt was paid by Applicant in the amount of \$682 on July 9, 2013. I find that this debt has been resolved.

1.ff. This overdue debt is cited in the SOR for a past due account in the amount of \$682. Applicant denied this SOR allegation in her RSOR. Applicant averred and Department Counsel concurred that this debt is a duplicate of 1.dd., above. (Tr at 88-89.) I find that this debt is a duplicate of 1.dd., and was only owed once

Applicant testified that her financial difficulties began in October 2003 when her husband, who worked in construction, suffered a herniated disc, which ended his construction career. This resulted in his being unemployed for approximately two years. He had been earning around \$20,000 a year. During this period, Applicant became pregnant, and she went on maternity leave for three and a half months as her son was born in December 2004. Also, in 2004, Applicant's father was diagnosed with terminal

cancer. He died in 2009. During this time period, Applicant and her husband gave her mother \$5,000 to help her with her vehicle. Additionally, in 2010, she was laid off for three months. Applicant's salary has fluctuated over the years, but in her current position she earns an annual salary of \$90,000. Her husband returned to the workforce in 2007, originally working for another company. In 2009, he started his own company, and his income varies. (Tr at 28-46.)

Applicant testified that she currently has no credit cards and is not incurring any additional overdue debts. (Tr at 60.) She has never consulted any debt consolidation company, because she thought she might have to pay more to the company to try to resolve her debts, and it could hurt her if she had to file for bankruptcy. She also testified that she hopes to resolve her IRS debt in a year and a half, after which she plans to contact the other creditors and try to resolve her other debts. (Tr at 83-85.) Applicant conceded that she has not taken any kind of financial planning course because, between her work and taking care of her children, she did not think she would have the time to take such a course. (Tr at 93-94.)

At the hearing, Applicant submitted a character letter from an individual who is president of a small business working with a DoD contract. (Exhibit B.) She wrote that during a challenging period with Applicant's work associates, Applicant "provided critical leadership, mentoring, and stability to the entire work force not to mention outstanding work in her billet." I also considered three additional positive character letters that were included with Applicant's RSOR, originally marked by Applicant as Exhibits C, D, and E, but renamed by me as Attachments C, D, and E. (Tr at 19-20.)

Policies

access to a sensitive position a sensitive positionaccess to [a sensitive position] accessa sensitive position sensitivesensitivesensitive 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, most of which has been overdue for several years.

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 husband’s injuries, medical bills, and period of unemployment could potentially make this condition applicable in this case. However, there is evidence that Applicant has made an attempt to resolve only four of the 32 overdue debts listed on the SOR, one being a duplicate, and those only where it was required either to the IRS, to a city for traffic tickets, or for continuing services for trash pickup. She has failed to even contact the other creditors to attempt to make any kind of plan to resolve the other debts. Accordingly, I do not find that Applicant has acted responsibly. Therefore, this mitigating condition is not applicable in this case.

Additionally, I do not find that AG ¶ 20(c) is applicable, since Applicant testified that she did not have the time to take any financial counseling, nor do I find that AG ¶ 20(d) is applicable, since Applicant has not “initiated a good-faith effort to repay [or even contact the vast majority of] overdue creditors or otherwise resolve debts.” Finally, I do not find 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 access to a classified position 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 majority of past-due debts listed on the SOR, or take a financial course to help her resolve her overdue debts, 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.	For Applicant
Subparagraphs 1.b. - 1.r.:	Against Applicant
Subparagraphs 1.s.	For Applicant
Subparagraphs 1.t. - 1.bb.:	Against Applicant
Subparagraphs 1.cc.	For Applicant
Subparagraphs 1.dd.	Against Applicant
Subparagraphs 1.ee. and 1.ff.	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