



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-06551

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: Arran S. Treadway, Esq.

June 27, 2016

Decision

MOGUL, Martin H., Administrative Judge:

On May 15, 2015, 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 July 21, 2015, Applicant replied to the SOR (RSOR) in writing with attachments, and she requested a hearing before an Administrative Judge (AJ). The case was assigned to this AJ on October 21, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 5, 2015, and the hearing was held as scheduled on December 7, 2015. At the hearing, the Government offered Exhibits 1 through 4, which were received without objection. Applicant testified on her own behalf and submitted Exhibits A through F, which were also admitted without objection. Applicant's husband also testified on her behalf. The record was kept open until December 21, 2015, to allow Applicant to submit additional evidence. The

documents that were timely received have been identified and entered into evidence without objection as post-hearing Exhibits G through K. DOHA received the transcript of the hearing (Tr) on December 15, 2015. Based upon a review of the pleadings, exhibits, and the testimony of the witnesses, eligibility for access to classified information is granted.

Findings of Fact

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

Applicant is 61 years old. She has been married for 30 years, and she has two adult children. Applicant received a Bachelor of Arts degree in Early Childhood Education. Applicant has been employed by her current employer, a defense contractor, for 14 years, as a Business Administrative Specialist, and she is seeking a DoD security clearance in connection with her employment in the defense sector. (Tr at 19-20.)

Guideline F, Financial Considerations

The SOR lists 2 allegations (1.a. and 1.b.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. Both SOR 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 collection account in the amount of \$33,600. At the hearing, Applicant testified that this credit card debt has been charged off, and it no longer appears on her credit reports. (Tr at 29-30.) I find that this debt has not been resolved, although as discussed below, Applicant did make a good-faith effort to resolve this debt.

Applicant explained that her financial difficulties occurred because of her husband's underemployment and unemployment and a number of health related difficulties. Applicant testified that debt 1.a. was incurred to pay the co-payments for the medical treatment received by her, her husband, and their son.

During the 2007 period, her husband was diagnosed with prostate cancer, and a tumor was also found on one of his kidneys, which resulted in a nephrectomy or the removal of a kidney. Thereafter he received a radical prostatectomy or removal of his prostate. Subsequent to that surgery he was required to undergo hernia surgery. The hernia surgery was unsuccessful so he underwent a complete abdominal reconstruction. All those surgeries occurred during the timespan of approximately two years. He also had developed blood clots in his lungs, for which he was treated. During this same period Applicant was diagnosed with melanoma on her arm, which required that she undergo a biopsy and she had to be treated by an oncologist for three years. Since that time, Applicant has also received Basal Cell Carcinoma in her eye. Applicant's son also had an appendectomy during this period. Finally, Applicant's husband was a self-employed loan officer, and during the recession beginning in the

2006 and 2007 period, his company was badly affected and his salary went down significantly. The company with whom Applicant's husband contracted went out of business, and he became unemployed from 2008 until the beginning of 2012. (Tr at 31-32, 37.)

Applicant testified that this credit card, which was only used by her husband for medical bills, was being paid regularly until December 2011. When they realized that they were not going to be able to make regular payments because they had depleted their savings, her husband had several online chats with the creditor in an attempt to set up a payment plan that they could afford. Applicant's husband offered to make payments of \$400, but it was not accepted by the credit card company. The creditor requested that Applicant and her husband make a first payment of between \$16,000 and \$20,000, which they could not afford to make. (Tr at 35-37.)

1.b. This overdue debt is cited in the SOR for a medical account in the amount of \$954. At the hearing, Applicant testified that she and her husband were not aware of this delinquent medical bill until her husband accessed their credit report for her periodic reinvestigation regarding her security clearance. Applicant explained that this bill was incurred for medical treatment for her husband's heart condition. Applicant and her husband had moved, and the bill had apparently been sent to an incorrect address. She stated that after they confirmed it was a correct bill, they paid this bill in full in June 2015. (Tr at 24-29.) Exhibit E establishes that this debt was paid in full. I find that this debt has been resolved.

Testimony of Applicant's husband

Applicant's husband is 64 years old and holds a Bachelor of Science degree in Business Administration. As reviewed above, he and Applicant have been married for 30 years. He confirmed that he is the member of their family that has always paid the bills. He testified that he was the primary user of the credit card that resulted in the debt listed as 1.a. above, and that a large portion of the credit card bill resulted from medical expenses for him, his wife and their son. He had held the card since 1990, and he continued to make payments until December 2011. In 2012, Applicant's husband went online to attempt to negotiate a payment plan settlement with the creditor. Applicant and her husband offered to make monthly payments of \$400 to settle this debt; this was countered by a demand from the creditor of a lump sum payment that was in excess of what they could afford at that time. He also confirmed that the debt listed as 1.b. on the SOR has been paid in full after originally being mailed to the wrong address. Finally, Applicant's husband testified that he was not aware of any additional debt delinquencies during their 30 years of marriage other than the two debts listed on the SOR. He also confirmed that they are not late in paying any current debts or credit card bills. (Tr at 56-71.)

Mitigation

Applicant submitted 14 positive Performance Evaluations from her current employment, in which her overall evaluation was generally Outstanding. (Exhibit A.) Applicant also submitted six extremely positive and laudatory character letters from

people who have known Applicant in her professional and/or personal capacity. (Exhibit C.) She was described by a General Manager of her employer as “a highly intelligent, stable, and valued employee, and she has been completely loyal to the United States during my professional and personal interactions with her.” The Operations Business Manager of her employer wrote about Applicant, “in all the years I have known [Applicant], she has always held [herself] to very high standards in moral character and work ethics.” Four of the individuals who wrote letters, also appeared in person to testify on behalf of Applicant. Since the nature of their testimony would have been the same as their letters, they did not testify; but it is worth noting that they all took time out of their busy schedules to appear and support Applicant at the hearing. Applicant also introduced a number of Certificates for awards that she has received for excellent service during her present employment. (Exhibit B.)

At the hearing, Applicant was asked if she did receive an IRS Form 1099 from the creditor forgiving part of the debt, were she and her husband were prepared to pay any tax on that forgiven amount. She answered that she did not know if she would be able to do that. (Tr at 46-47.) In post-hearing Exhibit F she averred that if she did receive an IRS Form 10990 from the creditor forgiving the debt, to pay a tax on the amount the creditor of 1.a., above, had forgiven of the debt, she and her husband were prepared and able to pay that tax. Finally, Applicant submitted two forms, an Income and Expense Declaration form and a Schedule of Assets and Debts. (Exhibits J and K.) Both show that Applicant and her husband have sufficient income to resolve their current debts, and they also have significant assets.

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 are potentially applicable to Applicant in this case.

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 reviewed above, Applicant’s financial difficulties occurred as a result of her husband’s

illnesses and those of her and her son. Her husband's periods of unemployment and underemployment also contributed to her family's financial difficulties. I find that Applicant has acted responsibly regarding the two SOR delinquent debts since one has been paid off and settled and Applicant and her husband did make a good-faith effort to settle the other debt. They made a legitimate offer to pay \$400 a month and were countered by a demand that, for them and their financial situation at the time, was unreasonable and impossible to accept. Accordingly, I find that this mitigating condition is applicable in this case.

I also find that ¶ 20(d) is applicable and controlling, since as reviewed above, Applicant "initiate[d] a good-faith effort to repay [her] overdue creditors or otherwise resolve debts," Finally, Applicant and her husband are able to keep current in paying their recent debts. Therefore, I find Guideline F for 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 all of the reasons cited above as to why the mitigating conditions are applicable and controlling, together with the laudatory character letters submitted by Applicant and most positive employment evaluations, 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 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:

FOR APPLICANT

Subparagraph 1.a.:

For Applicant

Subparagraph 1.b.:

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