



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



In the matter of:)
)
) ISCR Case No. 14-06432
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Julie Mendez, Esq., Department Counsel
For Applicant: Garret Elias, Esq.

February 16, 2018

Decision

MOGUL, Martin H., Administrative Judge:

Statement of the Case

On November 6, 2015, in accordance with Department of Defense (DoD) Directive 5220.6, as amended (Directive), the DoD issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F.¹ (Item 1.) The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

On December 20, 2015, Applicant submitted a written reply to the (RSOR), and she requested that her case be decided on the written record in lieu of a hearing. (Items 2 and 3.) On April 15, 2016, Applicant through counsel submitted a second response to the SOR. On September 22, 2016, Department Counsel issued the Department's

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered 10 documentary exhibits. (Items 1-10.) The second Response to the SOR (RSOR 2), prepared by Applicant's attorney, was not referred to in the FORM, although it was submitted prior to the FORM being issued. It had Exhibits 1 through 5 attached. Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on November 25, 2016. Applicant submitted two additional documents on January 17, 2018, which have been identified and entered into evidence without objection as Items A and B. The case was assigned to this Administrative Judge on July 11, 2017. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Findings of Fact

After a thorough and careful review of the pleadings, and exhibits, I make the following findings of fact:

Applicant was 47 years old at the time the FORM was submitted. She is not married, but she was married from October 1990 to August 1991. Applicant attended a vocational school from 1989 to 1991. Applicant is employed as a security guard for a DoD contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector. (Item 4.)

Guideline F, Financial Considerations

The SOR lists 27 allegations (1.a. through 1.aa.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. All of the SOR allegations were established by Items 6 through 10.

1.a. This overdue debt is cited in the SOR for a delinquent account in the amount of \$1,621. In RSOR 2, Applicant's attorney wrote that this debt was from the same judgment listed as 1.w. and 1.x., below. Exhibits 4 .d. and 4.e. show that a judgment had been vacated, and he wrote that this account was sold. No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.b. This overdue debt is cited in the SOR for a delinquent account in the amount of \$998. In RSOR 2, Applicant's attorney wrote that this debt was from judgment, referred to in 1.n., below, and that all of the debts listed to this creditor have been resolved. Exhibit 4.i. show that there are no outstanding debts to this creditor.

1.c. This overdue debt is cited in the SOR for a delinquent medical account in the amount of \$987. In RSOR 2, Applicant's attorney wrote that this debt was a dental bill, reported on Applicant's credit on September 2010, and it was not enforceable, which is not relevant in these proceedings. No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.d. This overdue debt is cited in the SOR for a delinquent medical account in the amount of \$692. In RSOR 2, Applicant's attorney wrote that this medical debt was listed with little information, and they intended to contact the credit bureaus to ascertain the origin of the debt. No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.e. This overdue debt is cited in the SOR for a delinquent medical account in the amount of \$500. In RSOR 2, Applicant's attorney wrote that this medical debt was listed with little information, and they intended to contact the credit bureaus to ascertain the origin of the debt. No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.f. This overdue debt is cited in the SOR for a delinquent account in the amount of \$481. In RSOR 2, Applicant's attorney averred that the evidence shows this debt is also the same as the SOR debts, listed as 1.p. and 1.aa. below, and it was sold to another creditor. Exhibit 4.b. shows that this debt was paid.

1.g. This overdue debt is cited in the SOR for a delinquent account in the amount of \$370. In RSOR 2, Applicant's attorney wrote that Applicant is still indebted to this creditor in the amount of \$270.

1.h. This overdue debt is cited in the SOR for a delinquent account in the amount of \$165. In RSOR 2, Applicant's attorney wrote that they have contacted the current creditor of this debt, which confirmed that they do have this account. The attorney wrote that they were awaiting written confirmation of the balance before they would forward payment. Item B establishes that this debt was paid on December 27, 2017.

1.i. This overdue debt is cited in the SOR for a delinquent account in the amount of \$69. In RSOR 2, Applicant's attorney wrote that they have contacted the current creditor of this debt, which confirmed that they do have this account. Item A establishes that this debt was paid on December 12, 2017.

1.j. This overdue debt is cited in the SOR for a delinquent account in the amount of \$400. In RSOR 2, Applicant's attorney wrote that they believe that this debt is not owed, and was listed on the SOR in error, because the amount shown on the credit report owed is \$0, and the amount of \$400 is listed as the high credit of the account. It also is reported as disputed. (Item 6.) I find this debt is not owed.

1.k. This overdue debt is cited in the SOR for a delinquent account in the amount of \$800. In RSOR 2, Applicant's attorney wrote that the credit report, dated May 3, 2013, shows this debt has been disputed, transferred and has a \$0 balance. (Item 7.) I find this debt is not owed.

1.l. This overdue debt is cited in the SOR for a judgment filed against Applicant in 2014 in the amount of \$513. In RSOR 2, Applicant's attorney averred that the evidence shows this debt is also the same as the SOR debt, listed as 1.z. below, and it was sold to another creditor. Exhibits 4.f. and 4.i. show that this debt was paid.

1.m. This overdue debt is cited in the SOR for a judgment filed against Applicant in 2011 in the amount of \$3,233. In RSOR 2, Applicant's attorney averred that the evidence shows that the judgment for this debt has been satisfied. Exhibit 4.g. shows that this judgment was satisfied.

1.n. This overdue debt is cited in the SOR for a judgment filed against Applicant in 2012 in the amount of \$1,802. In RSOR 2, Applicant's attorney averred that all of the debts listed to this creditor have been resolved. Exhibit 4.i. show that there are no outstanding debts to this creditor.

1.o. This overdue debt is cited in the SOR for a judgment filed against Applicant in 2010 in the amount of \$853. In RSOR 2, Applicant's attorney averred that the evidence shows that the judgment for this debt has been satisfied. Exhibit 4.a. shows that this judgment was satisfied.

1.p. This overdue debt is cited in the SOR for a delinquent account in the amount of \$303. Applicant established that this debt has been paid. (See 1.f., above.)

1.q. This overdue debt is cited in the SOR for a delinquent account in the amount of \$717. In RSOR 2, Applicant's attorney wrote that this debt, which is the same as 1.u., below, was not enforceable, but that Applicant still intends to resolve this account. No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.r. This overdue debt is cited in the SOR for a delinquent account in the amount of \$418. In RSOR 2, Applicant's attorney wrote that they contacted the current creditor of this debt, but the creditor was not able to locate the account. The attorney added that they would continue to attempt to locate this account. No independent evidence has been introduced to establish that this debt has been resolved or reduced, but Applicant has made a good-faith attempt to satisfy this debt.

1.s. This overdue debt is cited in the SOR for a delinquent account in the amount of \$374. In RSOR 2, Applicant's attorney wrote that this debt remains unresolved.

1.t. This overdue debt is cited in the SOR for a delinquent account in the amount of \$216. In RSOR 2, Applicant's attorney wrote that this debt remains unresolved.

1.u. This overdue debt is cited in the SOR for a delinquent account in the amount of \$172. This debt has not been paid. (See 1.q., above.)

1.v. This overdue debt is cited in the SOR for a delinquent account in the amount of \$112. In RSOR 2, Applicant's attorney wrote that this debt remains unresolved.

1.w. This overdue debt is cited in the SOR for a delinquent account in the amount of \$740. No independent evidence has been introduced to establish that this debt has been resolved or reduced. (See 1.a., above.)

1.x. This overdue debt is cited in the SOR for a judgment filed against Applicant in 2012 in the amount of \$1,594. No independent evidence has been introduced to establish that this debt has been resolved or reduced. (See 1.a., above.)

1.y. This overdue debt is cited in the SOR for a delinquent account in the amount of \$791. Applicant's attorney did not address this debt in RSOR 2. No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.z. This overdue debt is cited in the SOR for a delinquent account in the amount of \$602. Applicant established that this debt has been paid. (See 1.i., above.)

1.aa. This overdue debt is cited in the SOR for a delinquent account in the amount of \$438. Applicant established that this debt has been paid. (See 1.f., above.)

Mitigation

Applicant's counsel explained that Applicant had a long-term relationship with her former partner, and that together Applicant and her partner parented the partner's child. The partner began to struggle with substance abuse problems and left without notice for long periods of time, during which Applicant cared for her partner's child. Applicant separated herself from her partner, and became involved in a protracted court battle, which lasted for many years. During their time living together, Applicant's partner had knowledge of the finances of Applicant. Also, in 2006, Applicant home was burglarized and her laptop, a credit card, and other items were stolen. Subsequently, unbeknown to Applicant, accounts were opened and ultimately defaulted in her name. While Applicant believes it was her former partner who opened the accounts, she does not have proof of who it was. Applicant did not report her former partner for her conduct, as she was involved in a custody battle for the child of her partner, and even though Applicant was not biologically related to the child, she eventually was granted custody. (RSOR 2.)

Applicant's counsel also wrote that Applicant retained the legal services of the attorney's law firm to resolve her outstanding debts and correct her credit. They have been working to resolve her larger accounts through negotiated settlements. Their office has been working to verify the debts from creditors, and though they have requested documents, some of the accounts have yet to be found or verified. He also indicated that through their advice, Applicant has opened a dedicated trust account, under her name and social security number that is being managed by a third party custodian. As funds are accumulated in the account, they will continue to resolve Applicant's debts, one at a time. Applicant's counsel has written that Applicant is committed to resolving all of her delinquent debt, even that for which she is not legally responsible, and because all of the issues with child custody have been resolved, she will be able to focus more of her attention on this goal. Finally, he averred that Applicant maintains a careful budget, she is current on all of her recent bills and she has been for a considerable period of time. (RSOR 2.)

Finally, Applicant submitted 14 extremely positive and laudatory character letters, 13 from individuals who have known Applicant professionally, and one who has known her as a long-term friend. (Exhibit 3, a through n.)

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 to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility 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.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter 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 (EO) 10865 provides that adverse 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 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

Applicant has had many delinquent debts for several years, some of which are still unresolved. The guideline notes several conditions that could raise security concerns under AG ¶ 19. The evidence is sufficient to raise disqualifying conditions (a) and (c) as potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators;
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required;

(g) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that are inconsistent with known legal sources of income;

(h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and

(i) concealing gambling losses, family conflict, or other problems caused by gambling.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

(f) the affluence resulted from a legal source of income; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's legal issues with her former partner, together with the robbery of her personal financial information and the unauthorized opening and defaulting of credit accounts in her name, are all conditions that resulted in Applicant's financial problems and were largely beyond her control. By Applicant employing the services of a law firm

to help her resolve her delinquent debt, and her paying off a significant amount of the debt, evidence has been introduced to establish that Applicant has acted responsibly. An applicant is not required to show that she has completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts and has taken significant actions to implement that plan. I also considered that based on Applicant's counsel's representation, Applicant is current with all her recent debt, and has a financial structure with a budget, so she will be able to live within her means in the future. I therefore, find that mitigation conditions AG ¶ 20(a), (b), (c), and (d) have been established and Guideline F is found 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. I also considered the very positive character letters submitted on behalf of Applicant.

Overall, the record evidence leaves me with no significant questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:

FOR APPLICANT

Subparagraphs 1.a.-1.aa.:

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 national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul
Administrative Judge