



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



In the matter of:)	
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)	ISCR Case No. 15-00201
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew Henderson, Esquire, Department Counsel
For Applicant: *Pro se*

March 8, 2016

Decision

MOGUL, Martin H., Administrative Judge:

On August 19, 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 August 28, 2015, 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 October 21, 2015. DOHA issued a notice of hearing on November 4, 2015, and the hearing was held as scheduled on December 3, 2015. The Government offered Exhibits 1 through 5, which were entered into evidence without objection. Applicant testified on her own behalf and submitted Exhibits A through E, which were also admitted without objection. At the hearing, the record was left open until December 17, 2015, to allow Applicant to submit additional evidence. Applicant submitted additional documents, which have been identified and entered into evidence without objection as

Exhibits F and G. DOHA received the transcript of the hearing (Tr) on December 11, 2015. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

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 31 years old. She was married in 2005, and she is in the process of obtaining a divorce. She has one eight-year-old-son. Applicant is enrolled in a community college, where she is working on the pursuit of a degree in business administration . Applicant is employed as Computer Support by a defense contractor, and she is seeking a DoD security clearance in connection with her employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists two allegations (1.a. and 1.b.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. Both debts will be discussed below, in the order they were listed on the SOR.

1.a. This overdue debt is cited in the SOR for a charged-off account in the approximate amount of \$4,837. Applicant testified that this bill was for a water softener system that she and her husband purchased for the home that is the subject of SOR allegation 1.b., below. Applicant explained that when she and her husband stopped making the mortgage payments on the house, as reviewed below, they also stopped making the payments on the water softener system. Applicant engaged the services of a debt consolidation company (DCC.) She made an arrangement where she would pay to the DCC \$170 a month, which consisted of \$140 a month to the creditor and \$30 a month to the DCC. (Tr at 28-36.)

Exhibit B includes the contract from this DCC, and it shows that they arranged for Applicant to make 41 monthly payments to the creditor of \$140 to resolve this debt. Exhibit D shows that, by the time of the hearing, Applicant had made 10 monthly payments of \$170, from January 2015 through November 2015, which included \$140 a month to the creditor and \$30 a month to the DCC. Exhibit E shows that, as of September 30, 2015, Applicant had paid \$1,530 in total to this DCC for their services and for the payment of this debt. I find that Applicant is making a good-faith effort to resolve this debt.

1.b. This overdue debt is cited in the SOR for a mortgage account that went to foreclosure for a deficiency balance of \$218,000. Applicant testified that this debt is for a home that she and her husband purchased in 2007, and in which they both lived until February 2011, when they separated. She moved out of the house, and her husband remained in the house. He agreed to continue making the mortgage payments on the

house, but in June or July 2011, he was laid off from his job, and he stopped making the mortgage payments. Applicant testified that she requested from her husband that he continue making the payments toward the house or that they attempt to work with a realtor that she knew to have a short sale for the property. Applicant's husband refused all of her requests and the house was ultimately foreclosed. (Tr at 25-37.)

Applicant testified that after the foreclosure the home was eventually sold, but she has never been contacted by the bank to inform her that she still owes money to the bank. She stated that she has reviewed several of her credit reports after the foreclosure, and they always showed a \$0 balance owed to the bank. (Tr at 37-40.) The Equifax Total View credit Report, dated October 13, 2015, shows that there is a \$0 balance owed to this creditor. (Exhibit 5.)

Mitigation

Applicant testified that she is not delinquent on any of her current bills (Tr at [?].) She submitted an extremely detailed Personal Financial Statement (PFS) that shows her net monthly income is \$2,546, her total monthly expenses are \$1,430, her monthly debt payments are \$980, and her monthly remainder is \$136. Her PFS also shows that she is not overdue on any of her current debts. (Exhibit F.) Applicant also cited State A Code of Civil Procedure 580(d) which states that in State A, the state in which Applicant's foreclosure took place, a lender cannot get a deficiency judgment after a non-judicial foreclosure. (Exhibit G.)

Applicant submitted three extremely laudatory character letters from individuals who knew Applicant at her former place of employment, another Government contractor, where Applicant worked from October 2008 to March 2015. (Exhibit A.) Applicant was described as "responsible and trustworthy," and someone "who demonstrated consistent, exceptional and excellent performance." Finally, Applicant submitted two additional letters that commended her on her vigilance and decisive action by observing and reporting individuals, who appeared to be a potential security threat to her former employer. (Exhibit A.)

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 these conditions are initially 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 largest debt, the mortgage on her home, became overdue when she and her husband separated, and despite the fact that he continued to live in the home after she moved out, he refused to pay the mortgage or to have the house sold as Applicant had requested of him. Based on the most recent credit report it appears that she does not owe anything for this house. I also find Applicant has acted responsibly in attempting to resolve her other overdue debt, as she engaged the services of a company to help her resolve the debt, and she has been making payments toward the debt, as per the agreement, for almost a year. I find that this mitigating condition is applicable and controlling in this case.

I also find that ¶ 20(d) is applicable, since Applicant has “initiated a good-faith effort to repay her overdue creditors or otherwise resolve debts.” Finally, I find that Applicant’s overall financial situation is stable and secure, and 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, 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

Subparagraphs 1.a.-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