



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



In the matter of:)	
)	
)	ISCR Case No. 15-08138
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: Ryan C. Nerney, Esquire

March 23, 2017

Decision

MOGUL, Martin H., Administrative Judge:

On February 25, 2016, 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 April 19, 2016, 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 May 23, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 16, 2016, and the hearing was held as scheduled on July 20, 2016. At the hearing, the Government offered Exhibits 1 through 6, which were received without objection. Applicant testified on her own behalf and submitted Exhibits A through R, which were also admitted without objection. Two additional witnesses testified on Applicant's behalf. The record was kept open until August 3, 2016, 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 S through FF. DOHA received the transcript of the hearing (Tr) on July 27, 2016. 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 48 years old. She is single, but she incorrectly had believed she was married in 1988, although she learned from the court in 1992, when she planned to separate from her husband, that she was not legally married. Applicant and the man she believed to be her husband had three children. She attended a technical college in 2002. Applicant has been employed by her current employer, a defense contractor, since 2008 as a Solutions Architect, and she is seeking a DoD security clearance in connection with her employment in the defense sector. (Tr at 41-50.)

Guideline F- Financial Considerations

The SOR lists 11 allegations (1.a. through 1.k.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. Each of the 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 judgment account filed against her in 2009 in the amount of \$4,798. At the hearing, Applicant testified that she learned before completing her Security clearance Application (SCA) that this debt was for a late rent payment. She contended that she never received any kind of notice of the hearing for this debt, nor did she ever receive notice of the default judgment. She further explained that she had left this rental facility because it was uninhabitable with roaches and backed up sewage. When she learned of the debt she contacted the court, but she has been unable to contact the owner of the property, because he is not at the location he was when she had rented the property. It had been her intention, if she could have contacted the owner, to establish a payment plan to resolve the debt. (Tr at 50-57.)

I find that this debt has not yet been resolved but Applicant did appear to have a legitimate reason for leaving the premises, and she has since attempted to contact the creditor to resolve the debt.

1.b. This overdue debt is cited in the SOR for a collection account in the amount of \$7,031. At the hearing, Applicant testified that this debt and the subsequent debt, listed on the SOR as 1.c. are for education loans from the technical college that she had attended for two years, which she stopped attending after she was in a serious car collision. These loans have been consolidated into one loan. Applicant testified that she attempted to put the loans in a deferment status. Ultimately the loans became due, but she did not have sufficient income to make the payments. Applicant was given the

chance to rehabilitate the loans by making all of the payments according to a plan for 12 months. Applicant testified that she has made all the payments required, and she is now off the rehabilitation status. She has now paid \$32 a month for six months, and her loan is current. (Tr at 57-63.) I find that Applicant is following a proper course of action to rehabilitate and resolve these two debts.

1.c. This overdue debt is cited in the SOR for a collection account in the amount of \$3,994. This debt has been addressed in 1.b., above, and it is being resolved.

1.d. This overdue debt is cited in the SOR for a charged-off account in the amount of \$250. Applicant testified that this debt is for a ring that she purchased for her granddaughter. She has attempted to set up a payment plan with the seller of the ring, but has not been able to make an arrangement with them. She testified that it is her plan to send a money order for the amount owed to the creditor on the address listed on the credit report. (Tr at 64-66.)

1.e. This overdue debt is cited in the SOR for a collection account in the amount of \$1,150. Applicant testified that she does not believe that she ever signed for this college loan, and she has disputed it with the creditor and the credit reporting agency. She has asked the creditor to send her some kind of proof that she had applied for this loan, but she has not received anything. She averred that if and when she received proof of this debt, she would be willing and able to pay the debt. (Tr at 66-69.) I find that Applicant has a legitimate question about the validity of this debt, and she has acted responsibly in her dispute.

1.f. This overdue debt is cited in the SOR for a repossessed vehicle. Applicant testified that this debt was for her mother's car, for which Applicant was a cosigner. Her mother stopped making the payments, and Applicant could not afford to make the payments. Applicant estimated that the debt after the car was repossessed and sold was \$16,000. She stated she had called the creditor and she was planning to start a payment plan, but because the debt was in her mother's name it could not be resolved (Tr at 69-73.) I find that Applicant made an attempt to contact the creditor, but this debt was never resolved.

1.g. This overdue debt is cited in the SOR for a collection account in the amount of \$334. Applicant testified that this debt was for a phone carrier that she continues to use, and she believed that if this debt was still outstanding the creditor would have tried to collect while they continued to provide their service. She indicated that she has disputed this debt, and Exhibit G shows that this debt has been deleted. (Tr at 73-74.) I find that this debt has been successfully disputed.

1.h. This overdue debt is cited in the SOR for a collection account in the amount of \$244. Applicant testified that at one point when she moved out of an apartment, a box of items including a box of checks was stolen. One of these checks was used to make a purchase from a sporting goods store. After Applicant showed her identification, signature, and birth date, this debt was removed from her credit report. (Tr at 74-75.) Exhibit H establishes that this debt was removed from Applicant's credit report. I find that this debt has been resolved.

1.i. This overdue debt is cited in the SOR for a collection account in the amount of \$230. Applicant testified that she did not believe this was her debt, and after she disputed this debt with the credit reporting agency, this debt was removed from her credit report. (Tr at 76-77.)

1.j. This overdue debt is cited in the SOR for a collection account in the amount of \$175. Applicant testified that this debt was for water utility service. She contacted this creditor, and they created a payment plan for her to pay \$20 a month. She has made six monthly payments of \$20, and she indicated she has about two more payments left to resolve this debt, and an additional \$100 for an extra debt to this creditor. Exhibit K establishes that this debt is being resolved. (Tr at 78-81.) I find that this debt is being resolved.

1.k. This overdue debt is cited in the SOR for a judgment account filed against her in 2008 in the amount of \$373. Applicant testified that this judgment debt has been satisfied, and Exhibit L is a Satisfaction of Judgment showing that this debt was settled. (Tr at 82.)

Mitigation

Applicant explained that she was a single mother for most of the life of her three children. The father of her three children was ordered to pay child support, but he often did not pay the required amount, and he is currently in arrears in the amount of approximately \$99,000. She testified that he is now on disability and paying her \$433 a month. Applicant testified that currently she is supporting one of her daughters, and her daughter's boyfriend who lives with them as well Applicant's mother, but she is receiving some financial help from her daughter and her daughter's boyfriend. (Tr at 49-51, 82-85.)

Applicant testified that her income has increased from approximately \$54,000 to \$72,000, which has allowed her to reduce or resolve more of her debts and make her financial situation more stable. Even before her increased income, she has continued to stay current with her rent, gas, food and any other regular debts. It is her intention to resolve all of her remaining delinquent debts, so that she can increase her credit score to 680, which is the score she has been told she will need to purchase a home. Finally, Applicant testified that she has a budget, which she uses to maintain a tight control over all of her current debts. (Tr at 99-105.)

The Post-hearing exhibits include: a letter from a collection reporting agency showing that the debt listed as 1.i., above has been removed from the credit report (Exhibit S); second dispute letters sent to the creditors for the debts listed on the SOR as 1.d., e., f., and g. (Exhibits T through Y); a confirmation of a debt letter showing the debt listed as 1.d., above (Exhibit BB); a Personal Financial Statement and Personal Budget (Exhibits CC and EE); and child support documents showing arrears and sporadic payments by the father of Applicant's children. (Exhibit FF.)

Finally, as stated above, two additional witnesses testified on behalf of Applicant. Both witnesses have known Applicant as a co-worker, and they both spoke in extremely

laudatory terms about Applicant. Applicant was described as “honest and hard-working,” “very reliable,” “trustworthy,” and someone who is “trying to resolve her debts.” (Tr at 24-39.)

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 in large part as a result of the father of her children failing to pay the court-ordered child support for their three children and Applicant having to support three children and herself on a limited income. I find that Applicant has acted responsibly regarding the SOR delinquent debts, contacting or attempting to contact the creditors, and trying to establish payment plans that she could afford, or disputing the debts that she did not believe were correct. 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 has been able to keep current in paying her family’s 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 witnesses, 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.k.: 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