



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



In the matter of:)	
-----)	
)	ISCR Case No. 14-04525
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: Sean M. Bigley, *Esquire*

April 23, 2015

Decision

MOGUL, Martin H., Administrative Judge:

On November 3, 2014, 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 November 19, 2014, Applicant replied to the SOR (RSOR) in writing, and she requested a hearing before an Administrative Judge (AJ). The case was initially assigned to another AJ on February 19, 2015, and DOHA issued a notice of hearing on that date, for the hearing to be heard on March 12, 2015. The case was subsequently assigned to this AJ on February 23, 2015, and DOHA issued a second notice of hearing on February 24, 2015. The hearing was held as scheduled on March 24, 2014. The Government offered Exhibits 1 through 4, which were entered into evidence without objection. Applicant testified on her own behalf and submitted Exhibits A through H, which were also admitted without objection. One additional witness testified on behalf of

Applicant. DOHA received the transcript of the hearing (Tr) on March 31, 2015. Based upon a review of the pleadings, exhibits, and the testimony of Applicant and the additional witness, 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 68 years old. She is married, and she has two daughters. Applicant received a Bachelor of Arts degree in Liberal Arts and Education in 1968. Since 1982, she and her husband have been owners of a company that now has approximately 25 employees. Applicant also has worked for another company for two years that does work as a defense contractor, and Applicant is seeking a DoD security clearance in connection with her employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists one allegation (1.a.) regarding financial difficulties, specifically an overdue debt, under Adjudicative Guideline F.

1.a. This overdue debt is cited in the SOR for a collection account in the approximate amount of \$20,933. Applicant testified that this bill has now been paid. (Tr at 25-28.) (Exhibits F, G.)

Applicant testified that her business netted approximately \$1.5 million in 2013 and \$1.6 million in 2014, and she pays the bills for her company. At the advice of her banker, Applicant rolled her business bills, which she had been paying with a credit card, into her business line of credit. Applicant testified that the bill which is the subject of this paragraph was from a personal credit card, but it was misfiled as a business bill. Applicant was unaware it was owed until she was contacted by a collection agency, and informed that she was going to be sued for this debt. She thereafter engaged the services of an attorney who negotiated a settlement with the creditor. Thereafter, Applicant made one payment with a cashier's check of \$17,000 and paid off the debt. (Tr at 29-34.) Exhibit A confirms that the debt was paid on December 18, 2014. Exhibit B confirms that the lawsuit for the debt was dismissed.

Applicant averred that the failure to pay this debt was due to an oversight, not due to a wilful desire to avoid paying a legitimate debt. She had erroneously believed the debt had been included with the business line of credit. Applicant testified that she now looks at the bills more closely to make sure they all get paid in a timely manner. (Tr at 35-41.)

As reviewed above, one additional witness testified on behalf of Applicant. He is a certified public accountant, and Applicant's company is one of his clients. The witness confirmed that Applicant uses commonly accepted business practices, and that he has

no concerns about the way she handles her finances. He also affirmed that it was not unusual for a company of the size of Applicant's company to have a bill simply "slip through the cracks." (Tr at 43-50.)

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 neither of these conditions, nor any other disqualifying condition, applies to Applicant in this case. The evidence has established that Applicant had accumulated one significant delinquent debt, but it was only through inadvertence, not because of a wilful disregard to pay the debt. Once she was aware of this overdue debt, she engaged the services of an attorney, who negotiated a settlement, and she ultimately settled the debt. Applicant’s current financial situation is secure, and there is no evidence of any other overdue 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 no disqualifying conditions are applicable, 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.:	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