



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-04618
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

January 20, 2016

Decision

MOGUL, Martin H., Administrative Judge:

On November 8, 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); and the adjudicative guidelines (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

On December 23, 2014, 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 February 18, 2015. DOHA issued a notice of hearing on February 23, 2015, and the hearing was convened as scheduled on May 5, 2015.

At the hearing, the Government offered Exhibits 1 through 4, which were received without objection. Applicant testified on her own behalf and submitted Exhibit A, which was also admitted without objection. The record was kept open until May 19, 2015, to allow Applicant to submit additional evidence. The documents that were timely

received have been identified and entered into evidence without objection as Exhibits B through D. The Defense Office of Hearings and Appeals (DOHA) received the transcript of the hearing (Tr) on May 13, 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, including Applicant's RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 34 years old. She is not married, and she has no children. She was previously married from 1999 to 2005. Applicant is a senior in college, where she is majoring in business and psychology. She served in the United States Air Force from 1999 to 2003, when she received an Honorable Discharge. Applicant is employed as a Fight Operations Manager, and she seeks 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 SOR allegations 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 mortgage account that went to foreclosure in the amount of \$175,000. Applicant admitted this SOR allegation in her RSOR, and she wrote that this debt arose as a result of an investment property that she purchased. Because of the poor economy she was unable to find a renter for the house. She paid the mortgage for the house for two years without a tenant, but after an appraisal she made a determination that her only option was "let the house go." She worked with a real estate agent for ten months with the goal of short selling the house, but she was unsuccessful, and, ultimately, the house was foreclosed. In her RSOR, Applicant contended that this debt will remain on her credit reports for seven to 10 years, but, "I will be afforded participation in the *Mortgage Forgiveness Debt Relief Act of 2007* due to the economic meltdown and have been advised that I will receive tax information regarding this matter shortly." (Emphasis in the original.)

At the hearing, Applicant testified that she purchased the house for approximately \$190,000, and she purchased it because she was informed that the area where it was located was going to be gentrified, but it never materialized. She estimated that she made payments for three years in total before she attempted to short-sell the house. During the period she was making payments she tried to get a renter but was not successful. When she tried to make the short-sale she had some potential buyers but the bank/creditor refused each sale. Ultimately, the bank sold the house for less than the amount she could have sold it in a short sale. (Tr at 29-39.)

Applicant testified that she spoke to a representative of the bank/creditor after she received the SOR, and she was told that she did not owe anything to them under the Mortgage Forgiveness Debt Relief Act, but she would be receiving an IRS Form 1099 showing that the loan had been forgiven. (Tr at 36-37.) Exhibit 2 is the full credit report dated March 27, 2014, and it shows that this debt had been foreclosed, but the past due is \$0.

1.b. This overdue debt is cited in the SOR for a collection account in the amount of \$1,027. Applicant denied this SOR allegation in her RSOR, and she wrote she paid this debt in the amount of \$1,027.03 on March 20, 2014, and the creditor confirmed that this debt has been resolved.

At the hearing, Applicant testified that this debt was for an education loan, but she dropped the class when she became deployed. She did not receive the bill until she returned in March 2014, and when she learned of the debt she paid the debt almost immediately. (Tr at 30-33.) The credit report of May 5, 2015, showed that the balance due to this creditor is \$0. (Exhibit A.) I find that this debt has been resolved.

Applicant testified that her financial situation is stable, and she is not overdue with any of her current financial obligations. (Tr at 52-53.)

Mitigation

Applicant testified that she owns another house, for which she has a renter, and she is current on the loan for the mortgage on this house. (Tr at 35-36; Exhibit A.) She also submitted three extremely laudatory characters letter. She was described as having “excellent moral character.” (Exhibit B.) Finally, Applicant submitted a Personal Financial Statement showing three sources of income and a number of expenses, but the information was less that complete so it does not add significant insight into the Applicant’s financial status. (Exhibit C.)

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 AG ¶ 2 describing 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 the applicant or proven by Department Counsel. . . .” The applicant 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 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 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 apply to Applicant in this case. The evidence established that Applicant accumulated significant delinquent debt to two creditors.

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 rental home, became overdue because of the downturn in the economy. Her second debt was simply not resolved because Applicant was deployed and did not receive the bill for this debt until her deployment ended. I find Applicant has acted responsibly in attempting to resolve her debts. As reviewed above, Applicant made payments for two or three years on the mortgage for her rental home, even though she could not obtain a renter. Then when she determined that she could not continue to make payments on this house, she attempted to short-sell the house. While she did receive offers, no offer she received was accepted by the bank. She now has been informed by the bank that she does not owe anything for this house. Also, when Applicant finally learned of the second debt, she paid it off almost immediately. 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 the evidence that establishes that Applicant has resolved her past-due debts listed on the SOR, together with her honorable service in the United States Air Force, 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