



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-05335

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

February 29, 2016

Decision

MOGUL, Martin H., Administrative Judge:

On January 6, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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) (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On February 19, 2015, Applicant replied to the SOR (RSOR) in writing, and she requested a hearing in this case before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 6, 2015, and I convened the hearing, as scheduled, on May 28, 2015. The Government offered Exhibits 1 through 6, which were admitted without objection. Applicant testified on her own behalf and submitted no exhibits at the time of hearing. The record was left open to June 5, 2015, to allow Applicant to submit documents, and Applicant did submit timely evidence, which has been identified and entered into evidence without objection as

Exhibits A through K. DOHA received the transcript of the hearing (Tr) on June 5, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

After a complete and thorough review of the evidence in the record discussed above, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 44 years old. She has been married to her third husband from April 20, 2007, to the present, and she has two children. She has an Associate of Arts degree in Computer Information and Management, and she is working on earning a Bachelor's degree. Applicant has been employed as a Data Analyst by a defense contractor for the last 10 years, and she seeks a DoD security clearance in connection with her employment in the defense sector.

Paragraph 1 (Guideline F - Financial Considerations)

The SOR lists 11 allegations, 1.a. through 1.k., regarding financial difficulties, specifically delinquent debts of Applicant. They will be addressed in the same order as they were listed on the SOR.

1.a. The SOR alleges that Applicant has an overdue debt for a collection account in the approximate amount of \$1,174. In her RSOR, Applicant wrote that her identity had been stolen, and that not only was \$8,000 stolen from her bank account, but credit card accounts were opened in her name without her authorization. She averred that the debts listed on the SOR as 1.a through 1.c. were all in this category, and she indicated that she had hired a law firm to help her resolve these debts.

Applicant testified that she hired this law firm in January 2015 after she received the SOR, and she is paying the company \$90 a month. Applicant also testified that she had spoken to the police to report her identity theft. She explained that she has received letters showing that some of her disputed debts have been removed from her credit report. (Tr at 25-31.) Post-hearing Exhibit J is a letter from the law firm discussed above. It shows that this debt has been removed from Applicant's credit report. I find that this debt has been resolved.

1.b. The SOR alleges that Applicant has an overdue debt for a collection account in the approximate amount of \$288. As reviewed above in her RSOR, Applicant identified this debt as one that arose because of identity theft. Post-hearing Exhibit J shows that this debt has been removed from Applicant's credit report. I find that this debt has been resolved.

1.c. The SOR alleges that Applicant has an overdue debt for a collection account in the approximate amount of \$30. In her RSOR Applicant also identified this debt as one that arose because of identity card theft. No evidence was submitted from the law

firm to show that this debt has yet to be resolved, but as 1.a. and 1.b., above, have been resolved, it appears likely that this one will be resolved as well.

1.d. The SOR alleges that Applicant has an overdue debt for a medical account in the approximate amount of \$2,829. In her RSOR, Applicant wrote that her son had been injured at a Little League baseball game where he was struck in the face by a pitch. He needed stitches on the inside of his mouth, but the emergency room doctor had not properly cleaned the wound, so her son ended up with a serious septic infection that required him to be hospitalized for a week and treated there. Applicant supplied the hospital with both her medical insurance and the insurance of the Little League. While she did initially receive one or two medical bills, she was informed by her insurance carrier that the Little League's insurance would cover the medical bills, and she was further instructed to disregard these bills. She wrote that she had not received any medical bills for this incident for many years, and she had believed it had been resolved by the Little League insurance.

Applicant wrote that the debts listed on the SOR as 1.d., 1.e., 1.f., and 1.i., were all incurred as a result of her son's Little League injury. Finally, she indicated that the law firm she had hired was also working to help her resolve these debts. Post-hearing Exhibit J shows that this debt has been removed from Applicant's credit report. I find that this debt has been resolved.

1.e. The SOR alleges that Applicant has an overdue debt for a medical account in the approximate amount of \$1,933. As reviewed above in her RSOR, Applicant identified this debt as one that arose because of her son's injury. Post-hearing Exhibit J shows that this debt has been removed from Applicant's credit report. I find that this debt has been resolved.

1.f. The SOR alleges that Applicant has an overdue debt for a medical account in the approximate amount of \$79. In her RSOR Applicant also identified this debt as one that arose because of her son's injury. Post-hearing Exhibit J shows that this debt has been removed from Applicant's credit report. I find that this debt has been resolved.

1.g. The SOR alleges that Applicant has an overdue debt for a collection account in the approximate amount of \$216. In her RSOR, Applicant wrote that this debt for a water bill arose from her previous residence. However, she averred that she had paid all of her outstanding utility, water and trash bills before she moved so this bill is not correct. She indicated that the law firm she had hired was also working to help her resolve this debt. Post-hearing Exhibit F shows that this debt has been resolved. Also, Post-hearing Exhibit J shows that this debt has been removed from Applicant's credit report. I find that this debt has been resolved.

1.h. The SOR alleges that Applicant has an overdue debt for a collection account in the approximate amount of \$237. In her RSOR Applicant wrote that she had only been to the city where this debt originated one time in 2009, and she did not use the emergency travel services at that time from the service company that is the creditor. She does have a service card from this creditor, but there is a different number than

identified on this debt. She speculated that this debt may also be as a result of identity theft. She has contacted her agent from this creditor. Post-hearing Exhibit F shows that this debt has been paid. Post-hearing Exhibit G shows that this debt was being removed from all of Applicant's credit reports. I find that this debt has been resolved.

1.i. The SOR alleges that Applicant has an overdue debt for a medical account in the approximate amount of \$580. In her RSOR Applicant also identified this debt as one that arose because of her son's injury. Post-hearing Exhibit J, another letter from the law firm representing Applicant, shows that this debt has been removed from Applicant's credit report. I find that this debt has been resolved.

1.j. The SOR alleges that Applicant has an overdue debt to her employer for a writ of garnishment filed against her in 2013 in the approximate amount of \$14,801.60 as a result of misuse of a corporate credit card. In her RSOR Applicant wrote that this is not a valid or correct entry or charge. She wrote, "In my 10 years at [my employer], I have never had a corporate card balance with that large an amount, outstanding for any period of time and most definitely not due to misuse of a corporate card." She further added that she has spoken to different representatives of her company, and no one has been able to identify this amount of money owed or the situation described in the SOR.

Post-hearing Exhibit J includes emails from several representatives of Applicant's employer, who indicate that they have no record of this debt ever owed by Applicant or any record of Applicant ever misusing her corporate credit card. I find that Applicant has established that this debt is not owed by her, and that there have been no allegations within the company of corporate credit card misuse by Applicant.

1.k. The SOR alleges that Applicant has an overdue debt to a county transportation authority as a result of a judgment issued against her in June 2012 in the approximate amount of \$13,516.40 as a result of unpaid tolls, penalties and costs. In her RSOR Applicant wrote that she was unaware of this debt until she spoke with a Government investigator regarding her security clearance. She explained that she did have a toll account, but she had never been contacted by a representative of the toll company regarding this debt, in which the toll company was trying unsuccessfully to withdraw funds from Applicant's bank account that had become inactive. The bank account had become inactive because Applicant had to change accounts after her identity theft, as discussed above. (Tr at 45-50.)

Applicant also wrote that she had never received notice of the court hearing or the subsequent judgment. Additionally, she added that the actual debt was approximately \$200, and the remainder of the \$13,516.40 was from penalties. Finally, she indicated that more than \$14,000 was deducted from her paycheck per the judgment entered against her without her knowledge.

Post-hearing Exhibit H shows that \$15,185 was deducted from Applicant's payroll from July 18, 2013, to September 25, 2014, to resolve this debt including an overpayment of \$1,669. I find that this debt has been resolved, and it was incurred through no fault of Applicant.

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she engaged in conduct that exhibited questionable judgement, lack of candor, dishonesty or unwillingness to comply with rules and regulations.

2.a. It is alleged in the SOR that Applicant failed to provide truthful and candid answers to a question asked under section 26 of an Electronic Questionnaires for Investigations Processing (e-Quip), executed by her on February 27, 2014. (Exhibit 1.) The question asked whether in the last seven years Applicant has had a judgment entered against her. Applicant answered, "No," to this question and deliberately failed to disclose the judgment entered against her in June 2012, as set forth in subparagraph 1.k., above.

At the hearing, Applicant credibly testified that she never meant to mislead the Government, but when she completed the e-Qip she was not aware of the judgment that had been entered against her. She conceded that she should have reviewed her credit report, but the company did want her to complete the e-Quip as quickly as possible. However, she simply did not know about this judgment until she spoke to a Government investigator. (Tr at 49-52.)

2.b. It is alleged in the SOR that Applicant failed to provide truthful and candid answers to other questions asked under section 26 of e-Quip. The questions asked whether in the last seven years Applicant has had bills or debts turned over to a collection agency, or if she is currently over 120 days delinquent on any debt. Applicant answered, "No," to these questions and deliberately failed to disclose that information concerning her finances and overdue debts as set forth in paragraph 1., above.

Applicant also testified credibly that she never meant to mislead the Government, but when she completed the e-Qip she was unaware of the overdue debts that were listed on her credit report, and which had been turned over to a collection agency. (Tr at 49-52.)

Mitigation

Applicant submitted two extremely positive character letters on her behalf, one from a friend and the other from her husband. (Exhibits B and C.) Applicant also submitted Performance Evaluations for several years, and her overall ratings were generally "Exceeds Expectation." (Exhibit D.)

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 adjudication 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

Paragraph 1 (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 may apply to Applicant in this case. The evidence has initially established that Applicant had accumulated significant delinquent debt as reported on her credit reports.

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.” Applicant’s overdue finances occurred as a result of identity theft, errors by an insurance company, and not being notified of a court action or judgment. I also find that Applicant has acted responsibly because she has engaged the services of a law firm to help her resolve the debts that were largely incorrectly reported on her credit reports. All of the debts listed on the SOR have now been resolved. Therefore, I find that this mitigating condition is a factor for consideration in this case.

I also find that because Applicant has been able to have the debts removed from her credit reports, which were primarily on there incorrectly that AG ¶ 20(d) is applicable as Applicant has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

I conclude that at this time Applicant has resolved her overdue debts. Therefore, Applicant has mitigated the financial concerns of the Government, and I resolve Guideline F for Applicant.

Paragraph 2 (Guideline E - Personal Conduct)

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgement, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The Government alleges in this paragraph that Applicant is ineligible for clearance because she engaged in conduct that exhibited questionable judgement, lack of candor, and dishonesty. In reviewing the disqualifying conditions under Guideline E, I conclude that, while Applicant should have been more careful in completing her eQuip, there was

no “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire” by Applicant. She testified credibly, and I find that any incorrect information about the judgment or her finances was due to lack of knowledge of what was listed on her credit reports rather than a wilful desire to mislead the Government. I do not find disqualifying condition ¶ 16(a) or any other disqualifying condition applies in this case against Applicant. I, therefore, resolve Guideline E 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 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 the facts and circumstances surrounding this case. Based on all of the reasons cited above as to why the mitigating conditions apply under Guidelines F and E, 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 for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a.-1.k.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a. and 2.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