



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



In the matter of:	)	
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	)	ISCR Case No. 12-10882
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

June 27, 2013

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On January 16, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E for Applicant. (Item 1.) 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 February 13, 2013, Applicant replied to the SOR (RSOR) in writing, and she requested that her case be decided on the written record in lieu of a hearing. (Item 3.) On March 19, 2013, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered eight documentary exhibits. (Items 1-8.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on May 4, 2013. Applicant submitted no documents. The case was assigned to this Administrative Judge on May 31, 2013.

Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 35 years old. She is unmarried and has no children. She graduated from high school in 1996. Applicant served in the United States Navy from 1997 to 2010 and received an Honorable Discharge. Applicant is employed by a defense contractor, 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 7 allegations (1.a. through 1.g.) regarding overdue, unpaid debts, under Adjudicative Guideline F. The 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 in the amount of \$3,430. Applicant admitted this debt in her RSOR, and she wrote that she is making payments of \$137 a month. (Item 3.) Applicant did attach copies of checks to her RSOR, showing three payments of \$305.90 to one creditor and another payment of \$77 to the same creditor, a creditor that is not listed on the SOR. (Item 3.) However, Applicant furnished no independent evidence to show how many payments have been paid to this creditor, to prove that any payments have been made to this creditor, or to explain how much she contends that this debt has been reduced. Based on this lack of evidence, I find that this debt is still outstanding.

1.b. This overdue debt is cited in the SOR in the amount of \$1,290. Applicant admitted this debt in her RSOR, and she wrote that she is making payment of \$305 a month. She stated that February 16, 2013, will be her last payment. (Item 3.) No independent evidence has been introduced to establish that this debt has been resolved or reduced. I find that this debt is still outstanding.

1.c. This overdue debt is cited in the SOR in the amount of \$1,187. Applicant admitted this debt in her RSOR, and she wrote that she is making payment of \$100 a month. (Item 3.) No independent evidence has been introduced to establish that this debt has been resolved or reduced. I find that this debt is still outstanding.

1.d. This overdue debt is cited in the SOR in the amount of \$6,721. Applicant admitted this debt in her RSOR, and she wrote that she has contacted the creditor, and they have talked about an agreement to pay \$1,344 down and \$150 a month. (Item 3.) No independent evidence has been introduced to establish that this debt has been resolved or reduced. I find that this debt is still outstanding.

1.e. This overdue debt is cited in the SOR in the amount of \$2,699. Applicant admitted this debt in her RSOR, and she wrote that she is making payment of \$100 a month. (Item 3.) The Credit Report shows that this debt is overdue by Applicant. (Item 9 at 9.) No independent evidence has been introduced to establish that this debt has been resolved or reduced. I find that this debt is still outstanding.

1.f. This overdue debt is cited in the SOR in the amount of \$150,000 on a mortgage account that is in foreclosure status. Applicant admitted this debt in her RSOR, and she wrote that her house did go into foreclosure and has been sold. She contended that she does not owe anything on this debt. She also wrote that she could not afford the down payment requested by the creditor. (Item 3.) No independent evidence has been introduced to establish that this debt has been resolved or reduced. I find that this debt is still outstanding.

1.g. This overdue debt is cited in the SOR in the amount of \$8,200. Applicant admitted this debt in her RSOR, and she wrote that she is making payments of \$100 a month. (Item 3.) No independent evidence has been introduced to establish that this debt has been resolved or reduced. I find that this debt is still outstanding.

In Applicant's subject interview, she averred that she was unemployed from October 2010 to July 2011. She also said that the debts were beyond her control, and she did not have financial counseling or debt consolidation services. Finally, she indicated that her current financial situation is improving. (Item 8.)

## **Paragraph 2 Guideline E, Personal Conduct**

The SOR alleges that Applicant furnished incomplete, untruthful information on a Security Clearance Application (SCA) that she completed and certified on November 30, 2012. (Item 4.) Applicant answered, "No," to the questions in section 26, under "Delinquency Involving Routine Accounts," and she did not include any of the debts listed on the SOR as allegation 1.a. through 1.g. In her subject interview, Applicant explained her failure to list any of her overdue debts on the SCA by stating, that either she did not have the information with her when completing the questionnaire, or it was due to an oversight. (Item 8.)

I find that Applicant should have given affirmative responses to these questions and included all of the seven delinquent debts listed on the SOR. While Applicant may not have been aware of all of the overdue debts, it is inconceivable that she was not aware of any of these debts. Therefore, I find that Applicant knowingly furnished untruthful information to the Government.

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised 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 common sense 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 apply to Applicant in this case. The evidence has established that Applicant accumulated significant delinquent debts.

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 claimed that her poor finances were because of a period of unemployment. However, no independent evidence was introduced to establish that Applicant has resolved any of her overdue debt, or acted responsibly. Therefore, I do not find that this potentially mitigating condition is a factor for consideration in this case, nor do I find that any other mitigating condition applies.

I conclude that until Applicant is able to significantly reduce her overdue debt, and show that she is currently financially stable, she has not mitigated the financial concerns of the Government.

### 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, unreliability, unwillingness to comply with rules and regulations, and untrustworthiness.

With respect to Guideline E, I find that Applicant knew or should have known of her extensive overdue debts that had been acquired over several years, and she should have included at least some of these overdue debts when she completed her SCA. Because of her lack of honesty and candor regarding very clearly written questions, I find that Applicant did intend to mislead the Government.

The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. If such an individual intentionally falsifies material facts, it is extremely difficult to conclude that she nevertheless possesses the judgment and honesty, necessary for an individual given a clearance.

In reviewing the disqualifying conditions under Guideline E, I conclude that because of Applicant's "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire" that ¶ 16(a) applies against Applicant. I find no mitigating conditions can be applied. I, therefore, resolve Guideline E against 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, including all of the reasons cited above as to why the disqualifying conditions apply and no mitigating condition is applicable under Guideline F or E. Therefore, I find that the record evidence leaves me with significant questions and 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 not 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:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.g.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a.:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul  
Administrative Judge