



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



In the matter of:)	
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)	ADP Case No. 14-00892
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank Jr., Esquire, Department Counsel
For Applicant: *Pro se*

March 30, 2016

Decision

MOGUL, Martin H., Administrative Judge:

On April 20, 2015, in accordance with Department of Defense (DoD) Directive 5220.6, the DoD issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F for Applicant. (Item 1.) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD 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 after September 1, 2006.

On May 13, 2015, 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 2.) On June 18, 2015, 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 August 8, 2015. Applicant filed a timely response, and the documents submitted have been entered into evidence without

objection as Item A. The case was assigned to this Administrative Judge on August 20, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to a sensitive position is denied.

Findings of Fact

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

Applicant is employed by a defense contractor, and she seeks access to a sensitive position in connection with her employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists 21 allegations (1.a. through 1.u.) regarding financial difficulties, specifically judgements and overdue debts totaling more than \$125,000, including debts for education loans of almost \$110,000, under Adjudicative Guideline F. All of the SOR debts 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 in the amount of \$863. Applicant denied this SOR allegation in her RSOR, and she wrote that this credit card debt has been satisfied through garnishment. (Item 2.) Attachments to her RSOR show that this judgment debt of \$2,250 has been satisfied through garnishment.

1.b. This overdue debt is cited in the SOR for a judgment in the amount of \$1,086. Applicant denied this SOR allegation in her RSOR, and she wrote that this credit card debt has been satisfied through garnishment. (Item 2.) Attachments to her RSOR show that this debt has been satisfied through garnishment.

1.c. This overdue debt is cited in the SOR in the amount of \$2,678. Applicant denied this SOR allegation in her RSOR, and she wrote that this is a duplicate of the debt listed as 1. a., above. (Item 2.) I find that this debt to the same creditor as to 1.a., above, is the same debt, and it has been satisfied through garnishment.

1.d. This overdue debt is cited in the SOR in the amount of \$332. Applicant admitted this SOR allegation in her RSOR, and she wrote that she had disputed the amount owed for his debt, but the creditor has not accepted her dispute. She is scheduled to start making monthly payments of \$50 beginning in June 2015 to pay off this debt. (Item 2.)

1.e. This overdue debt is cited in the SOR in the amount of \$456. Applicant admitted this SOR allegation in her RSOR, and she wrote she is not disputing this debt. She is scheduled to start making monthly payments of \$50 beginning in June 2015 to pay off this debt. (Item 2.)

1.f. This overdue debt is cited in the SOR in the amount of \$205. Applicant admitted this SOR allegation in her RSOR, and she wrote she is not disputing this debt, but she cannot begin making payments on this debt until she has paid off some of her other debts. (Item 2.) I do not find that this debt has been resolved or reduced.

1.g. This overdue debt is cited in the SOR in the amount of \$56. Applicant admitted this SOR allegation in her RSOR, and she wrote she is not sure of the origination of this debt. She conceded that she may owe this debt, or she may dispute it, but she cannot begin making payments on this debt until she has paid off some of her other debts. (Item 2.) I do not find that this debt has been resolved or reduced.

1.h. This overdue debt is cited in the SOR in the amount of \$453. Applicant denied this SOR allegation in her RSOR, and she wrote that this is a duplicate of the debt listed as 1. b., above. (Item 2.) I find that this debt to the same creditor as to 1.b., above, is the same debt, and it has been satisfied through garnishment.

1.i. This overdue debt is cited in the SOR in the amount of \$1,528. Applicant denied this SOR allegation in her RSOR, and she wrote that this credit card debt has been satisfied through garnishment. (Item 2.) Attachments to her RSOR show that this debt of \$1,491.59 has been satisfied through garnishment.

1.j. This overdue debt is cited in the SOR in the amount of \$637. Applicant admitted this SOR allegation in her RSOR, and she wrote she is not disputing this debt, but she cannot begin making payments on this debt until she has paid off some of her other debts. (Item 2.) I do not find that this debt has been resolved or reduced.

1.k. This overdue debt is cited in the SOR in the amount of \$789. Applicant admitted this SOR allegation in her RSOR, and she wrote she is not disputing this debt, but she cannot begin making payments on this debt until she has paid off some of her other debts. (Item 2.) I do not find that this debt has been resolved or reduced.

1.l. This overdue debt is cited in the SOR in the amount of \$566. Applicant admitted this SOR allegation in her RSOR, and she wrote she is not disputing this debt, but she cannot begin making payments on this debt until she has paid off some of her other debts. (Item 2.) I do not find that this debt has been resolved or reduced.

1.m. This overdue debt is cited in the SOR in the amount of \$512. Applicant admitted this SOR allegation in her RSOR, and she wrote she is not disputing this debt, but she cannot begin making payments on this debt until she has paid off some of her other debts. (Item 2.) I do not find that this debt has been resolved or reduced.

1.n. This overdue debt is cited in the SOR in the amount of \$357. Applicant admitted this SOR allegation in her RSOR, and she wrote she is not disputing this debt, but she cannot begin making payments on this debt until she has paid off some of her other debts. (Item 2.) I do not find that this debt has been resolved or reduced.

1.o. This overdue debt is cited in the SOR in the amount of \$295. Applicant admitted this SOR allegation in her RSOR, and she wrote she is not disputing this debt, but she cannot begin making payments on this debt until she has paid off some of her other debts. (Item 2.) I do not find that this debt has been resolved or reduced.

1.p. This overdue debt is cited in the SOR in the amount of \$2,605. Applicant admitted this SOR allegation in her RSOR, and she wrote she is not disputing this debt, but she cannot begin making payments on this debt until she has paid off some of her other debts. (Item 2.) I do not find that this debt has been resolved or reduced.

1.q. This overdue debt is cited in the SOR in the amount of \$222. Applicant admitted this SOR allegation in her RSOR, and she wrote she is not disputing this debt, but she cannot begin making payments on this debt until she has paid off some of her other debts. (Item 2.) I do not find that this debt has been resolved or reduced.

1.r. This overdue debt is cited in the SOR in the amount of \$1,583. Applicant admitted this SOR allegation in her RSOR, and she wrote she is not sure of the origination of this debt. She conceded that she may owe this debt, or she may dispute it, but she cannot begin making payments on this debt until she has paid off some of her other debts. (Item 2.) I do not find that this debt has been resolved or reduced.

1.s., t., and u. These three overdue debts are cited in the SOR in the amounts of \$7,717; \$52,268; and \$50,222. Applicant admitted these SOR allegations in her RSOR, and she wrote she is not disputing these three debts that were incurred for living expenses while she was pursuing her degree. Unfortunately, she maxed out her funding before she completed the courses required to earn a Bachelor's degree in either of the two fields in which she has received Associate's degrees, Criminal Justice or Paralegal Studies. These three debts are with the same collection agency, and Applicant indicated that she has established a payment plan to resolve these three debts, although she did not furnish the specifics in her RSOR as to what the arrangements are or how much she has paid. (Item 2.)

Applicant wrote further in her RSOR that her husband was diagnosed with Degenerative Disk Disease/Herniated Disk in his back; Traumatic Brain Injury, the severity is in the process of being determined; Post Traumatic Stress Disorder; and Severe Anxiety. As a result of these illnesses, he has required continuing medical treatment, and he has been unable to work. Also, Applicant's son has been diagnosed with Sensory Processing Disorder, which also requires continuing medical treatment. (Item 2.) Applicant's also indicated that in the last year her wages have been garnished in the amount of \$5,337.29, and during that period her family was almost evicted from their apartment, they almost had their utilities shut off on more than one occasion, and they had to seek aid from their church to help with rent and utilities. She also averred that she is attempting to resolve her debts, and she has made some payment arrangements, but it is extremely difficult. (Exhibit 2.)

In Applicant's post-FORM submissions, (Item A), she indicated that she is working with collection agencies to try to resolve some of her delinquent debts.

Applicant conceded that some of these debt are extremely old, and since she has moved several times since they were incurred and she does not have the original documentation, she plans to dispute them, although she did not argue that she had not incurred them. She also wrote, "I have severely over-extended myself as of late, to try and pay these [her past and present bills, including medical bills] off . . ." She also wrote that she has met with a few lawyers to explore filing for bankruptcy, but since her largest debts for Federal and private student loans are not dischargeable in bankruptcy she did not believe it would be beneficial to file for bankruptcy. Applicant also indicated that she had started making payments of approximately \$450 a month to pay off her student loans, but after two payment she stopped because she could not afford to continue making payments on her income and with her bills. She wrote if she had continued to make monthly payments at that amount, her family would have been homeless.

Finally, Applicant wrote, "I realize that I have made some very poor financial decisions. I take full responsibility for that, and I am trying to rectify those situations. I have taken on 2 part time jobs doing direct sales and I am working OT [sic] when available, to try and make more money, to pay more things." (Item A.)

Policies

When evaluating an applicant's suitability for access to a sensitive position, 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 access to a sensitive position.

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 access to [a sensitive position] 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 access decision.

A person who seeks access to a sensitive position 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 sensitive information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive 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 debt, most of which has been overdue for several years.

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 husband’s unemployment, and her husband and son’s medical treatment, could potentially make this condition applicable in this case. However, since there is

evidence that these debts were incurred over several years, and the only debts that have been resolved have been involuntarily through judgments and garnishments, I do not find that Applicant has acted responsibly. Therefore, this mitigating condition is not applicable in this case.

Additionally, I do not find that AG ¶ 20(d) is applicable, since Applicant has not “initiated a good-faith effort to repay [the majority of] overdue creditors or otherwise resolve debts.” Finally, because Applicant has not significantly reduced or resolved her overdue debts, and because the evidence has not established that her current financial situation is stable, I do not find any other mitigating condition applies to this case. Therefore, I find Guideline F against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility and suitability for a sensitive position by considering the totality of 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 sensitive 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 lack of evidence to establish that Applicant has significantly resolved or reduced the past-due debts listed on the SOR, I find that the record evidence leaves me with significant questions and doubts as to Applicant’s eligibility and suitability for a sensitive position, under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the trustworthiness 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. - 1.c.:	For Applicant
Subparagraphs 1.d. - 1.g.:	Against Applicant
Subparagraphs 1.h. - 1.i.:	For Applicant
Subparagraphs 1.j. - 1.u.:	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 access to a sensitive position. Eligibility for access to sensitive information is denied.

Martin H. Mogul
Administrative Judge