



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



In the matter of:)	
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)	ISCR Case No. 14-01604
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

April 23, 2015

Decision

MOGUL, Martin H., Administrative Judge:

On June 10, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security 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; 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 after September 1, 2006.

On October 7, 2014, 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 January 21, 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 seven documentary exhibits. (Items 1-7.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on March 4, 2015. Applicant did not submit any additional evidence. The case was assigned to this Administrative Judge on

March 31, 2015. 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 and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 51 years old. She has never been married, and she has no children. She is a professional graphic designer, and she was self-employed from October 2006 to October 2013. Applicant now works as a sign painter for a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector. (Items 4, 6.)

Guideline F, Financial Considerations

The SOR lists nine allegations (1.a. through 1.i.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. The 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 state tax lien in the amount of \$1,881. In her RSOR, Applicant admitted this SOR allegation, and she wrote that this debt would be paid in full with her next tax refund. The record was left open until March 4, 2015, to allow Applicant to submit evidence establishing that this debt was paid. No evidence was introduced to prove that this debt has been resolved or reduced. I find that this debt is still outstanding.

1.b. This overdue debt is cited in the SOR for a collection account in the amount of \$283. In her RSOR, Applicant admitted this SOR allegation. In regard to this allegation and several other allegations, Applicant wrote that she has contacted the debtor, and she has set up a payment plan. (Item 3.) I have proceeded with the assumption that she meant she contacted the creditor, since she is the debtor, and I will use the term creditor where she has used debtor. No evidence was introduced to prove 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 for a collection account in the amount of \$98. In her RSOR, Applicant denied this SOR allegation, and she wrote that she has a current account with this creditor and is paying "in per terms." (Item 3.) The most current credit report shows that this debt was paid for less than full balance. (Item 7.) I find that this debt is resolved.

1.d. This overdue debt is cited in the SOR for a charged-off account in the amount of \$548. In her RSOR, Applicant admitted this SOR allegation, writing that she has contacted the creditor to set up a payment plan. (Item 3.) No evidence was introduced to prove 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 for a charged-off account in the amount of \$5,613. In her RSOR, Applicant denied this SOR allegation, contending that she did not know the origination of this debt. (Item 3.) The November 2013 credit report shows that this debt, which was a personally guaranteed business loan was charged off in 2009, at which time the account was closed. (Item 5.)

In Applicant's Personal Subject Interview, based on an interview conducted on December 11, 2013, Applicant stated that she thinks this debt could be for a business loan for a previous business. She indicated that she planned to contact the creditor and make a payment plan to pay off this debt. (Item 6.) No evidence was introduced to prove 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 for a collection account in the amount of \$2,497. In her RSOR, Applicant admitted this SOR allegation, writing that she has contacted the creditor to set up a payment plan. (Item 3.) No evidence was introduced to prove 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 for a collection account in the amount of \$492. In her RSOR, Applicant admitted this SOR allegation, writing that she has contacted the creditor to set up a payment plan. (Item 3.) No evidence was introduced to prove that this debt has been resolved or reduced. I find that this debt is still outstanding.

1.h. This overdue debt is cited in the SOR for a collection account in the amount of \$456. In her RSOR, Applicant denied this SOR allegation, contending that items from a storage facility were auctioned off to pay this debt, and she was told that this debt was paid in full. The November 2013 credit report shows that this debt has been in collection since November 2008. (Item 5.) No evidence was introduced to prove that this debt has been resolved or reduced. I find that this debt is still outstanding.

1.i. This overdue debt is cited in the SOR for a collection account in the amount of \$66. The November 2013 credit report shows that this debt has been in collection since July 2013, for a returned check, and the recent credit report, dated January 21, 2015, continues to show this debt is unpaid. (Item 5.) No evidence was introduced to prove that this debt has been resolved or reduced. I find that this debt is still outstanding.

In Applicant's Personal Subject Interview, again based on an interview conducted on December 11, 2013, Applicant described her current financial status as having bad credit and outstanding debts. She planned to get her finances in order after the first of the new year when her probationary time from work would be over. She averred that she is meeting her current financial obligations. (Item 7.) On her Security Clearance Application, Applicant wrote that she left her self-employment position as a result of a "business slowdown-laidoff." (Item 4.) It was not made clear how she could be laid off from her own business.

No evidence was introduced by Applicant as to her current financial situation, including her income and debts. Nor was evidence offered to show whether she will be able to resolve her past overdue debts or stay current with her present debts.

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 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 both of these disqualifying conditions apply to Applicant in this case. The evidence has established that Applicant accumulated significant delinquent debt, which has not been satisfied.

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 stated that she became unemployed because of a business slowdown, which occurred in September 2013. No evidence was introduced to show that Applicant's overdue debts occurred because of this event. Also, since the evidence has established that Applicant has only paid off one debt, I do not find that this mitigating condition is a factor for consideration in this case.

AG ¶ 20(d) is also not applicable, since Applicant has not "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," as only one debt has been proven to be resolved. Therefore, I do not find that this mitigation condition or any other mitigating condition applies to this case.

Finally, since Applicant has not submitted a Personal Financial Statement, nor was any other evidence offered about her current financial stability, I cannot conclude that Applicant will be able to pay off her past debts or keep up to date on her current debts and expenses, especially if any new or unexpected debts are incurred. Therefore, I conclude that Applicant has not mitigated the Financial Consideration concerns, which are found 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. Based on all of the reasons cited above as to why the disqualifying conditions apply and no mitigating conditions are applicable, 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. - 1b.:	Against Applicant
Subparagraphs 1.c.:	For Applicant
Subparagraphs 1.d. - 1i.:	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