DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
---------------------------	)	ISCR Case No. 14-04565
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

April 23, 2015

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Decision

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MOGUL, Martin H., Administrative Judge:

On October 15, 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) (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006.

On November 4, 2014, Applicant furnished a reply to the SOR (RSOR) in writing, with Exhibits 1 through 8 attached, and she requested that her case be decided on the written record in lieu of a hearing. (Item 4.) On December 30, 2014, 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 February 26, 2015. Applicant did submit additional evidence, which has been identified and entered into evidence without objection as Items A through F. The case was assigned to this Administrative Judge on March 12, 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, the FORM, and the exhibits, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 31 years old. She was married from 2003 to 2008, and she has no children. Applicant served in the United States Army from 2004 to 2009, when she received an Honorable Discharge as the result of a medical condition. Applicant is employed by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector. (Item 5.)

Guideline F, Financial Considerations

The SOR lists 12 allegations (1.a. through 1.l.) regarding financial difficulties, specifically overdue debts. The debts listed on the SOR total more than $13,000. 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 for a charged-off account in the amount of $7,035. Applicant admitted this allegation in her RSOR. She wrote that she had made an offer to settle this debt but had not yet been able to come to an agreement with the creditor. (Item 4.) I find that this debt has not been resolved or reduced.

1.b. This overdue debt is cited in the SOR for a charged-off account in the amount of $3,762. In her RSOR, Applicant admitted this SOR allegation. She wrote that she had reached an agreement with this creditor wherein she will make payments of $334 on the first of each month beginning on December 1, 2014, and ending on June 1, 2015. (Item 4.) Exhibit 2 confirms this agreement. Item B is a letter from the creditor for this debt, showing a payment of $334 is expected for this debt. No evidence was submitted post hearing to show if any payments have yet been made on this debt.

1.c. This overdue debt is cited in the SOR for a collection account in the amount of $1,047. In her RSOR, Applicant admitted this SOR allegation. She wrote that she had reached an agreement with this creditor wherein she will make payments of $50 a month beginning on December 15, 2014, for 20 payments. (Item 4.) Exhibit 3 confirms this agreement. Item F shows Applicant made one payment of $50 on January 15, 2015, but the majority of the debt is unpaid.

1.d. This overdue debt is cited in the SOR for a charged-off account in the amount of $580. In her RSOR, Applicant denied this SOR allegation. She wrote that this debt had been settled for $580 in 2010. (Item 4.) Exhibit 4 confirms this agreement and that the account is settled.

1.e. This overdue debt is cited in the SOR for a charged-off account in the amount of $169. In her RSOR, Applicant admitted this SOR allegation. She wrote that she had reached an agreement with this creditor wherein she will make payments of $50 a month beginning on November 27, 2014, for four payments. (Item 4.) Item E shows Applicant has made payments of $150 on the debt.

1.f. This overdue debt is cited in the SOR for a collection account in the amount of $101. In her RSOR, Applicant denied this SOR allegation. She wrote that this debt had been settled for two payments of $101. (Item 4.) Exhibit 3 confirms that Applicant made at least one payment of $101 plus a $2.40 processing fee. Item G is a letter from the collection agency for this debt establishing that this debt has been paid in full.

1.g. This overdue debt is cited in the SOR for a judgement entered against Applicant in the amount of $630. In her RSOR, Applicant admitted this SOR allegation with extenuating circumstances. She wrote that she had filed a complaint with a state Department of Consumer Affairs, and the case is still under investigation. Exhibit 7 confirms that Applicant has contacted both the creditor and a state Department of Consumer Affairs in an attempt to resolve this disputed debt. I find that Applicant is making a good-faith effort to resolve this debt.

1.h. This overdue debt is cited in the SOR for a charged-off account in the amount of $436. In her RSOR, Applicant denied this SOR allegation. She wrote that this debt had been settled for payments of $145.42, until the debt was paid in full. (Item 4.) Exhibit 8 confirms that this debt is settled.

1.i. This overdue debt is cited in the SOR for a collection account in the amount of $813. In her RSOR, Applicant denied this SOR allegation. She wrote that this debt was incurred when she was out of the country, and she has filed a fraud affidavit procedure to dispute this debt. (Item 4.) I find that Applicant is making a good-faith effort to dispute this debt.

1.j. This overdue debt is cited in the SOR for a collection account in the amount of $554. In her RSOR, Applicant admitted this SOR allegation with extenuating circumstances. She wrote that she was unable to settle this account, because the debt is so old that the creditor would not accept payments to settle this debt. (Item 4.) I find that this debt has not been resolved.

1.k. This overdue debt is cited in the SOR for a collection account in the amount of $517. Applicant denied this SOR allegation. She wrote that this debt had been settled for four payments of $77.58, which settled the debt on October 17, 2013. (Item 4.) Exhibit 11 confirms that this debt is settled.

1.l. This overdue debt is cited in the SOR for a collection account in the amount of $202. Applicant denied this SOR allegation. She wrote that this debt, which is the same as the debt listed as 1.f., above. had been settled for four payments of $77.58, on October 17, 2013. (Item 4.) Exhibit 3 confirms that this debt is a duplicate of 1.f. and is settled.

Applicant wrote on her RSOR that most of her accounts went into delinquent status during the period when she was medically discharged from the Army. She was unable to find suitable employment, so that she could not satisfy her bills, and this resulted in her bills going into default or delinquent status and her losing her home.

Applicant also wrote that since she now has stable employment and a promising career, she has been able to regain control of her finances by paying off some of her debts and/or making payment arrangements with the collection agencies. She submitted a monthly budget report as of January 2015. It shows her income is $3,221 plus $668 in Veterans (VA) benefits. (Item C.) The budget shows Applicant has a monthly net remainder of $1,001.

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 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." As reviewed above, Applicant explained her financial difficulties occurred because she could not find satisfactory employment when she was Medically Discharged from the Army. The condition that caused her financial problems was not within her control. While Applicant has resolved many of her smaller debts, her two largest debts, 1.a and 1.b., totaling $10,797, have not been resolved or reduced, and she has made only one payment of $50 toward her third largest debt of $1,047, listed as 1.c. I therefore cannot find that she has acted responsibly, and thus I cannot find that this mitigating condition is a factor for consideration in this case.

AG ¶ 20(d) is also not applicable, since the majority of Applicant's debt has not been reduced or resolved. Finally, I do not find any other mitigating condition under this Guideline.

Until Applicant is able to significantly resolve or reduce her past overdue debts, I find 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 are applicable and controlling, 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. - 1c.:	Against Applicant
Subparagraph 1.d.-1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.l.:	For 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