



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-12695
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jennifer I. Goldstein, Esquire, Department Counsel  
For Applicant: *Pro Se*

August 4, 2008

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**Decision**

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MOGUL, Martin H., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on July 5, 2006. On February 25, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F and Guideline B 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), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant replied to the SOR (RSOR) in writing on April 1, 2008, and requested a hearing before an Administrative Judge. I received the case assignment on April 25, 2008. DOHA issued a notice of hearing on May 13, 2008, and I convened the hearing as scheduled on June 5, 2008. The Government offered Exhibits (Ex) 1 through 6, which were received without objection. Applicant testified on her own behalf and submitted Exhibits A through G, without objection. DOHA received the transcript of the hearing (Tr) on June 17, 2008. I granted Applicant's request to keep the record open

until June 13, 2008, to submit additional documents. She timely submitted a cover letter, and three additional documents, which have been marked collectively as Exhibit H, and entered into evidence without objection. The record closed on June 13, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Department Counsel indicated in her opening statement that the Government was withdrawing the allegations listed under Guideline B (Tr at 17). Therefore the allegations that are listed under Guideline B will not be discussed or have any influence on this decision.

### **Findings of Fact**

In her RSOR, Applicant admitted SOR allegations 1. a., b., c., d., e., j., and m. She denied 1. f, g., h., l., k., l., and n. The admitted allegations are incorporated herein as findings of fact.

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

Applicant is 22 years old. She is engaged to be married and she has one child. She is a high school graduate with some college.

Applicant is employed as a security administrator by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector.

The SOR lists 14 allegations (1.a. through 1.n.) regarding financial difficulties under Adjudicative Guideline F. All of the allegations will be discussed in the same order as they were listed in the SOR:

1.a. This overdue debt to Creditor 1 is cited in the SOR in the amount of \$2,642. In her RSOR, Applicant admitted that this allegation is correct, and at the hearing, Applicant testified that the total amount of this debt is still unpaid.

1.b. This overdue debt also to Creditor 1 is cited in the SOR in the amount of \$3,038. In her RSOR, Applicant admitted that this allegation is correct, and at the hearing, Applicant testified that, although she is attempting to negotiate a payment plan to resolve this debt, at this time, the total amount of this debt is still unpaid,

1.c. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$62. In her RSOR, Applicant admitted that this allegation is correct, and at the hearing, Applicant testified that the total amount of this debt is still unpaid.

1.d. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$830.36. At the hearing, Applicant testified that she had made an arrangement with the creditor to

settle this debt for a one time payment of \$499. However, she never made the payment and the debt is still outstanding.

1.e. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$11,593. In her RSOR, Applicant admitted that this allegation is correct, and at the hearing, Applicant testified that the total amount of this debt is still unpaid.

1.f. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$226. At the hearing, Applicant testified that she had resolved this debt with a payment of \$100. Since she had no evidence of this payment, the record was held open to allow Applicant to submit proof of payment. Exhibit H includes a letter from this creditor, dated January 15, 2008, which shows that a payment was made of \$100 on this account, and there is now a \$0 balance on this debt.

1.g. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$391. In her RSOR, Applicant denied that this allegation is correct, and at the hearing, Applicant testified that she was unaware of the basis of this debt, although she has not challenged or disputed this bill with any credit reporting agency.

1.h. This overdue debt to Creditor 7 is cited in the SOR in the amount of \$176. Applicant testified that this debt was as a result of a fraud perpetrated on her by another individual and that she is disputing this debt. Exhibit G is a credit report that includes 19 debts that were disputed by Applicant, including this debt. While some of the debts were deleted as a result of this dispute, the credit reporting agency shows that this debt was verified with no change. Therefore this debt is still due and owing at this time.

1.i. This overdue debt to Creditor 8 is cited in the SOR in the amount of \$201. In her RSOR, Applicant denied that this allegation is correct, and at the hearing, Applicant testified that she was unaware of the basis of this debt, although she has not challenged it with any credit reporting agency.

1.J. This overdue debt to Creditor 9 is cited in the SOR in the amount of \$880. In her RSOR, Applicant admitted that this allegation is correct. However, at the hearing, Applicant testified that she has not made any payment on this debt, because she does not believe she should have received this bill. However, she has done nothing to dispute this bill with the collection agency or any credit reporting agency.

1.k. This overdue debt to Creditor 10 is cited in the SOR in the amount of \$3,358. In her RSOR, Applicant denied that this allegation is correct. However, at the hearing, Applicant testified that she has a debt consolidator who is attempting to negotiate a settlement of this debt, but at this time the total amount of this debt is still unpaid.

1.l. This overdue debt to Creditor 11 is cited in the SOR in the amount of \$74. In her RSOR, Applicant denied that this allegation is correct, and at the hearing, Applicant testified that she is current with this creditor. Exhibit H includes an invoice from this creditor, showing that Applicant made a payment of \$100 as of April 23, 2008, but there is still an amount owing of \$172.62.

1.m. This overdue debt to Creditor 12 is cited in the SOR in the amount of \$86. In her RSOR, Applicant denied that this allegation is correct, and at the hearing, Applicant testified that she received this bill as a result of a parking ticket in error since she has a legitimate placard allowing her to park in a handicapped parking space. When she contacted the creditor, she was informed that if she sent a copy of a printout showing she had an active handicap placard the debt would be eliminated. However, Applicant testified that she has not sent the letter to resolve this debt, because she has not had any time since November 2007 to resolve this debt. I find that at this time this debt is still owed, since Applicant has not taken the time and made the effort to resolve it.

1.n. This overdue debt to Creditor 13 is cited in the SOR in the amount of \$486. In her RSOR, Applicant denied that this allegation is correct, and at the hearing, Applicant testified that she received this bill as a result of identity theft. In Exhibit H, Applicant submitted a letter that she wrote indicating that she had contacted a representative from this creditor explaining that an investigation is now being conducted on this account.

Applicant testified that her financial difficulties primarily began when she was 19 and 20, and did not act in a financially responsible manner. She testified that she is not overdue on any of her current debts. She did purchase a vehicle in November 2007 in the amount of \$13,000, and she has been making payments of \$397 a month.

Applicant submitted a confirmation agreement, signed by Applicant on February 5, 2008, from a consumer crediting agency, attached to her RSOR, that Applicant testified is attempting to help her resolve her overdue debts. However, no documentation was submitted, nor did Applicant have any information, as to whether this company had done anything to resolve any of her debts.

Finally, Applicant did submit a very positive performance evaluation from her current employer (Exhibit A) and a certificate of Congratulations for her "outstanding support" in her current employment (Exhibit E).

### **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 trustworthiness 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 [sensitive] 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 trustworthiness concerns. 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. Applicant accumulated significant delinquent debt and has been unable to pay some obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties.

AG ¶ 20 provides conditions that could mitigate security concerns:

I do not find any of the mitigating conditions is a factor for consideration in this case. While Applicant seems to be more financially sound and better prepared for future contingencies, she still has not resolved a great deal of overdue debt. I therefore conclude that until she is able to significantly reduce her overdue debt, she has not mitigated the financial concerns of the Government.

### **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) 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 why no Mitigating Condition applies, 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.

## **Formal Findings**

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:                      **AGAINST APPLICANT**

Subparagraphs 1.a through 1.n.:              **Against Applicant**

## **Conclusion**

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

Martin H. Mogul  
Administrative Judge