



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-00660  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro Se*

December 11, 2008

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**Decision**

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MOGUL, Martin H., Administrative Judge:

Applicant submitted her Security Clearance Application (SCA), on May 9, 2007. On July 3, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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 responded to the SOR (RSOR) with attachments, in writing on July 11, 2008, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on September 15, 2008. DOHA issued a notice of hearing on September 30, 2008, and the hearing was convened as scheduled on October 22, 2008, in Las Vegas, Nevada. The Government offered Exhibits 1 through 8, which were received without objection. Applicant testified on her own behalf and two additional witnesses testified for her. She submitted Exhibits A through J, which were entered into

evidence without objection. I granted Applicant's request to keep the record open until October 29, 2008, to submit additional matters. She timely submitted additional documents, identified and entered into evidence without objection as Exhibits K through N, and the record closed on October 29, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and the testimony of Applicant and the other two witnesses, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 48 years old. She is currently unmarried, and she has four children. 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 14 allegations of overdue debts, 1.a. through 1.n., under Adjudicative Guideline F. All of the debts 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 \$201. Applicant testified that this debt has been paid, and Exhibit E confirms that this debt has been paid. The most current credit report (cr) also confirms that this debt has been paid (Exhibit 8).

1.b. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$62. Applicant testified that this debt has been paid, and the most current cr also confirms that this debt has been paid (Exhibit 8).

1.c. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$770. Applicant testified that this debt has been paid, although she had no documentation to prove it. While it is not clear, it appears that Exhibit 8 also shows that this debt has been resolved.

1.d. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$68. Applicant testified that she has contacted the collection agency for this debt, but they did not have a record of her owing this debt. She indicated that she was planning to pay the debt, but has been unable to do so. I conclude that this debt has not been paid in full, but not as a result of Applicant's wrongful action.

1.e. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$233 for a medical bill. In her RSOR, Applicant stated that she had paid this bill, and she was

waiting for a proof of payment to be sent to her. Exhibit 8 shows that a payment of \$233 was made for a medical bill, so it appears that this debt has been resolved.

1.f. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$12,222 for a judgement for child support. In her RSOR and during her testimony, Applicant reiterated that this debt has been paid. Her attachment to the RSOR, and Exhibit 8 confirm that this debt has been paid.

1.g. This overdue debt to Creditor 7 is cited in the SOR in the amount of \$427. In her RSOR and during her testimony, Applicant reiterated that this debt has been paid. Her attachment to the RSOR, and Exhibit 8 confirm that this debt has been paid.

1.h. This overdue debt to Creditor 8 is cited in the SOR in the amount of \$164. In her RSOR and during her testimony, Applicant reiterated that this debt has been paid. Her post hearing submission confirms that this debt has been paid (Exhibit L).

1.i. This overdue debt to Creditor 9 is cited in the SOR in the amount of \$2,460. This debt arose, because a vehicle owned by Applicant was towed and stored. She did not remember that the vehicle had been towed, and the fee for the towing and storage continued to grow. Applicant estimated the value of this old vehicle at either \$600 or \$700. She has contacted this creditor, but thus far they refuse to negotiate a more reasonable amount for settlement, even though the creditor has retained the vehicle. She indicated that she will attempt to renegotiate the debt again so that she may resolve the debt.

1.j. This overdue debt to Creditor 10 is cited in the SOR in the amount of \$491. In her RSOR and during her testimony, Applicant reiterated that this debt has been paid. However, no documentation was introduced to confirm that this debt has been paid.

1.k. This overdue debt to Creditor 11 is cited in the SOR in the amount of \$713. In her RSOR and during her testimony, Applicant reiterated that this debt has been paid. Her attachment to the RSOR, and Exhibit B confirm that this debt has been paid.

1.l. This overdue debt to Creditor 12 is cited in the SOR in the amount of \$21,116. In her RSOR and during the hearing, Applicant testified that this debt is for a vehicle that is in the possession of her ex-boyfriend. While they were together, she and this boyfriend had made an agreement that he would use the vehicle that had been purchased in her name, as long as he made the payments on the vehicle. After they separated, he stopped making the required monthly payments, but he refused to return the vehicle to her, and as far as she is aware, the vehicle is still in his possession. While she is still legally responsible for the payments of this debt, she has contacted both the creditor and the police to attempt to explain and resolve this debt. She testified that she was informed by the creditor that they would attempt to work out a payment plan with her ex-boyfriend, but apparently they did not do so. Applicant indicted in her RSOR that she intended to file a civil suit against her ex-boyfriend to recover the amount owed for this debt.

1.m. This overdue debt to Creditor 13 is cited in the SOR in the amount of \$200. In her RSOR and during her testimony, Applicant reiterated that this debt has been paid. No documentation was introduced to confirm that this debt has been paid. However, since this debt is not included in the most current cr, it may have been resolved (Exhibit 8).

1.n. This overdue debt to Creditor 14 is cited in the SOR in the amount of \$373. In her RSOR and during her testimony, Applicant reiterated that this debt has been paid. Exhibits I and 8 confirm that this debt has been paid.

1.o. This allegation was amended at the time of the hearing, and struck from the SOR, with no objections raised from either party. I find that the allegation regarding what evidence Applicant introduced about each debt, is a question for me to resolve, and that is how it has been addressed.

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

2.a. In 1997, Applicant was charged with fraud to obtain over \$400, perjury, and grand theft over \$400, for her failure to inform her social worker that she had become married.

At the hearing, Applicant testified that she had initially left telephonic messages to the social worker to inform her that she had become married, but the social worker did not contact her, and Applicant simply never followed up to inform her of the marriage. She appeared in court and pled no contest to a lesser charge, and she was ordered to repay public assistance benefits that she had wrongfully received in the amount of \$400. She was not sentenced to any other restrictions or punishment. Applicant testified that she was not aware that she received a payment to which she was not entitled.

2.b. In 2004, Applicant was sued and found liable for unpaid child support. Applicant explained that her daughter had lived with her until she was 13 or 14, and eventually she moved in with Applicant's ex-sister-in-law. Applicant was providing some money for her daughter's support, but the ex-sister-in-law requested additional child support from the court, which Applicant was ordered to pay. As reviewed in paragraph 1.f., above, Applicant has resolved this debt.

2.c. Applicant executed a signed SCA on May 9, 2007 (Exhibit 1). Question 28.a. asks, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Question 28.b. asks, "Are you currently over 90 days delinquent on any debt(s)?" Applicant answered "No" to both of these questions, and she listed no debts. The Government alleges that Applicant should have included the debts listed as 1.a. through 1.n., discussed above in the SOR.

Applicant testified that she was confused about these questions, and she is not certain why she answered "No" to both of these questions. She testified credibly that

she had no intention of hiding information from the Government when she completed the SCA (Tr at 78-82).

Applicant explained that she and her fiancée drive a long distance truck together. They have been together for two years, and he has helped her to resolve her finances. They pay their debts together, and they are not overdue on any of their current debts. They each submitted post hearing income and expense statements that show a remainder of approximately \$2,000 a month each after net income and expenses are tabulated (Exhibit N). Applicant testified that her previous financial difficulties were incurred primarily because as a mother of four children she did not have sufficient funds to pay all of her debts. She also conceded that at times she was not as thorough as she should have been to make sure the debts were resolved.

Two witnesses testified at the hearing on Applicant's behalf, her daughter and her fiance. Applicant's daughter, who is now 25 years old, testified that she lived with her aunt (Applicant's ex-sister-in-law) for eight or nine months and that during that time her mother continued to give her aunt \$200 a month for her and to pay for her clothes and food. There was no explanation for why the court ordered Applicant to pay her ex-sister-in-law the \$12,222, as reviewed in paragraph 1.f., above. She also confirmed that Applicant's ex-boyfriend has retained the vehicle, of which the purchase agreement was in Applicant's name, and he has not returned it.

Applicant's fiancé testified that they have driven a truck together for the last two years, and they also pay their bills together. He reiterated that together they are able to resolve all of their debts, and they do not have any current overdue bills. They plan to marry in December 2008.

Finally, Applicant submitted four character letters from individuals who have known Applicant in a variety of settings (Exhibit M). They were all very positive describing Applicant as "dependable," and "hard working." She also submitted a letter from the minister of her church, who wrote that Applicant and her fiancé were enrolled in a pre-marital counseling program with the stated intention of being married in December of 2008.

### **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 Government has established that Applicant has had a history of financial difficulties and overdue debts.

Regarding the Disqualifying Conditions (DC) under Guideline F, I conclude both DC (a) and DC (c) apply, because of Applicant’s history of not meeting financial obligations and her previous inability or unwillingness to satisfy her debts.

However, I find that Mitigating Condition (MC) (d) applies as Applicant has initiated a good-faith effort to repay the overdue creditors and resolve her debts. She

also is not overdue on any of her current debts. I, therefore, hold Guideline F for Applicant.

### **Guideline E, Personal Conduct**

With respect to Guideline E, I find that Applicant testified credibly that she did not knowingly provide incorrect material information to the Government on the SCA that she executed on May 9, 2007. I also find that the \$400 that she wrongfully received in 1997 was not due to any illegal or improper conduct. Finally, it is not clear why the court ordered Applicant to pay such a substantial amount of child support in 2004, which based on the testimony of Applicant and her daughter, appears to be unwarranted. Regardless, Applicant has paid the full amount of child support that was ordered by the court and fulfilled her legal requirements.

In reviewing the DCs under Guideline E, I conclude that no DC applies against Applicant. I therefore, resolve Guideline E for 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) 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 have considered the potentially disqualifying and mitigating conditions under Guidelines F and E, in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above, including the testimony of her two character witnesses and her significant attempt to resolve her overdue debts, I find that the record evidence leaves me with no significant questions or 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 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: FOR APPLICANT

Subparagraphs 1.a. through 1.n.: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraphs 2.a. through 2.c.: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul  
Administrative Judge