



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-05379
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: *Pro se*

June 24, 2010

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**Decision On Remand**  
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MOGUL, Martin H., Administrative Judge:

On February 12, 2009, 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), in writing on March 7, 2009, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on April 16, 2009. DOHA issued a notice of hearing on April 21, 2009, and the hearing was convened as scheduled on May 26, 2009. The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified on her own behalf, and she submitted Exhibit A, which was entered into evidence without objection. The transcript (Tr) was received on June 4, 2009.

I granted Applicant's request to keep the record open until June 9, 2009, to submit additional matters. She timely submitted additional documents, that have been entered into evidence without objection as Exhibits B through M, and the record closed on that date. I issued my written decision on August 26, 2009, and based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information was granted.

Department Counsel filed a timely appeal and the Appeal Board (AB) issued its decision on November 24, 2009, which concluded that the case be Remanded. The AB held that there was not enough discussion in the decision regarding my consideration of Applicant's meeting with an attorney with the intention to file bankruptcy.

On May 12, 2010, I issued an Order On Remand, in which I reopened "the record to allow Applicant to submit any available documentation showing the status of the bankruptcy, if any, filed by Applicant, and the status of any other debts listed on the SOR, which had not been resolved at the time of the hearing on August 26, 2009." Applicant submitted two documents, which have been marked as Exhibits N and O, and entered into evidence without objection. The Finding of Facts regarding Exhibits N and O, and their effect on this remand decision will be discussed below.

### **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 upon due consideration of that evidence, I make the following findings of fact:

Applicant is 38 years old. She is not married, and she has two children. She 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 nine allegations of overdue debts, 1.a. through 1.i., 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 \$625. Applicant testified she was not aware of the origin of this debt, but it has not been paid.

At the hearing, Applicant testified that she was considering filing bankruptcy and had a meeting scheduled to meet with an attorney in that regard. In her post hearing exhibits, Applicant also has consulted with a second credit counseling service (CCS), after she had also consulted with a previous CCS, which had taken no positive steps to resolve her debts. (Tr at 40-45.) Applicant stated that this debt will be included in the bankruptcy that she plans to file. (Exhibit B.) She also included a letter from a law firm,

dated June 2, 2009, (Exhibit C), which confirmed that they would be representing Applicant "with regard to a Chapter 7 bankruptcy filing."

1.b. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$29,630. Applicant testified that this debt for a vehicle, which Applicant still possessed at the time of the hearing, had not yet been paid. In Exhibit B, Applicant indicated that she would include this debt in her bankruptcy.

1.c. This overdue debt to Creditor 3 for a judgement is cited in the SOR in the amount of \$822. During the hearing, Department Counsel stated that based upon an indication, as reported in Exhibit 2, that the Judgement had been satisfied, the Government would stipulate that this debt had been resolved. (Tr at 25-27.)

1.d. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$50. Applicant testified that she has paid this debt. Exhibit D establishes that Applicant paid \$71.07 to a collection agency for this debt, and it has been paid in full.

1.e. This second overdue debt to Creditor 4 is cited in the SOR in the amount of \$50 for a medical bill. Applicant testified that she has paid this debt. Exhibit E establishes that Applicant paid \$69.01 to the same collection agency for this debt, which has the same original creditor and may actually be the same debt, but in any event, it has been paid in full.

1.f. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$1,027. Applicant testified that she has not paid this debt, but she is disputing it since she believes it may have been based on identity theft, which Applicant contends she suffered. (Tr at 48-50.) Exhibit 3 establishes that Applicant did dispute this bill with the credit reporting agency, which began an investigation to determine if the debt was correct and owing. However, no evidence was offered to ascertain the result of the investigation. In Exhibit B, Applicant indicated that she would include this debt in her bankruptcy.

1.g. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$2,452. Applicant testified that she only owed the co-payment requirement of \$50 for this debt for a medical bill, which she has paid. She averred that the rest of the bill should have been paid by her medical insurance carrier. Exhibit G, a letter from the collection agency for this debt, establishes that this debt was resolved.

1.h. This overdue debt to Creditor 7 is cited in the SOR in the amount of \$203. Applicant testified that this debt for a medical bill should also have been paid by her insurance carrier at the time. Exhibit H, a letter from the Applicant's insurance carrier, seems to establish that this debt was resolved.

1.i. This second overdue debt to Creditor 7 is cited in the SOR in the amount of \$2,460. Applicant testified that this debt for a medical bill, from the same health care provider as 1.h., above, should also have been paid by her insurance carrier. Exhibit H,

a letter from the Applicant's insurance carrier, also seems to establish that this debt was resolved.

Applicant testified that one of the causes of her financial problems was that her roommate moved out of an apartment, for which both of them were paying rent. Ultimately, she was unable to pay for the rent herself, together with the payments for the truck she had purchased, which resulted in the debt that is reviewed in 1.b., above. The continuing on again, off again relationship with her boyfriend, which has been described above, also contributed to her financial difficulties, since he ejected her from the home where they were both living, and she thereafter was forced to live for a period of time in a hotel. She had also taken out a loan with this man, and she believed the payments were being made out of the proceeds of the loan, which, she later learned, was not correct.

Applicant submitted a report (Exhibit M), showing her current monthly expenses were \$4,533. Unfortunately, she did not include her monthly income in this report, so it is not particularly helpful in giving full insight into her current economic condition. She did testify that outside of the debts reviewed above, she is current on her most recent bills.

Applicant also submitted four character letters from individuals who have known Applicant in an employment capacity (Exhibits A, I, K, and L), Exhibit J is a duplicate of Exhibit A. The letters were all very positive, describing Applicant as "intelligent, enthusiastic and motivated . . . who conscientiously adheres to company standards and guidelines."

### **Findings of Fact Regarding Exhibits N and O**

Exhibit N consists of a one page, undated, unsigned letter from Applicant, in which she refers to nine exhibits that she states will be part of her Chapter 7 bankruptcy. No exhibits were included or submitted with the letter. Exhibit N is identical to the first page of a two page letter, dated June 5, 2009, that Applicant submitted post hearing, which was marked as Exhibit B, The only difference is that on the recent letter, Applicant simply removed the date and submitted only one page of the letter.

Exhibit O is a one page letter, dated May 25, 2010, from the legal administrator of a law firm that has been engaged by Applicant to file a Chapter 7 bankruptcy. The administrator states the law firm anticipates a "timely filing pending receipt of [Applicant's] credit counseling Certificate of Completion mandated by The Court." I have reviewed Exhibit N in comparison to Exhibit C, a letter from this same law firm, dated June 2, 2009, where they confirm they "represent [Applicant] with regard to Chapter 7 Bankruptcy filing." Exhibit O is literally 51 weeks after Exhibit C, and more than one year after the hearing, and yet it appears Applicant is currently no closer to resolving her overdue debts in bankruptcy than she was one year ago. Therefore, I do not find that Applicant has acted responsibly to attempt to resolve her remaining delinquent debts in an expeditious manner.

## 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 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.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties: I initially found find that AG ¶ 20(d) was applicable because Applicant had engaged the services of two separate CCS companies, paid several of her debts, pursued disputing the debts which she believed were not hers, and met with an attorney to file for bankruptcy to resolve her other debts, and therefore, she had "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." However, it is now more than one year post hearing, and Applicant is no closer to resolving those overdue debts that she indicated she planned to discharge in bankruptcy than she was at the hearing. Therefore, I do not find that this potentially mitigating condition is a factor for consideration in this case. I conclude that Applicant has not mitigated the financial concerns of the Government. I, therefore, find Guideline F 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 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 Applicant's failure to resolve her overdue debts in bankruptcy more than one year after the hearing, 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., 1.b., 1.f.:	Against Applicant
Subparagraphs 1.c., 1.d., 1.e., 1.g. through 1.i.:	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 on remand, 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