



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-11820
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

December 1, 2009

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**Decision**  
\_\_\_\_\_

MOGUL, Martin H., Administrative Judge:

On May 8, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F 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 May 27, 2009, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on June 11, 2009. DOHA issued a notice of hearing on June 12, 2009, and the hearing convened on August 13, 2009, in Las Vegas, Nevada.

The Government offered Exhibits 1 through 7, which were received without objection. Applicant testified, and one additional witness testified on her behalf. She also submitted Exhibits A through G, which were entered into evidence without objection.

The transcript (Tr) was received on August 20, 2009. 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 upon due consideration of that evidence, I make the following findings of fact:

Applicant is 29 years old. She was previously married, and she has two children. Applicant is a high school graduate. 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 two allegations of overdue debts, 1.a. and 1.b., under Adjudicative Guideline F.

1.a. This overdue debt is cited in the SOR in the amount of \$45,000.

1.b. This overdue debt is cited in the SOR in the amount of \$150,000.

In her RSOR and during her testimony, Applicant admitted that both of these allegations are correct. These two debts were as a result of a home equity loan and a first mortgage loan on the home that she previously owned with her husband (Tr at 27).

Applicant testified that in July 2001, she, and her boyfriend at the time, purchased a home together. In 2002, they married, and the marriage formally ended in January 2007. Applicant testified that during the later years that she and her husband were living together, he stopped working and spent a lot of their money on drugs. She worked overtime for a period of one and one half years, just so that she could earn enough to pay their bills (Tr at 35). In September 2006, because she was the victim of domestic violence from her husband, she fled her home with her two young children.

In October 2006, she filed a restraining order against her husband because of the domestic violence. Exhibit E is a copy of an "Extended Order For Protection Against Domestic Violence" filed by Applicant against her husband on January 9, 2007, which was first issued on October 23, 2006, for the protection of Applicant from her husband. When she left the home, a family court judge ordered her husband to continue making the mortgage payments on the house, make the necessary repairs, and obtain the services of a realtor to place the home on the market for sale (Tr at 31).

Applicant testified that her husband paid the mortgage for one month, but thereafter failed to make any additional payments. He lived in the house for a total of

five months, before he moved out of the home, as a result of the order of the family court judge. After her husband vacated their home, Applicant's father brought the mortgage and equity loans up to date, and even paid one additional year on both loans. During that one year period the house was unoccupied. Because her husband had seriously damaged the home, she had to have the home repaired to make it marketable, and her father contributed an additional \$12,000 to make the necessary repairs. She thereafter place the home for sale, but despite the house being on the market for more than two years, and its price being continually reduced from \$320,000 to as low as \$150,000, she was unable to sell the home. On March 20, 2009, the bank foreclosed on her home (Tr at 31-33).

She has now filed a Chapter 7 bankruptcy for the two debts listed on the SOR. Exhibit B consists of the court documents showing that a Chapter 7 bankruptcy was filed by Applicant on August 3, 2009, in the United States Bankruptcy Court.

Applicant testified that, with the exception of these two debts, she is, and has always been, current on all of her other debts. She has even paid several months in advance for her present rent (Tr at 37-38, 43-44). Her ex-husband has been ordered to pay her \$866 a month, but since he is not working, she currently receives \$400 a month from his unemployment compensation (Tr at 40-41).

### **Mitigation**

Applicant's supervisor testified on her behalf. He has known Applicant for two years and been her supervisor for the past year. He described her as "an excellent worker, willing to learn, and always bettering [herself]" (Tr at 47). Additionally, as someone who has held a security clearance for five years, he indicated that he would strongly recommend her for a security clearance, and he does not believe that she would ever jeopardize national security (Tr at 49).

Applicant also offered into evidence eight very positive character letters from individuals who have known Applicant in a variety of settings (Exhibit A). She was described in such laudatory terms as "trustworthy, responsible, honest and courteous."

Exhibit F consists of three certificates of achievement or commendation that Applicant has received from her current employer. Exhibit G has documents she received from a credit counseling course taken by Applicant on July 24, 2009.

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

The guideline notes several conditions that could raise security 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 two significant delinquent debts that she has been unable to satisfy. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

Under AG ¶ 20 there are certain conditions that could mitigate trustworthiness concerns arising 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 noted above, the financial problems arose primarily from the domestic abuse Applicant suffered from her ex-husband, which forced her to flee from her own home with her two young children.

Despite this situation, when Applicant was given the opportunity to resolve the financial difficulties from the home, she, with the help of her father, brought the delinquent loans up to date and even paid for an additional year on these debts. She made the necessary repairs to make the home marketable, and she thereafter placed the home on the market, and attempted to sell the home for more than two years, continually lowering the selling price. However, because of the falling economy and home values, she was unable to sell the home, which ultimately was lost in foreclosure. Applicant thereafter continued to act responsibly by availing herself of the legal remedy of bankruptcy. I find this mitigating condition is a significant factor for consideration in this case as Applicant has continually done everything reasonably possible to try to resolve this very difficult situation.

Applicant is currently financially sound and prepared for future contingencies. I conclude that she has mitigated the financial concerns.

### **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 Mitigating Condition applies, and considering the testimony of the additional witness, the character letters and the other mitigating evidence discussed above, I find that the record evidence leaves me with no 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.:	For Applicant
Subparagraphs 1.b.:	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