



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



In the matter of:	)	
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	)	ISCR Case No. 10-00601
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro se*

May 10, 2011

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

On September 9, 2010, the Defense Office of Hearings and Appeals (DOHA) 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), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On October 12, 2010, Applicant replied to the SOR (RSOR) in writing, and she requested that her case be decided on the written record in lieu of a hearing. (Item 3.) On December 7, 2010, 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 11 documentary exhibits. (Items 1-11.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on February 11, 2011. Applicant submitted one additional two page letter that she wrote, which has been entered into

evidence without objection, as Item A. She also submitted additional documents, which have also been entered into evidence without objection, as Item B. The case was assigned to this Administrative Judge on March 3, 2011.

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 admitted additional documents, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 48 years old. Applicant is employed by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector.

### **Guideline F, Financial Considerations**

The SOR lists 15 allegations (1.a. through 1.o.) regarding overdue debts totaling approximately \$24,500 under Adjudicative Guideline F. The debts will be discussed below in the same order as they were listed on the SOR:

In her RSOR, Applicant denied every SOR allegation. In her post FORM document (Item A), she wrote, "I denied all of the negative amounts on my credit report [*sic*] because some of the items are duplicates and some of them [*sic*] have been paid and some of the balance is not correct amount that I owe." She does not identify which debts are duplicates, which have been paid, or which debts do not indicate the correct amount owed. On her Security Clearance Application (SCA) Applicant listed several of her overdue bills and she wrote, "Currently we are having financial problems, mortgage payments, and other bills to [*sic*] expensive, causing problems with paying bills. We are currently working to make arrangements to pay off."

Among the documents submitted by Applicant in Item B are two letters from the law firm hired by Applicant to help her resolve her debts. Their information regarding each debt will also be discussed when reviewing each debt.

Each debt listed on the SOR, has been included in at least one of the credit reports in Items 6, 7, 9, or 11. Additionally, they have been referred to and admitted in other documents that are in evidence.

1.a. This overdue debt is cited in the SOR in the past due amount of \$333. In Applicant's Response to Interrogatories (Item 8), she wrote that this debt previously had a balance of \$1,333, but it has been reduced to \$333. In the letter from the law firm, they indicate that this debt has been deleted from the credit report. A letter from the listed creditor states that the account was closed and returned to the original creditor.

(Item B.) I find that this debt, at least as owed to the collection agency listed on the SOR, has been resolved.

1.b. This overdue debt is cited in the SOR for a medical account in the amount of \$342. In Item 8 Applicant wrote that she paid \$145.09, but that she did not receive a confirmation letter showing it had been paid. Without some independent confirmation or explanation, I cannot conclude that this debt has been resolved.

1.c. This overdue debt is cited in the SOR for a medical account in the amount of \$29. In Item 8 Applicant wrote that she paid \$29 at the time of an office visit, but that she did not receive a receipt. In the letter from the law firm, they indicate that 'Proof [was] Sent to Client.' (Item B.) No indication was given as to what this was referring. Without some independent confirmation or explanation, I cannot conclude that this debt has been resolved.

1.d. This overdue debt is cited in the SOR in the amount of \$1,213. In the letter from the law firm, they indicate that this debt has been deleted from the credit report. (Item B.) No indication was given for why this debt has been deleted. Without some independent confirmation or explanation, I cannot conclude that this debt has been resolved.

1.e. This overdue debt is cited in the SOR in the amount of \$540. Applicant wrote that she would pay a settlement in the amount of \$267.12 by August 13, 2010. (Item 8.) In the letter from the law firm, they indicate that this debt has been transferred to another creditor. (Item B.) The credit report included with Item B shows that this debt was paid in full for less than the full balance. I conclude that this debt has been resolved.

1.f. This overdue debt is cited in the SOR in the amount of \$4,734 for an education loan. Applicant wrote that the creditor refused to make a payment arrangement without a large down payment. She planned to get the money to make a down payment to set up a payment plan. (Item 8.) No evidence was submitted to show that Applicant has made any payment on this debt so I cannot conclude that this debt has been resolved.

1.g. This overdue debt is cited in the SOR in the amount of \$1,064. In the letter from the law firm, they indicate that this debt has been deleted from the credit report. (Item B.) No indication was given for why this debt has been deleted. Without some independent confirmation or explanation, I cannot conclude that this debt has been resolved.

1.h. This overdue debt is cited in the SOR in the amount of \$1,607. Applicant wrote that she planned to dispute this debt. (Item 8.) No evidence was submitted to show that this debt has been disputed, so I cannot conclude that this debt has been resolved.

1.i. This overdue debt is cited in the SOR in the amount of \$121. In the letter from the law firm, they indicate that this debt has been deleted from the credit report. (Item B.) No indication was given for why this debt has been deleted. Without some independent confirmation, I cannot conclude that this debt has been resolved.

1.j. This overdue debt is cited in the SOR in the amount of \$6,365. Applicant wrote that the balance had been paid on this debt, but she no longer had any receipts. (Item 8.) Without some independent confirmation, I cannot conclude that this debt has been resolved.

1.k. This overdue debt is cited in the SOR in the amount of \$1,227. Applicant wrote that she has attempted to contact the creditor, but has thus far been unable to do so. (Item 8.) She indicated that she will continue to attempt to contact this creditor, but no evidence was submitted to establish that contact has been made and this debt has been resolved.

1.l. This overdue debt is cited in the SOR in the amount of \$1,809. In the letter from the law firm, they indicate that this debt is being disputed. (Item B.) No indication was given for why this debt is in dispute or the resolution of that dispute. Without additional information, I cannot conclude that this debt has been resolved.

1.m. This overdue debt is cited in the SOR in the amount of \$4,204. Applicant wrote that this was not her debt, and she planned to dispute this. (Item 8.) No evidence was submitted to show that this debt has been disputed, so I cannot conclude that this debt has been resolved.

1.n. This overdue debt is cited in the SOR in the amount of \$626. In the letter from the law firm, they indicate that this debt is being disputed. (Item B.) No indication was given for why this debt is in dispute or the resolution of that dispute. Without additional information, I cannot conclude that this debt has been resolved.

1.o. This overdue debt is cited in the SOR in the amount of \$380. In the letter from the law firm, they indicate that this debt has been deleted from the credit report. (Item B.) No indication was given for why this debt has been deleted. Without some independent confirmation or explanation, I cannot conclude that this debt has been resolved.

While it was not listed on the SOR, the letter from the attorneys did refer to a debt in the amount of \$12,821 that is in dispute, and a debt in the amount of \$79 that is in dispute. (Item B.) These debts appear to still be due and owing.

Applicant submitted a financial statement signed by her and her husband on July 21, 2009. It shows a net monthly income of \$5,507.30 and estimated monthly expenses and taxes of \$6,391.40, leaving a monthly remainder of -\$884.10.

Applicant gave several reasons for her financial difficulties. These included having the monthly mortgage of the home, owned by her husband and her, increased from \$1,323 to \$2,300 each month, because they had only been taxed on their land and not on the home sitting on the land. Additionally, her step daughter and her three children had to come live with them because she was unemployed. Finally, Applicant also had to pay for her father's funeral during this period.

### **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 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. 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 of mortgage problems and family issues. However, no independent evidence was introduced to establish that she has acted responsibly by resolving or reducing most of her considerable overdue debt. Therefore, I do not find that this potentially mitigating condition is a factor for consideration in this case.

I conclude that until Applicant 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) 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, including all of the reasons cited above as to why the Disqualifying Conditions apply and no Mitigating Condition is applicable. Also, since this case is an Administrative Determination, I have not had the opportunity to assess the credibility of the Applicant in person, nor has any independent evidence concerning Applicant's character been submitted. Therefore, 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. and 1.e.:	For Applicant
Subparagraphs 1.b. - 1.d.; 1.f. -1.o.:	Against 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