



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 10-08604  
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Applicant for Security Clearance )

**Appearances**

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

September 12, 2012

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On November 4, 2011, 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 adjudicative guidelines (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

On January 10, 2012, Applicant replied to the SOR (RSOR) in writing, and she requested that her case be decided by a hearing before an Administrative Judge. I received the case assignment on February 27, 2012. DOHA issued a notice of hearing on February 29, 2012, and I convened the hearing as scheduled on March 27, 2012. The Government offered Exhibits 1 through 14, which were received without objection. Applicant testified on her own behalf and submitted no exhibits at the time of hearing. DOHA received the transcript of the hearing (Tr) on April 9, 2012. I granted Applicant's request to keep the record open until April 20, 2012, to submit additional documents,

and the additional documents were received, have been identified and entered into evidence without objection as Exhibits A through S. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, 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 documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 55 years old. She is married and has two children. She received a Bachelors of Arts Degree in Business Management. 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 26 allegations (1.a. through z.) regarding overdue debts under Adjudicative Guideline F. The allegations will be reviewed below in the same order as they were listed on the SOR:

1.a. This overdue debt is cited in the SOR in the amount of \$393. Applicant denied this allegation in her RSOR. At the hearing, Applicant testified that this debt for cable equipment has been satisfied since the equipment was picked up by the creditor, although the creditor claimed Applicant still had possession of the equipment. (Tr at 39-42.) The record was left open to allow her to offer evidence to prove the debt had been satisfied. I did not find sufficient evidence to establish that this debt had been paid.

1.b. This overdue debt is cited in the SOR in the amount of \$40. Applicant admitted this allegation in her RSOR and testified that this debt is still owing. (Tr at 42.) Exhibit K is a letter from this creditor showing that \$833 was paid on this debt on April 13, 2012. This payment is to the same creditor as listed in SOR allegations 1.c., 1.p., and 1.q. The amount paid would seem to indicate it would settle all of these accounts.

1.c. This overdue debt is cited in the SOR in the amount of \$30. Applicant admitted this allegation in her RSOR and testified that this debt is still owing. (Tr at 43.) This debt was paid. (See 1.b., above.)

1.d. This overdue debt is cited in the SOR in the amount of \$336. Applicant admitted this allegation in her RSOR and testified that this debt is still owing. (Tr at 43.) Exhibit H is a letter from this creditor showing that this debt was paid in full on April 11, 2012.

1.e. This overdue debt is cited in the SOR in the amount of \$1,446. Applicant admitted this allegation in her RSOR and testified that this debt is still owing. (Tr at 43.)

Exhibit M is a letter from this creditor showing that this debt was settled and paid in full in the amount of \$875 on April 11, 2012

1.f. This overdue debt is cited in the SOR in the amount of \$754. Applicant admitted this allegation in her RSOR and testified that this debt is still owing. (Tr at 44.) Exhibit E is a letter from this creditor showing that this debt was paid in full on April 11, 2012.

1.g. This overdue debt is cited in the SOR in the amount of \$1,146. Applicant denied this allegation in her RSOR, and she testified that she has paid this debt. (Tr at 44-45.) The record was left open to allow her to offer evidence to prove the debt had been satisfied. In her post hearing documents, Applicant wrote that this debt had been paid since November 2008. (Exhibit D.) Exhibit J is a letter from this creditor showing that this debt was paid in full on April 13, 2012.

1.h. This overdue debt is cited in the SOR in the amount of \$1,748. Applicant admitted this allegation in her RSOR and testified that this debt is still owing. (Tr at 45.) Exhibit G is a letter from this creditor showing that this debt was paid in full on April 19, 2012.

1.i. This overdue debt is cited in the SOR in the amount of \$1,180. Applicant denied this allegation in her RSOR and testified that this debt is in dispute. She conceded that she owed on a debt to this creditor, but she did not believe it was as large as that stated on the credit report. (Tr at 45-46.)

1.j. This overdue debt is cited in the SOR for a judgement entered in 2010 in the amount of \$250. Applicant denied this allegation in her RSOR. She testified that she was not aware what was the basis of this debt or if a judgement had been entered against her. (Tr at 47.)

1.k. This overdue debt is cited in the SOR in the amount of \$2,494. Applicant admitted this allegation in her RSOR and testified that this debt is still owing. (Tr at 47-48.) This debt was for a student loan. (See 1.z., below.)

1.l. This overdue debt is cited in the SOR in the amount of \$4,468. Applicant admitted this allegation in her RSOR and testified that this debt is still owing. (Tr at 48.) This debt was for a student loan. (See 1.z., below.)

1.m. This overdue debt is cited in the SOR in the amount of \$2,494. Applicant denied this allegation in her RSOR. She testified that she had used this creditor as her insurance carrier, but her coverage had lapsed. However, she did not believe she owed this debt. She planned to contact this creditor after the hearing so the record was left open to allow her to offer evidence as to the status of this debt. (Tr at 48-49.) Exhibit I is a letter from this creditor showing that this debt was paid in the amount of \$299 on April 11, 2012, and the debt was settled.

1.n. This overdue debt is cited in the SOR in the amount of \$1,683. Applicant admitted this allegation in her RSOR and testified that this debt is still owing. (Tr at 49.) In her post-hearing documents, Applicant wrote that she had received an offer to settle from this creditor. (Exhibit D.) Exhibit O is a letter from this creditor stating that they would accept eight monthly payments of \$105.19 to settle this debt. I cannot find that this debt has been paid, but Applicant has begun the process of resolving the debt.

1.o. This overdue debt is cited in the SOR in the amount of \$100. Applicant denied this allegation in her RSOR. She testified that she believed this medical bill should have been paid by her employer since it was work related and that she did not owe it. (Tr at 49-50.)

1.p. This overdue debt is cited in the SOR in the amount of \$75. Applicant denied this allegation in her RSOR, but she testified that this debt is from a co-payment due by her on a medical bill. (Tr at 51.) This debt was paid. (See 1.b., above.)

1.q. This overdue debt is cited in the SOR in the amount of \$75. Applicant denied this allegation in her RSOR, but she testified that this debt is from a co-payment due by her on a medical bill. (Tr at 51.) This debt was paid. (See 1.b., above.)

1.r. This overdue debt is cited in the SOR in the amount of \$838. Applicant admitted this allegation in her RSOR and testified that this debt is still owing. (Tr at 51.) In her post hearing documents, Applicant wrote that this debt was paid on April 11, 2012. (Exhibit D.) However, no evidence was offered to prove that the debt had been paid so I cannot find that this debt has been paid.

1.s. This overdue debt is cited in the SOR in the amount of \$2,911. Applicant admitted this allegation in her RSOR and testified that this debt is still owing. (Tr at 52.) Exhibit N is a letter from this creditor showing that this debt was settled and paid in full on April 11, 2012.

1.t. This overdue debt is cited in the SOR in the amount of \$717. Applicant admitted this allegation in her RSOR and testified that this debt is still owing. (Tr at 52.)

1.u. This overdue debt is cited in the SOR in the amount of \$325. Applicant denied this allegation in her RSOR, and she testified that she has paid this debt. (Tr at 52-53.) The record was left open to allow her to offer evidence to prove the debt had been satisfied. Exhibit L is a letter from this creditor showing that this debt was settled and paid in full in the amount of \$200 on September 26, 2011.

1.v. This overdue debt is cited in the SOR in the amount of \$134. Applicant denied this allegation in her RSOR, and she testified that she is unaware of the origin of this debt. (Tr at 53-54.) The record was left open to allow her to offer evidence to prove the debt had been satisfied. In her post hearing documents, Applicant wrote that this debt was paid on April 11, 2012. (Exhibit D.) However, no evidence was offered to prove that the debt had been paid so I cannot find that this debt has been paid.

1.w. This overdue debt is cited in the SOR in the amount of \$3,791. Applicant admitted this allegation in her RSOR and testified that this debt is still owing. (Tr at 54.) This debt was for a student loan. (See 1.z., below.)

1.x. This overdue debt is cited in the SOR in the amount of \$1,319. Applicant admitted this allegation in her RSOR and testified that this debt is still owing. (Tr at 54.) This debt was for a student loan. (See 1.z., below.)

1.y. This overdue debt is cited in the SOR in the amount of \$6,617. Applicant admitted this allegation in her RSOR and testified that this debt is still owing. (Tr at 54.) This debt was for a student loan. (See 1.z., below.)

1.z. This overdue debt is cited in the SOR in the amount of \$3,296. Applicant admitted this allegation in her RSOR and testified that this debt is still owing. (Tr at 54.) This debt was for a student loan.

Applicant averred that the debts for her education loans, listed on the SOR as 1.k., l., w., x., y., and z., were deferred until April 2012, and that they were not overdue. (Tr at 55-59.) This testimony contradicted her earlier testimony about these debts, in which she admitted they were all due. The full credit report, dated June 18, 2010, shows that all of these debts are in collection. (Exhibit 6. ) Exhibit R shows that a forbearance was granted for at least some of her education loans, and that at least some of them have been consolidated. The evidence has not established that all of Applicant's six education loans have been consolidated and deferred.

On February 9, 2012, Department counsel drafted a proposed amendment to the SOR, adding one allegation. Applicant responded to the allegation on March 6, 2012. The proposed amendment has been added to the SOR as allegation 1.aa. It states:

1.aa. You were charged on or about October 29, 1998, with Welfare Fraud, and three counts of perjury by false application. You plead Nolo Contendere to count one, and you were found guilty of a misdemeanor. You were sentenced to summary probation for three years, to pay restitution, and to perform community service. The remaining counts were dismissed due to plea negotiations.

Applicant admitted this allegation in her written response to this amended allegation and again at the hearing. (Tr at 55.) She testified that she was collecting welfare because neither she nor her husband were employed. When she got a weekend job, she failed to inform the welfare agency that she was working part time. She did pay the restitution, which she believed to be approximately \$3,000. (Tr at 63-67.) Exhibit 1 establishes that the welfare fraud was committed in November 1994.

Applicant testified that her debts accumulated over a number of years. Many of the debts were incurred because her husband was unemployed or underemployed for many years, and her sole income was not enough to support her family of four. She estimated that she was laid off for a seven year period in the 1980s and she only

worked on a limited basis. (Tr at 60-63.) Exhibit B shows Applicant was laid off from February 1991 to August 1997.

## **Mitigation**

Applicant submitted a positive character letter from her relative and friend. (Exhibit A.) She was described as someone who is “reliable, trustworthy and maintains the utmost confidentiality among peers.” Applicant also submitted certificates of appreciation from her employer, showing that in 2009 she was commended for giving 30 years of “dedicated service.” (Exhibit C.)

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the 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 has accumulated significant delinquent debt. AG ¶ 19 (d) is also applicable “deceptive or illegal financial practices” because of Applicant’s fraudulently collecting welfare while she was employed, without giving notice of her employment.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties: AG ¶ 20 (a) is applicable regarding Applicant’s welfare fraud which occurred in 1994, “because the behavior happened so long ago, was so infrequent . . . that it is unlikely to recur.”

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, Applicant testified that her financial problems resulted from her long periods of unemployment, as well as the unemployment of her husband. I find that Applicant has recently acted responsibly by paying of most of the debts listed on the SOR, and making some arrangement or payment plans with the some of the other creditors to resolve the additional debts. However, I am somewhat concerned that so many of these

debts have only been resolved as recently as after the hearing was held, although many of them were overdue for many years. Therefore, I do not find that this mitigating condition is a factor for consideration in this case. Applicant must continue the recent responsible actions, by paying all of her current debts and continuing to resolve the not yet paid overdue debts, especially her education loans, if she wants to have a security clearance in the future.

I find that this mitigating condition AG ¶ 20(d), Applicant has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts” is not yet applicable in this case, again because of my concern that most of these long overdue debts have only been resolved very recently, after the hearing was held.

In summary, I conclude that Applicant has only very recently reduced her overdue debts. Until she can resolve more of her overdue debts and establish financial stability, 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. Based on all of the reasons cited above as to why the disqualifying conditions apply and the mitigating conditions do not apply, 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 under the whole-person concept.



## 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., i., j., k., l., n., o., r., t., v., w., x., y., z.:	Against Applicant
Subparagraphs 1.b., c., d., e., f., g., h., m., p., q., s., aa.:	For 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