



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 11-04450  
 )  
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Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esquire, Department Counsel  
For Applicant: *Pro se*

June 26, 2012

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On February 28, 2012, 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 March 12, 2012, 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 March 23, 2012, 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 10 documentary exhibits. (Items 1-10.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on May 6, 2012. Applicant submitted no response. The case was assigned to this Administrative Judge on June 4, 2012.

Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

In her RSOR, Applicant admitted each SOR allegation. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, and the FORM, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 48 years old. She is divorced and has one adult child. Applicant has an employment offer from a defense contractor, and she seeks a DoD security clearance in connection with her future employment in the defense sector.

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

The SOR lists 17 allegations (1.a. through 1.q.) regarding one bankruptcy filing and 16 overdue debts totaling approximately \$31,000 under Adjudicative Guideline F. The allegations will be discussed below in the same order as they were listed on the SOR:

1.a. Applicant filed a Chapter 13 Bankruptcy on or about April 1, 2002, and the bankruptcy was converted to a Chapter 7 Bankruptcy on July 2, 2003. The bankruptcy was discharged on August 16, 2004. As reviewed above, Applicant admitted this allegation in her RSOR.

1.b. This overdue debt is cited in the SOR in the amount of \$940. Applicant admitted this allegation in her RSOR, and no evidence has been submitted to show that this debt has been resolved in any way.

1.c. This overdue debt is cited in the SOR in the amount of \$6,876. Applicant admitted this allegation in her RSOR, and no evidence has been submitted to show that this debt has been resolved in any way.

1.d. This overdue debt is cited in the SOR in the amount of \$180. Applicant admitted this allegation in her RSOR, and no evidence has been submitted to show that this debt has been resolved in any way.

1.e. This overdue debt is cited in the SOR in the amount of \$243. Applicant admitted this allegation in her RSOR, and no evidence has been submitted to show that this debt has been resolved in any way.

1.f. This overdue debt is cited in the SOR in the amount of \$93. Applicant admitted this allegation in her RSOR, and no evidence has been submitted to show that this debt has been resolved in any way.

1.g. This overdue debt is cited in the SOR in the amount of \$35. Applicant admitted this allegation in her RSOR, and no evidence has been submitted to show that this debt has been resolved in any way.

1.h. This overdue debt is cited in the SOR in the amount of \$135. Applicant admitted this allegation in her RSOR, and no evidence has been submitted to show that this debt has been resolved in any way.

1.i. This overdue debt is cited in the SOR in the amount of \$4,011. Applicant admitted this allegation in her RSOR, and no evidence has been submitted to show that this debt has been resolved in any way.

1.j. This overdue debt is cited in the SOR in the amount of \$42. Applicant admitted this allegation in her RSOR, and no evidence has been submitted to show that this debt has been resolved in any way.

1.k. This overdue debt is cited in the SOR in the amount of \$319. Applicant admitted this allegation in her RSOR, and no evidence has been submitted to show that this debt has been resolved in any way.

1.l. This overdue debt is cited in the SOR in the amount of \$1,248. Applicant admitted this allegation in her RSOR, and no evidence has been submitted to show that this debt has been resolved in any way.

1.m. This overdue debt is cited in the SOR in the amount of \$1,592. Applicant admitted this allegation in her RSOR, and no evidence has been submitted to show that this debt has been resolved in any way.

1.n. This overdue debt is cited in the SOR in the amount of \$13,104. Applicant admitted this allegation in her RSOR, and no evidence has been submitted to show that this debt has been resolved in any way.

1.o. This overdue debt is cited in the SOR in the amount of \$298. Applicant admitted this allegation in her RSOR, and no evidence has been submitted to show that this debt has been resolved in any way.

1.p. This overdue debt is cited in the SOR in the amount of \$1,331. Applicant admitted this allegation in her RSOR, and no evidence has been submitted to show that this debt has been resolved in any way.

1.q. This overdue debt is cited in the SOR in the amount of \$1,364. Applicant admitted this allegation in her RSOR, and no evidence has been submitted to show that this debt has been resolved in any way.

Applicant cited a number of reasons for her financial difficulties, the primary one being that she was unemployed for significant periods of time. (Items 4 and 8.)

Applicant's unemployment occurred because of job abandonment, lack of work, family emergencies, and attempts to return to the technology field. Applicant's financial problems also occurred because of Applicant's use of crack cocaine and her consumption of significant amounts of alcohol.

Applicant submitted a financial statement, which shows a gross monthly salary of \$9,721.61, but a net monthly income of \$700. (Item 9.) Clearly, Applicant did not complete the form accurately, since Applicant submitted an earning statement showing she had earned a yearly gross total of \$9,721.61 as of November 15, 2011. Therefore, the \$700 net monthly income seems correct. Applicant's financial statement also showed her monthly expenses to be \$600, leaving a monthly remainder of \$100.

### **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 over the course of many years.

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’s financial difficulties occurred because of periods of unemployment, although not all of the unemployment was beyond Applicant’s control. Some of Applicant’s loss of employment occurred because of her drug use and some because of Applicant’s voluntarily leaving her employment. Additionally, no independent evidence was introduced to establish that Applicant has acted responsibly by resolving or reducing any of her considerable overdue debt, even the very small debts listed on the SOR in the amounts of \$180, \$243, \$92, \$35, \$135, and \$42. Therefore, I do not find that this potentially mitigating condition is a factor for consideration in this case. Since Applicant has not eliminated or reduced any of her significant debt, I cannot find any other mitigating condition applies to 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 under the whole-person concept.

### **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:

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|-----------------------------------|-------------------|
| Paragraph 1, Guideline F:         | AGAINST APPLICANT |
| Subparagraphs 1.a. through 1. q.: | 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