



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-09731
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: Amy C. Broderick, Esquire

September 9, 2013

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

MOGUL, Martin H., Administrative Judge:

On November 7, 2012, the Department of Defense (DoD) 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 December 26, 2012, Applicant replied to the SOR (RSOR) in writing, and she requested a hearing before an Administrative Judge (AJ). The case was assigned to this AJ on April 3, 2013. DOHA issued a notice of hearing on May 1, 2013, and the hearing was convened as scheduled on May 29, 2013. The Government offered Exhibits 1 through 8, which were received without objection. Applicant testified on her own behalf and submitted Exhibits A through I, which were also admitted without objection. One additional witness testified on behalf of Applicant. The record was kept open until June 7, 2013, to allow Applicant to submit additional evidence. The documents that were timely received have been identified and entered into evidence

without objection as Exhibits A1, J, K, and L. DOHA received the transcript of the hearing (Tr) on June 12, 2013. Based upon a review of the pleadings, exhibits, and the testimony of Applicant and the other witness, eligibility for access to classified information is denied.

### **Findings of Fact**

After a complete and thorough review of the evidence in the record, described above, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 50 years old. She is currently unmarried, but was previously married. She has one daughter. She graduated high school and attended some college. 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 14 allegations (1.a. through n.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. The allegations will be discussed 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 \$22,026. Applicant admitted this allegation in her RSOR, and averred that this debt has been listed on her Chapter 7 bankruptcy. Exhibit 1A (page 13) shows that this debt was listed on Applicant's bankruptcy. A letter was received from Applicant's bankruptcy attorney. The attorney wrote that the bankruptcy discharge was granted on April 8, 2013. (Exhibit K.) I find that this debt was discharged in bankruptcy.

1.b. This overdue debt is cited in the SOR in the amount of \$508. Applicant admitted this allegation in her RSOR, and averred that this debt has been listed on her Chapter 7 bankruptcy. Exhibit K shows that Applicant had disputed this bill with a credit reporting agency. The agency determined that the debt was still owed, but it showed that it had been charged off and the charged off amount was \$0. In reviewing Applicant's bankruptcy filing I find that this debt was not listed as an unsecured creditor.

Applicant's bankruptcy attorney wrote that all of Applicant's unsecured debts were discharged if they existed during the time of the bankruptcy filing, and that even though this debt was not listed on her bankruptcy, pursuant to 11 U.S.C. 727, this debt is considered discharged. (Exhibit K.) I find that this debt should be considered discharged in bankruptcy.

1.c. This overdue debt is cited in the SOR in the amount of \$748. Applicant admitted this allegation in her RSOR, and averred that this debt has been listed on her Chapter 7 bankruptcy. Exhibit 1A (page 14) shows that this debt was listed on Applicant's bankruptcy. I find that this debt was discharged in bankruptcy.

1.d. This overdue debt is cited in the SOR in the amount of \$435. Applicant admitted this allegation in her RSOR, and averred that this debt has been listed on her Chapter 7 bankruptcy. Exhibit 1A (page 14) shows that this debt was listed on Applicant's bankruptcy. I find that this debt was discharged in bankruptcy.

1.e. This overdue debt is cited in the SOR in the amount of \$435. Applicant admitted this allegation in her RSOR, and averred that this debt has been listed on her Chapter 7 bankruptcy. Exhibit 1A (page 14) shows that this debt was listed on Applicant's bankruptcy. I find that this debt was discharged in bankruptcy.

1.f. This overdue debt is cited in the SOR in the amount of \$333. Applicant admitted this allegation in her RSOR, and averred that this debt has been listed on her Chapter 7 bankruptcy. Exhibit 1A (page 15) shows that this debt was listed on Applicant's bankruptcy. I find that this debt was discharged in bankruptcy.

1.g. This overdue debt is cited in the SOR in the amount of \$219. Applicant admitted this allegation in her RSOR, and averred that this debt has been listed on her Chapter 7 bankruptcy. Exhibit 1A (page 13) shows that this debt was listed on Applicant's bankruptcy. I find that this debt was discharged in bankruptcy.

1.h. This overdue debt is cited in the SOR in the amount of \$64,176. Applicant admitted this allegation in her RSOR, and averred that this debt has been listed on her Chapter 7 bankruptcy. She also indicated in her RSOR that this mortgage debt is being listed for a short sale, but it may become a foreclosure. Exhibit 1A (page 11) shows that this debt was listed on Applicant's bankruptcy as a secured debt with a value of \$150,000. This secured debt would not be resolved in bankruptcy, and it may have gone into foreclosure. .

1.i. This overdue debt is cited in the SOR in the amount of \$410. Applicant admitted this allegation in her RSOR, and averred that this debt has been listed on her Chapter 7 bankruptcy. Exhibit 1A (page 14) shows that this debt was listed on Applicant's bankruptcy. I find that this debt was discharged in bankruptcy.

1.j. This overdue debt is cited in the SOR in the amount of \$1,272. Applicant admitted this allegation in her RSOR, and averred that this debt has been listed on her Chapter 7 bankruptcy. Exhibit 1A (page 13) shows that this debt was listed on Applicant's bankruptcy. I find that this debt was discharged in bankruptcy.

1.k. This overdue debt is cited in the SOR in the amount of \$1,200. Applicant admitted this allegation in her RSOR, and averred that this debt has been listed on her Chapter 7 bankruptcy. This debt was also not listed on Applicant's bankruptcy. Pursuant to Exhibit K, and as reviewed in 1.b., above, I find that this debt should be considered as discharged in bankruptcy.

1.l. This overdue debt is cited in the SOR in the amount of \$22,280. Applicant denied this allegation in her RSOR, and averred that she paid \$7,975 toward this debt

for a vehicle repossession, and the deficiency balance was paid in full. Exhibit D, a letter from the creditor, establishes that this debt was resolved.

1.m. This overdue debt is cited in the SOR in the amount of \$2,000. Applicant admitted this allegation in her RSOR, and averred that this debt has been listed on her Chapter 7 bankruptcy. I find that this debt was discharged in bankruptcy.

1.n. This overdue debt is cited in the SOR in the amount of \$6,000. Applicant admitted this allegation in her RSOR, and averred that this debt has been listed on her Chapter 7 bankruptcy. Applicant explained that this debt was for homeowners fees, and that she had a dispute with a woman from her condominium homeowners association as to the amount owed. However, she conceded that she knew she owed something, and she could give no legitimate reason for why she failed to pay the amount she knew was due. (Tr at 48-55.) I find that this debt was discharged in bankruptcy.

Applicant testified that her financial problems began when she was going through a split from her significant other in 2004 or 2005, when she had one child and her income was reduced by half. She also co-signed for the purchase of a truck for a friend and the friend thereafter stopped making payments. She then became responsible for making payments on two vehicles. In 2006, Applicant refinanced the mortgage on her home in an attempt to take some money out of the equity in the house to pay off the loan, but before she could gain access to the money the truck of her friend was repossessed. In addition, the refinance loan had a variable rate with a balloon payment, of which she contended she was not aware. Because of the rate, she refinanced her home loan a second time in 2007. Her monthly mortgage payments went up and this made it more difficult for her to pay all of her other bills. Applicant testified that prior to the truck repossession and the two refinances of her home, she did not have any significant financial delinquencies. (Tr at 34-41.)

Applicant also testified that in 2008, she had some health problems with her thyroid and high blood pressure which resulted in her having to miss time from work. For some of her leave time she was compensated, but she also had to take some time off from work without compensation. (Tr at 41-44.)

Ultimately, despite her reluctance, Applicant engaged the services of an attorney and filed for Chapter 7 bankruptcy. Applicant also completed the required financial counseling as part of the bankruptcy procedure. She testified that her debts were discharged in the bankruptcy. (Tr at 44-46.)

Applicant testified that she has gambled periodically starting in approximately 2000. She went with a friend at least once a month to a casino. She estimated that she would gamble about \$100 or \$200 each time. She began writing checks to the casino and they would give her chips. On Applicant's bankruptcy, Schedule A1 shows that Applicant wrote five checks, in the amounts of \$538, \$435, \$435, \$435, and \$333, even though she had insufficient funds in her checking account. (Exhibit A1.) Applicant conceded that she was aware that she did not have sufficient funds to write the checks.

When she was asked why she continued to write the checks with insufficient funds, she answered, "I don't know what I was thinking." (Tr at 95-99.)

Applicant was not certain of the amount of money she lost from gambling, but she estimated it to be \$3,000 a year. Applicant testified that she has not gambled during this current year, but she estimated that in the year before, she went approximately once a month and gambled between \$200 and \$300 a month. Finally, Applicant conceded that she gambled to try to get some extra money to try to pay off her debts, but her gambling resulted in additional debts. (Tr at 99-101.)

## **Mitigation**

Applicant offered into evidence five positive and laudatory character letters, submitted on her behalf from friends and co-workers. (Exhibit F 1-5.) She was praised as being, "reliable, trustworthy and of good character." Applicant also submitted copies of 12 certificates and awards that she has earned in her career. (Exhibit G 1-12.)

Exhibits B and C establish that Applicant received the proper counseling and education requirements to file a bankruptcy. Finally, Exhibit L is a copy of a Personal Financial Statement of Applicant, dated June 4, 2013. It revealed that Applicant has a net monthly income of \$3,794.54, monthly expenses of \$2,318, and monthly debt payments of \$1,326, leaving a net monthly remainder of \$150.59.

## **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 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. I also find that AG ¶ 19 (i), “compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, “chasing losses” (i.e. increasing the bets or returning another day in an effort to get even) . . . or other problems caused by gambling” is applicable in this case. The evidence has established that Applicant has accumulated significant delinquent debt, and gambling was a contributing factor of that debt. Applicant’s conduct would also be considered “chasing losses.”

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 noted above, Applicant testified that some of her financial problems resulted from her periods of uncompensated time off from work due to illness and her split from her significant other. However, because her financial problems were also due to her gambling I cannot find that this mitigating condition is applicable in this case.

AG ¶ 20(c) applies since Applicant has received financial counseling during the process of filing for bankruptcy, and there are indications that the problem is being resolved and is under control. I find that this mitigating condition is a factor for consideration in this case.

Finally, AG ¶ 20(d) applies since I find that Applicant has “initiated a good-faith effort” to “resolve debts,” by engaging an attorney to employ the legal remedy of bankruptcy. Since most of Applicant’s debts have been resolved in bankruptcy, and Applicant is current with her recent debts, this mitigating condition is a factor for consideration in this case. However, Applicant’s debt, listed as 1.h. on the SOR was not resolved in bankruptcy, but rather in foreclosure, this factor is limited.

Overall, Applicant’s long history of gambling has contributed to her financial problems, and her attempts at chasing losses, plus her continued gambling is a significant concern that has not been mitigated. Therefore, I conclude that Applicant 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. Because Applicant's gambling continues to be an issue of concern. 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. -1.g.:	For Applicant
Subparagraphs 1.h., 1.n.:	Against Applicant
Subparagraphs 1.i. -1.m.:	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