



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



In the matter of:)	
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)	ADP Case No. 12-01251
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

January 30, 2014

Decision

MOGUL, Martin H., Administrative Judge:

On July 30, 2013, in accordance with Department of Defense (DoD) Directive 5220.6, the DoD issued a Statement of Reasons (SOR) detailing the trustworthiness 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; DoD 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 after September 1, 2006.

On August 22, 2013, 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 2.) On October 22, 2013, 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 six documentary exhibits. (Items 1-6.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on December 22, 2013. Applicant filed a timely response, and the documents submitted have been entered into evidence without

objection as Items A, B, and C. The case was assigned to this Administrative Judge on January 13, 2014. Based upon a review of the pleadings and exhibits, eligibility for access to a sensitive position is denied.

Findings of Fact

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

Applicant is 64 years old. She was first married in April 1989 and divorced in June 1993. Her second marriage was from January 2000 to March 2004. Applicant has four adult children. She is employed by a defense contractor, and she seeks access to a sensitive position in connection with her employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists 26 allegations (1.a. through 1.z.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. In her RSOR, admitted SOR allegations 1.a., 1.f., 1.h., 1.i., 1.o., 1.u., and 1.v. The admitted debts are deemed to be owed by Applicant. All of the SOR debts 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 for a medical account in the amount of \$1,105. Applicant admitted this SOR allegation in her RSOR. (Item 2.) I do not find that this debt has been resolved or reduced.

1.b. This overdue debt is cited in the SOR for a medical account in the amount of \$210. Applicant denied this SOR allegation in her RSOR. (Item 2.) Applicant's credit report, dated February 21, 2013, shows this debt has been delinquent since July 2007. (Item 5.) I do not find that this debt has been resolved or reduced.

1.c. This overdue debt is cited in the SOR for a medical account in the amount of \$48. Applicant denied this SOR allegation in her RSOR. (Item 2.) Item 5 shows this debt has been delinquent since August 2010. Applicant did dispute this debt with the credit bureau, but after an investigation by the credit bureaus the debt is still be listed as overdue. I do not find that this debt has been resolved or reduced.

1.d. This overdue debt is cited in the SOR for a medical account in the amount of \$35. Applicant denied this SOR allegation in her RSOR. (Item 2.) Item 5 shows this debt has been delinquent since November 2009. I do not find that this debt has been resolved or reduced.

1.e. This overdue debt is cited in the SOR for a medical account in the amount of \$55. Applicant denied this SOR allegation in her RSOR. (Item 2.) Item 5 shows this debt has been delinquent since July 2007. I do not find that this debt has been resolved or reduced.

1.f. This overdue debt is cited in the SOR for a collection account in the amount of \$174. Applicant admitted this SOR allegation in her RSOR. (Item 2.) I do not find that this debt has been resolved or reduced.

1.g. This overdue debt is cited in the SOR for a medical account in the amount of \$38. Applicant denied this SOR allegation in her RSOR. (Item 2.) Item 5 shows this debt has been delinquent since September 2006. I do not find that this debt has been resolved or reduced.

1.h. This overdue debt is cited in the SOR for a collection account in the amount of \$1,328. Applicant admitted this SOR allegation in her RSOR. (Item 2.) In her post - FORM exhibit, she wrote that she is making monthly payments toward this debt and that the debt will be paid off shortly. (Item A.) Item C shows that Applicant has made 3 payments of \$141.75 toward this debt, but no information was furnished as to how much is still owed on this debt. (Item C.) I do not find that this debt has been resolved, but it has been reduced. However, it is not clear what the amount is that is still owed.

1.i. This overdue debt is cited in the SOR for a medical account in the amount of \$313. Applicant admitted this SOR allegation in her RSOR. (Item 2.) I do not find that this debt has been resolved or reduced.

1.j. This overdue debt is cited in the SOR for a medical account in the amount of \$160. Applicant denied this SOR allegation in her RSOR. (Item 2.) Item 5 shows this debt has been delinquent since April 2008. I do not find that this debt has been resolved or reduced.

1.k. This overdue debt is cited in the SOR for a medical account in the amount of \$3,844. Applicant denied this SOR allegation in her RSOR. (Item 2.) Item 5 shows this debt has been delinquent since August 2010. I do not find that this debt has been resolved or reduced.

1.l. This overdue debt is cited in the SOR for a medical account in the amount of \$160. Applicant denied this SOR allegation in her RSOR. (Item 2.) Item 5 shows this debt has been delinquent since May 2008. I do not find that this debt has been resolved or reduced.

1.m. This overdue debt is cited in the SOR for a medical account in the amount of \$160. Applicant denied this SOR allegation in her RSOR. (Item 2.) Item 5 shows this debt has been delinquent since October 2008. I do not find that this debt has been resolved or reduced.

1.n. This overdue debt is cited in the SOR for a medical account in the amount of \$150. Applicant denied this SOR allegation in her RSOR. (Item 2.) Item 5 shows this debt has been delinquent since January 2007. I do not find that this debt has been resolved or reduced.

1.o. This overdue debt is cited in the SOR for a medical account in the amount of \$343. Applicant admitted this SOR allegation in her RSOR. (Item 2.) Item 5 shows this debt has been delinquent since May 2009. I do not find that this debt has been resolved or reduced.

1.p. This overdue debt is cited in the SOR for a medical account in the amount of \$343. Applicant denied this SOR allegation in her RSOR. (Item 2.) Item 5 shows this debt has been delinquent since October 2008. I do not find that this debt has been resolved or reduced.

1.q. This overdue debt is cited in the SOR for a medical account in the amount of \$520. Applicant denied this SOR allegation in her RSOR. (Item 2.) Item 5 shows this debt has been delinquent since April 2008. I do not find that this debt has been resolved or reduced.

1.r. This overdue debt is cited in the SOR for a medical account in the amount of \$110. Applicant denied this SOR allegation in her RSOR. (Item 2.) Item 5 shows this debt has been delinquent since January 2007. I do not find that this debt has been resolved or reduced.

1.s. This overdue debt is cited in the SOR for a medical account in the amount of \$864. Applicant denied this SOR allegation in her RSOR. (Item 2.) Item 5 shows this debt has been delinquent since September 2006. I do not find that this debt has been resolved or reduced.

1.t. This overdue debt is cited in the SOR for a medical account in the amount of \$160. Applicant denied this SOR allegation in her RSOR. (Item 2.) Item 5 shows this debt has been delinquent since September 2006. I do not find that this debt has been resolved or reduced.

1.u. This overdue debt is cited in the SOR for a charged off account in the amount of \$20. Applicant admitted this SOR allegation in her RSOR. (Item 2.) I do not find that this debt has been resolved or reduced.

1.v. This overdue debt is cited in the SOR for a medical account in the amount of \$409. Applicant admitted this SOR allegation in her RSOR. (Item 2.) I do not find that this debt has been resolved or reduced.

1.w. This overdue debt is cited in the SOR for a collection account in the amount of \$334. Applicant denied this SOR allegation in her RSOR. (Item 2.) Applicant's credit report, dated November 16, 2011, shows this debt has been delinquent since April 2011. (Item 6.) I do not find that this debt has been resolved or reduced.

1.x. This overdue debt is cited in the SOR for a medical account in the amount of \$260. Applicant denied this SOR allegation in her RSOR. (Item 2.) Item 6 shows this debt has been delinquent since January 2009. I do not find that this debt has been resolved or reduced.

1.y. This overdue debt is cited in the SOR for a medical account in the amount of \$130. Applicant denied this SOR allegation in her RSOR. (Item 2.) Item 6 shows this debt has been delinquent since October 2008. I do not find that this debt has been resolved or reduced.

1.z. This overdue debt is cited in the SOR for seven student loan accounts in the amount of approximately \$8,000. Applicant denied this SOR allegation in her RSOR. (Item 2.) In Applicant's December 9, 2011, security interview, she admitted that her student loans had become delinquent in August 2004 when she had ceased payments. (Item 4.) I do not find that this debt has been resolved or reduced.

Applicant wrote in her RSOR that she has investigated her credit report of August 22, 2013, and she has disputed errors on the report. She also explained that the medical bills were from emergency surgery and that arrangements were made to resolve the bills, and she claimed that she was not aware of unpaid accounts. In Item A, Applicant wrote that she was laid off from 2004 to 2008, and her medical bills were "supposed to be hardship addressed by the hospital."

During Applicant's security clearance interview on December 19, 2011, she admitted that she had not yet contacted her creditors or made arrangements to resolve her overdue debts, but she promised to do so in the future. (Item 4.) In her April 25, 2013 responses to DOHA Interrogatories, she again promised to contact creditors and begin resolving her delinquent debts. The only documentary evidence submitted by Applicant regarding these debts shows that she has made three payments toward one of her 26 overdue debts. (Item C.) All of the other 25 debts remain unresolved and unreduced.

Policies

When evaluating an applicant's suitability for access to a sensitive position, 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 access to a sensitive position.

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 access to [a sensitive position] 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 access decision.

A person who seeks access to a sensitive position 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 sensitive information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive 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, most of which has been overdue for several 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.” Applicant’s period of unemployment, and her emergency medical treatment, could potentially make this condition applicable in this case. However, since there is evidence that Applicant has made an attempt to resolve only one of the 26 overdue debts listed on the SOR, which were all incurred several years ago, I do not find that Applicant has acted responsibly. Therefore, this mitigating condition is not applicable in this case.

Additionally, I do not find that AG ¶ 20(d) is applicable, since Applicant has not “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Finally, I do not find any other mitigating condition applies to this case. Therefore, I find Guideline F against Applicant.

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 access to a sensitive position 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 the lack of evidence to establish that Applicant has made any attempt to resolve the past-due debts listed on the SOR, with the exception of one debt, I find that the record evidence leaves me with significant questions and doubts as to Applicant’s eligibility and suitability for a sensitive position, under the whole person concept. For all these reasons, I conclude Applicant has not mitigated the trustworthiness 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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. - 1.g.:	Against Applicant
Subparagraphs 1.i. - 1.z.:	Against Applicant
Subparagraph 1.h.:	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 access to a sensitive position. Eligibility for access to sensitive information is denied.

Martin H. Mogul
Administrative Judge