



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



In the matter of:

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) ISCR Case No. 12-09539
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Applicant for Security Clearance

Appearances

For Government: Nicole A. Smith, Esquire, Department Counsel
For Applicant: *Pro se*

February 16, 2017

Decision

MOGUL, Martin H., Administrative Judge:

On December 2, 2015, the Department of Defense (DoD) 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 after September 1, 2006.

On January 21, 2016, 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 February 29, 2016, 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 eight documentary exhibits. (Items 1-8.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on April 9, 2016. Applicant submitted no additional evidence. The case was assigned to this Administrative Judge on November

1, 2016. 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 and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 41 years old. She received a Bachelor's degree in 2001. She has been married to her current spouse since 2001, and she was previously married from 1999 to 2001. She has three minor children, and one adult step-child. Applicant was unemployed from 2009 to 2012. She has worked for a defense contractor since 2012 as a VTC Operator, and she seeks a DoD security clearance in connection with her employment in the defense sector. (Item 3.)

Guideline F, Financial Considerations

The SOR lists eight allegations (1.a. through 1. h.) regarding financial difficulties, specifically delinquent medical debts, student loans, and other credit debts, totaling approximately \$75,000, under Adjudicative Guideline F. Each of the SOR alleged debts were established in the credit reports submitted with the FORM, dated February 26, 2016, October 2, 2015, and March 31, 2012. (Items 6, 7, and 8.) The 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 collection account in the amount of \$41,703. In her RSOR, Applicant provided one response to allegations 1.a. through 1.e. In her reply to all of the allegations, Applicant wrote, " I have been making steady payments to my student loans, as reflected in my credit report. I am paying just above minimum on the higher ones and more than that on the lower in order to see changes. My husband sends checks out and keeps copies for accounting purposes. I admit that student loan debt looks damaging on my report and I acknowledge that I will continue to be diligent in paying them to the best of my ability." (Item 2.) As reviewed above, Items 6 through 8 show that these debts are owed. I find that no independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.b. This overdue debt is cited in the SOR for a collection account in the amount of \$28,724. (See 1.a., above.) I find that no evidence has been introduced to establish that this debt has been resolved or reduced.

1.c. This overdue debt is cited in the SOR for a past-due account in the amount of \$1,319, with a remaining balance of approximately \$20,046. (See 1.a., above.) I find that no independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.d. This overdue debt is cited in the SOR for a past-due account in the amount of \$622, with a remaining balance of approximately \$7,616. (See 1.a., above.) I find that no

independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.e. This overdue debt is cited in the SOR for a past-due education account in the amount of \$343, with a remaining balance of approximately \$5,242. (See 1.a., above.) I find that no independent evidence has been introduced to establish 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 \$2,489. In her RSOR, Applicant wrote, "My [1.f.] debt was tacked on to my credit report but I will take that debt to consolidate as soon as possible. I have gathered necessary information in order to pay that individually. I admit to this debt during my master's program. When I realized that the cost of a master's degree did not fit into my current situation, I reevaluated my approach and decided to stop and take care of my current debt rather than incurring more in student loans. I do intend to pay this debt." (Item 2.) I find that no independent evidence has been introduced to establish 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 \$85. In her RSOR, Applicant wrote, "I have printed my credit report and this \$85.00 debt will be paid as soon as possible. I have the means to pay this within a paycheck." (Item 2.) I find that no independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.h. This overdue debt is cited in the SOR for a medical account in the amount of \$79. In her RSOR, Applicant wrote, "I have printed my credit report and this \$79.00 debt that was incurred while I was in a deployed environment will be paid. I have contacted [the creditor] and this amount will be taken care of." (Item 2.) I find that no independent evidence has been introduced to establish that this debt has been resolved or reduced.

Applicant also wrote in her RSOR, "I admit that in the past, I did not make the best decisions regarding my finances. I admit that debt has been placed on my credit report. I admit that I have learned from negative debt and that I will continue to improve my credit and credit report and I will continue to use my credit wisely. I don't gamble and a great deal of past debt has been removed from my credit report." (Item 2.)

Finally, Applicant wrote in her RSOR that she accepted a position in Afghanistan in order to pay off her debts more quickly; she and her husband have paid off their car and refinanced their home for a lower percentage rate. She added that while she is deployed, her husband is paying the bills, and they constantly communicated about improving their finances. (Item 2.)

In her Personal Subject Interview, Applicant indicated that her financial difficulty occurred because of some of the following reasons: her low income in 1998; unbeknown to her, her former husband was not making required payments on some of their debts; and she failed to pay her student loans from 2003 to 2007, because she incorrectly believed the student loans were deferred. (Item 5.)

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 debts, many of which have not been resolved or reduced.

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, some of Applicant's financial problems were beyond her control, as she had low income in 2008, and her previous husband had not paid all the bills. However, her incorrect assumption that her education loans were being deferred, was not a situation beyond her control. Also, since no independent evidence has been introduced to establish that Applicant has resolved or reduced any of the debts listed on the SOR, I cannot find that she acted responsibly under the circumstances. Therefore, I do not find that this mitigating condition is a factor for consideration in this case.

AG ¶ 20(d) is also not applicable, since Applicant has not "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," Therefore, I find that this mitigation condition does not apply to this case.

Finally, since Applicant has not submitted a Personal Financial Statement, nor was any independent evidence offered about her current financial stability, I cannot conclude that Applicant will be able to pay off her past-due debts or keep up to date on her current debts and expenses, especially if any new or unexpected debts are incurred. Therefore, I find that Applicant has not mitigated the Financial Consideration concerns, which are found 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 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 why the concerns about Applicant's current finances have not been mitigated, 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:

Paragraph 1, Guideline F: **AGAINST APPLICANT**

Subparagraphs 1.a.-1.h.:	Against Applicant
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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