



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04272

Appearances

For Government: Phillip J. Katauskas, Esquire, Department Counsel
For Applicant: *Pro se*

August 24, 2016

Decision

MOGUL, Martin H., Administrative Judge:

On December 2, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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 DoD after September 1, 2006.

On February 5, 2015, 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 4.) On December 22, 2015, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant on January 8, 2016. 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 by February 7, 2016. Applicant submitted additional evidence, which has been identified and entered into evidence without objection as Items A through D. The case was assigned to this

Administrative Judge on March 28, 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 43 years old. She is married and has two children. Applicant received a Bachelor's degree in Management and Human Resources Management in 2002. Applicant has been employed as Administrative Support since 2013 by her current employer, a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector. (Item 5.)

Guideline F - Financial Considerations

The SOR lists 11 allegations (1.a. through 1.k.) regarding financial difficulties, specifically delinquent debts, under Adjudicative Guideline F. The delinquent debts total \$228,651, and the debts Applicant admits to total \$227,424. 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 for a delinquent student loan account in the amount of \$35,361. (Item 1.) Applicant admitted this SOR allegation in her RSOR. (Item 4.) She wrote that she has been attempting to consolidate all of her student loans, which includes SOR allegations 1.b. through 1.h. and 1.j. She also wrote that she has been taking credit counseling class, and she has been paying her student loans for a few years.

1.b. This overdue debt is cited in the SOR for a delinquent student loan in the amount of \$15,245. (Item 1.) Applicant admitted this SOR allegation in her RSOR. (Item 4.)

1.c. This overdue debt is cited in the SOR for a delinquent student loan in the amount of \$28,105. (Item 1.) Applicant admitted this SOR allegation in her RSOR. She wrote that this is the identical debt as 1.b., above. (Item 4.) As both debts list the same creditor and have the same loan number, I find that this debt is a duplicate of 1.b., above.

1.d. This overdue debt is cited in the SOR for a delinquent student loan in the amount of \$6,893. (Item 1.) Applicant admitted this SOR allegation in her RSOR. (Item 4.)

1.e. This overdue debt is cited in the SOR for a delinquent student loan in the amount of \$118,016. (Item 1.) Applicant admitted this SOR allegation in her RSOR, but she wrote that she is researching this amount since she does not believe the amount stated is correct. She wrote that this is the identical debt as 1.d., above. (Item 4.) As both

debts list the same creditor and have the same loan number, I find that this debt is a duplicate of 1.d., above.

1.f. This overdue debt is cited in the SOR for a delinquent student loan in the amount of \$3,281. (Item 1.) Applicant admitted this SOR allegation in her RSOR. She wrote that this is the identical debt as 1.d. and 1.e., above. (Item 4.) As all three debts list the same creditor and have the same loan number, I find that this debt is a duplicate of 1.d. and e., above.

1.g. This overdue debt is cited in the SOR for a delinquent student loan in the amount of \$3,891. (Item 1.) Applicant admitted this SOR allegation in her RSOR. (Item 4.)

1.h. This overdue debt is cited in the SOR for a delinquent student loan in the amount of \$3,007. (Item 1.) Applicant admitted this SOR allegation in her RSOR. She wrote that this is the identical debt as 1.g., above. (Item 4.) As both debts list the same creditor and have the same loan number, I find that this debt is a duplicate of 1.g., above. (Item 4.)

1.i. This overdue debt is cited in the SOR for a delinquent account in the amount of \$152. (Item 1.) Applicant denied this SOR allegation in her RSOR. She wrote that this debt was paid a long time ago, and she is currently disputing this debt with a credit agency. (Item 4.) I find that Applicant has resolved this debt as established in Items 9 and 10.

1.j. This overdue debt is cited in the SOR for a delinquent student loan in the amount of \$14,625. (Item 1.) Applicant admitted this SOR allegation in her RSOR. (Item 4.)

1.k. This overdue debt is cited in the SOR for a delinquent account in the amount of \$75. (Item 1.) Applicant denied this SOR allegation in her RSOR. She wrote that this debt was paid a long time ago, and she is currently disputing this debt with a credit agency. (Item 4.) Post-FORM Item D establishes that this debt has been resolved.

Applicant provided no information on her RSOR as to what, if any, steps she had taken to accomplish her goal of consolidating her student loans. With the exception of 1.i. and 1.k, above, no evidence was submitted showing Applicant had made any payments toward any of the other debts listed on the SOR.

Applicant submitted a Post-FORM document showing some of her student debts has been consolidated, although it is not clear which debts have been consolidated. As of December 17, 2015, Applicant owed \$76,999.61 for one student loan debt, and \$109,182.13 for another student loan debt, and no payments had yet been made. While the document showed a first payment of \$1,032.15 was due on February 5, 2016, no evidence was submitted to show if this payment was made. (Item C.)

Applicant also wrote on her RSOR that her financial difficulties occurred, "due to a fall in the economy, unexpected medical bills and loss of income due to being a military spouse having to move frequently." She also wrote, "My Mom was diagnosed with cancer so I have been helping her pay for her home so she would not loose [sic] it." Finally Applicant wrote that the payments for her mother's home had been reduced so she would have more money to pay toward her delinquent debts. (Item 4.)

Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she engaged in conduct that exhibited questionable judgement, lack of candor, dishonesty or unwillingness to comply with rules and regulations.

2.a. It is alleged in the SOR that Applicant was charged with Larceny, Fraud and/or False Statements in May 1998 when she removed a laptop computer valued at approximately \$1,779 from a store without rendering payment. It is further alleged that Applicant later returned with an empty box stating that the laptop she had purchased was not in the box so she requested that she be supplied with another laptop.

Applicant explained in her RSOR that she had paid for the computer, which was being sold on a clearance, and when she realized the computer was not in the box she went back into the store immediately. She averred that she was never charged with any criminal offense. (Item 4.) I do not find that this allegation has been established.

2.b. It is alleged in the SOR that Applicant was arrested and charged with Theft in an amount of between \$300 and \$500, and that she pled guilty and was fined and sentenced to five years of probation, which ended in September 2008. Applicant admitted this allegation in her SOR, but wrote that she was not certain about the date. (Item 4.) A report from the Federal Bureau of Investigation confirms this allegation. (Item 8.)

2.c. It is alleged in the SOR that Applicant failed to provide truthful and candid answers on a Standard Form 85P, executed by her on September 8, 2006, in which she was asked, "In the last 7 years, have you been arrested, charged with, or convicted of any offenses?" Applicant responded, "No," to this question when, it is alleged, she had been charged in the past seven years with Larceny, Fraud and/or False Statements as set forth in subparagraph 2.a., above. Applicant denied in her RSOR that she was attempting to mislead the Government, but she was not sure from what date to count. (Item 4.) Since subparagraph 2.a. has not been established, I do not find that the Government has established this allegation.

2.d. It is alleged in the SOR that Applicant failed to provide truthful and candid answers to questions asked under Section 22 of an Electronic Questionnaires for Investigations Processing (e-QIP), executed by her on March 20, 2013. (Item 5.) The question asked whether in the last seven years Applicant has been on probation or parole or whether Applicant is currently on probation or parole. Applicant answered,

“No,” to this question and it is alleged that she deliberately failed to disclose that she had been on probation until 2008, as set forth in subparagraph 2.b., above.

On her RSOR, Applicant wrote that she did not intend to falsify material facts on her e-QIP and that this was an “honest mistake.” She wrote that this answer had to be reset several times because of an error from a previous questionnaire. (Item 4.)

Mitigation

Applicant submitted a post-FORM letter from a financial planning company, dated October 29, 2015, showing that she had received a counseling session and had set up an action plan to help her better manage her finances. (Item A.)

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 several years ago.

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 as a result of a number of reasons including: a fall in the economy, unexpected medical bills, a diminution of her income, and having to pay for her mother’s mortgage because of her mother’s illness. However, with the exception of two very small debts, Applicant has offered no evidence that she has paid off any of the delinquent student loan debts listed on the SOR. Accordingly, I find that this mitigating condition is not applicable in this case.

While Applicant has received some counseling to help her with her financial issues, I do not find that ¶ 20(c) is applicable because I do not find that there is a clear indication that the problem is solved.

Finally, ¶ 20(d) is also not applicable, since Applicant has not taken action to “initiate a good-faith effort to repay [the majority of her] overdue creditors or otherwise resolve debts.” To be applicable and controlling in the future, Applicant must establish a consistent history of continuing to resolve these delinquent past-due debts and not become past due on her present debts. At this time, I find Guideline F against Applicant.

Guideline E - Personal Conduct

The Government relies heavily on the honesty and integrity of individuals seeking access to our nation’s secrets. When such an individual intentionally falsifies material facts or fails to furnish relevant information to a Government investigator, it is extremely difficult to conclude that he nevertheless possesses the judgment, and honesty necessary for an individual given a clearance.

With respect to Guideline E, I find that Applicant should have been aware that her probation continued to September 2008, which is within seven years of when she completed the e-QIP on March 20, 2013. In reviewing the disqualifying conditions under Guideline E, I conclude that there was “deliberate omission, concealment, or falsification of relevant facts from [a] personnel security questionnaire” by Applicant. Therefore, I find ¶ 16 (a) applies against Applicant. I do not find that any mitigating condition under ¶ 17 is applicable. Therefore, I resolve Guideline E 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 mitigating conditions are not applicable at this time under Guidelines F and E, 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.b.:	Against Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraphs 1.e. - 1.f.:	For Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraphs 1.h. - 1.i.:	For Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	For Applicant

Paragraph 2, Guideline E:

AGAINST APPLICANT

Subparagraph 2.a.:	For Applicant
Subparagraph 2.b.:	Against Applicant
Subparagraph 2.c.:	For Applicant
Subparagraph 2.d.:	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