



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 15-00762

**Appearances**

For Government: Gina L. Marine, Esquire, Department Counsel

For Applicant: *Pro se*

August 15, 2016

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On July 23, 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 October 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 2.) On December 3, 2015, 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 seven documentary exhibits. (Items 1-7.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on January 14, 2015. Applicant submitted no additional evidence. The case was assigned to this Administrative Judge

on March 15, 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 42 years old. She has never been married, and she has two children. She earned an Associates degree in 2011. Applicant has been employed as a Senior Engineering Technician since September 2008 by a DoD Contractor, 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 21 allegations (1.a. through 1.u.) regarding financial difficulties, specifically overdue debts and a foreclosed mortgage, under Adjudicative Guideline F. The delinquent debts in the SOR total approximately \$11,000. Credit Reports (CR) dated January 14, 2015; September 20, 2012; and November 30, 2015, establish the debts listed in the SOR. (Items 5, 6, and 7.) 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 account in the amount of \$413. (Item 1.) In her RSOR, Applicant admitted this SOR allegation. She wrote that she has been attempting to get this student loan deferred, and she is still attending school on a part time basis, but when she attends less than half time the payment of the debt becomes due. (Item 2.) No evidence was introduced to establish that this debt has been resolved, reduced or is in deferred status.

1.b. This overdue debt to the same creditor as 1.a., above, is cited in the SOR for a delinquent account in the amount of \$281. (Item 1.) In her RSOR, Applicant admitted this SOR allegation, and wrote this debt is in the same status of debt as 1.a. (Item 2.) No evidence was introduced to establish that this debt has been resolved, reduced or is in deferred status.

1.c. This overdue debt to the same creditor as 1.a. and 1.b., above, is cited in the SOR for a delinquent account in the amount of \$242. (Item 1.) In her RSOR, Applicant admitted this SOR allegation, and wrote this debt is in the same status of debt as 1.a. (Item 2.) No evidence was introduced to establish that this debt has been resolved, reduced or is in deferred status.

1.d. This overdue debt is cited in the SOR for a delinquent medical account in the amount of \$320. (Item 1.) In her RSOR, Applicant admitted this SOR allegation. She wrote that she was hospitalized twice in 2014 and was informed by a hospital representative that she had already met her co-payment expenses for the year. She

subsequently received additional bills for medical treatment from outside of her network, of which she had not been aware. (Item 2.) No evidence was introduced to establish that this debt has been resolved or reduced.

1.e. This overdue debt is cited in the SOR for a delinquent medical account in the amount of \$300. (Item 1.) In her RSOR, Applicant admitted this SOR allegation, and wrote this debt is in the same status of debt as 1.d., above. (Item 2.) No evidence was introduced to establish that this debt has been resolved or reduced.

1.f. This overdue debt is cited in the SOR for a delinquent medical account in the amount of \$279. (Item 1.) In her RSOR, Applicant admitted this SOR allegation, and wrote this debt is in the same status of debt as 1.d., above. (Item 2.) No evidence was introduced to establish that this debt has been resolved or reduced.

1.g. This overdue debt is cited in the SOR for a delinquent medical account in the amount of \$163. (Item 1.) In her RSOR, Applicant admitted this SOR allegation, and wrote this debt is in the same status of debt as 1.d., above. (Item 2.) No evidence was introduced to establish that this debt has been resolved or reduced.

1.h. This overdue debt is cited in the SOR for a delinquent medical account in the amount of \$57. (Item 1.) In her RSOR, Applicant admitted this SOR allegation, and wrote this debt is in the same status of debt as 1.d., above. (Item 2.) No evidence was introduced to establish that this debt has been resolved or reduced.

1.i. This overdue debt is cited in the SOR for a delinquent medical account in the amount of \$51. (Item 1.) In her RSOR, Applicant admitted this SOR allegation, and wrote this debt is in the same status of debt as 1.d., above. (Item 2.) No evidence was introduced to establish that this debt has been resolved or reduced.

1.j. This overdue debt is cited in the SOR for a delinquent account in the amount of \$694. (Item 1.) In her RSOR, Applicant admitted this SOR allegation, and wrote that she has tried to dispute the amount owed with this creditor, but they are unable to resolve it. (Item 2.) No evidence was introduced to establish that this debt has been resolved or reduced.

1.k. This overdue debt is cited in the SOR for a delinquent account in the amount of \$1,191. (Item 1.) In her RSOR, Applicant denied this SOR allegation, alleging that she did not know the origin of this debt. (Item 2.) No evidence was introduced to establish that this debt has been resolved or reduced.

1.l. This overdue debt is cited in the SOR for a delinquent account in the amount of \$804. (Item 1.) In her RSOR, Applicant admitted this SOR allegation, and wrote that she could not continue payment toward this debt because of "income changes." (Item 2.) No evidence was introduced to establish that this debt has been resolved or reduced.

1.m. This overdue debt is cited in the SOR for a delinquent account in the amount of \$225. (Item 1.) In her RSOR, Applicant denied this SOR allegation, alleging that she did not know the origin of this medical debt. (Item 2.) No evidence was introduced to establish that this debt has been resolved or reduced.

1.n. This overdue debt is cited in the SOR for a delinquent medical account in the amount of \$50. (Item 1.) In her RSOR, Applicant denied this SOR allegation, alleging that she did not know the origin of this medical debt. (Item 2.) No evidence was introduced to establish that this debt has been resolved or reduced.

1.o. This overdue debt is cited in the SOR for a delinquent account in the amount of \$116. (Item 1.) In her RSOR, Applicant admitted this SOR allegation, and wrote that this debt resulted from the last week of day care charges that were never processed correctly. (Item 2.) No evidence was introduced to establish that this debt has been resolved or reduced.

1.p. This overdue debt is cited in the SOR for a delinquent account in the amount of \$5,853. (Item 1.) In her RSOR, Applicant admitted this SOR allegation, but she wrote that she denied the amount alleged in the account. (Item 2.) No evidence was introduced to establish what Applicant believes she owes on this account or that this debt has been resolved or reduced.

1.q. This overdue debt is cited in the SOR for a delinquent medical account in the amount of \$100. (Item 1.) In her RSOR, Applicant denied this SOR allegation, alleging that she did not know the origin of this medical debt. (Item 2.) No evidence was introduced to establish that this debt has been resolved or reduced.

1.r. This overdue debt is cited in the SOR for a delinquent account in the amount of \$120. (Item 1.) In her RSOR, Applicant admitted this SOR allegation, alleging that she did not know there was still an outstanding debt with this creditor. (Item 2.) No evidence was introduced to establish that this debt has been resolved or reduced.

1.s. This overdue debt is cited in the SOR for a delinquent account in the amount of \$347. (Item 1.) In her RSOR, Applicant admitted this SOR allegation, alleging that she did not know there was still an outstanding debt with this creditor. (Item 2.) No evidence was introduced to establish that this debt has been resolved or reduced.

1.t. The SOR alleges that Applicant's mortgage was foreclosed upon in about 2009 due to her inability to pay the loan. (Item 1.) In her RSOR, Applicant admitted this SOR allegation, and she wrote that she had rented out the property that is the subject of this allegation and the renters had severely damaged it, which ultimately resulted in the property being foreclosed. (Item 2.)

1.u. This overdue debt is cited in the SOR for a delinquent account in the amount of \$51. (Item 1.) In her RSOR, Applicant admitted this SOR allegation, and wrote that she thought this debt had been resolved years ago. (Item 2.) No evidence was introduced to establish that this debt has been resolved or reduced.

## 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, as the evidence has established that Applicant accumulated significant delinquent debt.

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 explained part of her financial difficulties occurred because of two medical treatments she received in 2014 that were not paid by her health insurance. However, there is no evidence that Applicant has acted responsibly to resolve or reduce her delinquent debts. Therefore, I do not find that this mitigating condition is applicable.

AG ¶ 20(d) is also not applicable, as there has been no evidence introduced that Applicant has "initiated a good-faith effort to repay overdue creditors or otherwise resolve [her] debts." Finally, based on the evidence submitted in this case, I cannot conclude that Applicant will be able to pay off her past 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 no mitigating conditions are applicable, 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. - 1u.:                      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