



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



In the matter of: )  
)  
) ADP Case No. 15-01464  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara R. Karoian, Esquire, Department Counsel  
For Applicant: *Pro se*

December 7, 2016

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On October 28, 2015, 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 November 24, 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 January 25, 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 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 March 10, 2016. Applicant filed a timely response, and the documents submitted have been entered into evidence without

objection as Items A through K. The case was assigned to this Administrative Judge on April 26, 2016. 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 through K, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 56 years old. She has a Bachelor's Degree and she is pursuing a Master's Degree. She has been employed as an Early Child Care Service manager since 2012, and she seeks access to a sensitive position in connection with her employment in the defense sector. (Items 2, 4.)

### **Guideline F, Financial Considerations**

The SOR lists 51 allegations (1.a. through 1.yy.) regarding financial difficulties, specifically overdue debts totaling more than \$38,000, under Adjudicative Guideline F. All of the SOR debts will be discussed below:

According to Applicant's post-FORM response, the following 40 allegations of debts in the SOR have all been consolidated and are owed to one medical collection service: 1.a., b., d., f., g., h., i., j., k., l., m., n., o., p., q., r., s., t., u., v., w., x., y., z., aa., bb., cc., dd., ee., ff., gg., hh., qq., rr., ss., tt., uu., vv., ww., and xx, totaling \$14,837. (Items A, B.) The evidence does not establish that this debt has been resolved or reduced in any manner.

1.c. This overdue debt is cited in the SOR in the amount of \$2,569. Applicant admitted this SOR allegation in her RSOR, and she wrote she is paying \$25 a month toward this debt. Item C confirms that she is to begin being billed in monthly payments of \$25. The evidence does not establish that this debt has been resolved or reduced in any manner.

1.e. This overdue debt is cited in the SOR in the amount of \$1,608. Applicant admitted this SOR allegation in her RSOR, and she wrote she has made a payment plan for this debt. Item D confirms that she is to begin being billed in monthly payments of \$50.25 beginning on March 4, 2016, to July 21, 2017. Item E establishes that one payment of \$50.25 was made on March 7, 2016. The evidence does not establish that this debt has been resolved or reduced beyond that one payment.

1.ii. This overdue debt is cited in the SOR in an unspecified amount. Applicant admitted this SOR allegation in her RSOR, and she wrote that she has been unable to contact the creditor about this delinquent debt.

1.jj. This overdue debt is cited in the SOR in an unspecified amount. Applicant admitted this SOR allegation in her RSOR, and she wrote she has made a payment

plan for this debt of \$292.72 . Item F confirms that she is to begin being billed in monthly payments of \$58.54 beginning on March 4, 2016, to July 15, 2016. Item E establishes that one payment of \$58.54 was made on March 7, 2016. The evidence does not establish that this debt has been resolved or reduced beyond that one payment.

1.kk., ll., and mm. These three overdue debts for State tax liens to State A are cited in the SOR in the amounts of \$4,535, \$1,496, and \$2,296. Applicant admitted these SOR allegations in her RSOR, and she wrote that she intends to pay these debts in full. Item G establishes that \$1,115 was used from her state tax refund to reduce these three debts. The evidence does not establish that these debts have been resolved or reduced beyond that one refund amount.

1.nn. This overdue debt is cited in the SOR in the amount of \$530. Applicant admitted this SOR allegation in her RSOR, and she wrote she this debt is for cell service for her daughter's phone, and she is currently in negotiations with the creditor to settle this debt. The evidence does not establish that this debt has been resolved or reduced.

1.oo. This overdue debt is cited in the SOR in the amount of \$382. Applicant denied this SOR allegation in her RSOR, and she wrote she is disputing this debt. Item J establishes that Applicant has disputed this debt. However, there is no evidence of the outcome of the dispute. The evidence does not establish that this debt has been resolved or reduced.

1.pp. This overdue debt is cited in the SOR in the amount of \$262. Applicant denied this SOR allegation in her RSOR, and she wrote she is disputing this debt. Item J establishes that Applicant has disputed this debt. However, there is no evidence of the outcome of the dispute. The evidence does not establish that this debt has been resolved or reduced.

1.yy. This overdue debt for Federal taxes for tax years 2007 and 2008 are cited in the SOR in the amounts of \$10,000. Applicant admitted this SOR allegation in her RSOR, and she wrote that she has made a payment plan for this debt. Item K confirms that she is to begin being billed in monthly payments of \$50 toward this debt, and that she has made at least six payments of \$50 toward this debt. The evidence establishes that this debt is being reduced, but there is still more than \$9,000 owed toward this debt.

In explanation for her financial difficulties, Applicant wrote in her RSOR that her husband abandoned her twice, resulting in her being hospitalized. She also had periods of unemployment, received unexpected medical bills, and was the sole provider of her household. (Item 2.)

### **Policies**

When evaluating an applicant's suitability for access to a sensitive position, 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 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 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 unemployment, and her medical treatment, could potentially make this condition applicable in this case. However, since there is evidence that these debts were incurred over several years, and that very few of the debts have only minimally been resolved, 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 [the majority of] overdue creditors or otherwise resolve debts." Finally, because Applicant has not significantly reduced or resolved her overdue debts, and because the evidence has not established that her current financial situation is stable, 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 and suitability for a sensitive position by considering the totality of 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 significantly resolved or reduced the past-due debts listed on the SOR, I find that the record evidence leaves me with 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.yy.:                      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 access to a sensitive position. Eligibility for access to sensitive information is denied.

Martin H. Mogul  
Administrative Judge