



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-01785

Appearances

For Government: Rhett Petcher, Esquire, Department Counsel

For Applicant: *Pro se*

August 15, 2016

Decision

MOGUL, Martin H., Administrative Judge:

On September 21, 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 22, 2015, Applicant replied to the SOR (RSOR) in writing, including attachments, and she requested that her case be decided on the written record in lieu of a hearing. (Item 1.) On December 9, 2015, Department Counsel issued the Department's written case. On December 9, 2015, 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 15, 2016. Applicant submitted additional evidence, which has been identified and entered into evidence without objection as Items A through G. The case

was assigned to this Administrative Judge on February 4, 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 47 years old, married, and she has one adult child. She is employed as a technical writer by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists seven allegations (1.a. through 1.g.) regarding financial difficulties, specifically overdue debts and bankruptcies, under Adjudicative Guideline F. The complete amount of the alleged delinquent debts in the SOR total approximately \$29,000. 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 tax lien to the Federal Government entered against Applicant in September 2004 in the amount of \$12,849. Applicant denied this allegation in her RSOR. She wrote, "payment of \$200 a month set up." Applicant also wrote that she had contacted the IRS and was informed that the tax lien for this debt was released many years ago. Applicant's attachment to her RSOR shows that this lien was satisfied. (Item 1.) I find that this debt has been resolved.

1.b. This overdue debt is cited in the SOR for delinquent taxes owed to the Federal Government for tax years 2010 and 2011 in the amount of \$15,000. Applicant admitted this allegation in her RSOR. She wrote that she and her husband are currently on a payment plan to repay the delinquent taxes, wherein each year after they submit their tax returns the IRS garnishes any refunds that they may be owed. She contended that her balance at this time was approximately \$4,000. (Item 1.) A Post-FORM document from the IRS shows that as of December 19, 2012, Applicant owed \$12,521.27 for tax years 2007, 2010, and 2011. (Item F.)

1.c. This overdue debt is cited in the SOR for a collection account in the amount of \$187. Applicant admitted this allegation in her RSOR. She wrote that she has made payments toward this debt, but at this time she does not know what company holds this debt. (Item 1.) I do not find that Applicant has established this debt has been resolved or reduced.

1.d. This overdue debt is cited in the SOR for a collection account in the amount of \$161. Applicant denied this allegation in her RSOR, and wrote that she had contacted this company and they confirmed that this debt had been paid in full. (Item 1.) Applicant submitted no evidence showing this debt has been satisfied, and the credit report dated

July 24, 2014, shows this debt is still owing. (Item 4.) I do not find that Applicant has established this debt has been resolved or reduced.

1.e. This overdue debt is cited in the SOR for a charged-off account in the amount of \$1,096. Applicant admitted this allegation in her RSOR. She wrote that she had contacted the creditor and set up payment plan in which, starting on August 8, 2014, she would send \$100 a month toward this debt. She further wrote that she had sent one \$100 check, which was returned to her uncashed with a notation that the creditor could not accept payment. (Item 1.) I find that this debt is still owing by Applicant and has not been resolved or reduced.

1.f. It is alleged in the SOR that Applicant filed for Chapter 13 Bankruptcy in approximately September 2006, and in approximately August 2012 her dischargeable debts were discharged. Applicant admitted this allegation in her RSOR

1.g. It is alleged in the SOR that Applicant filed for Chapter 7 Bankruptcy in approximately August 1999 and this bankruptcy was dismissed in approximately November 1999. Applicant admitted this allegation in her RSOR

Applicant explained that she and her husband filed for bankruptcy two times because her husband, who was operating his own home-building business, is "horrible at business and he failed to manage his money appropriately." She also averred that she has resolved additional debts that were not listed on the SOR.

Applicant reiterated in a post-FORM letter that her overdue debts occurred primarily because of the problems her husband had with his business. She also wrote that over the past 10 years she and her husband have spent all of their extra money towards their son's education. She wrote, "There are certain considerations you have to take [sic] in your life. And maybe I should have been paying our Government all this money [for the past taxes that she owes] so that our politicians could build illegal servers and default on their own tax payments." (Item A)

Applicant offered no documents into evidence which would show her current financial status, including the income of her and her husband or their expenditures and debts, and whether she is resolving her present debts in a timely manner. Applicant also submitted no character letters, employment evaluations, or any other information to give any insight into her character and employment record.

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. The evidence has established that Applicant accumulated significant delinquent debt, much of it several years old, which has not been satisfied, and filed for bankruptcy two times.

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." I do not find that this condition is applicable since Applicant explained the financial difficulties occurred because of her husband's poor business skills and to pay for her son's education, neither of which were conditions beyond the person's control. Therefore, I find that this mitigating condition is not a factor for consideration in this case.

Since there is no evidence that Applicant has taken any kind of counseling to better manage her finances I do not find that AG ¶ 20(c) is applicable. While some debts were paid or reduced a significant amount of delinquent debt remains unresolved. Therefore, AG ¶ 20(d) is also not applicable. Finally, I do not find any other mitigating condition applies to this case, since no evidence was introduced to establish that Applicant's current financial status is stable and that she is able to resolve her past debts or stay current with her recent debts. 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 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
Subparagraph 1.a.:	For Applicant
Subparagraphs 1.b. - 1.g.:	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