



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



In the matter of:

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) ISCR Case No. 15-03072¹
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Applicant for Security Clearance

Appearances

For Government: Benjamin R. Dorsey, Esquire, Department Counsel
For Applicant: *Pro se*

March 8, 2017

Decision

MOGUL, Martin H., Administrative Judge:

On November 4, 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 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 March 7, 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 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 April 13, 2016. Applicant submitted

¹The case number was incorrectly listed on the SOR as 15-03702.

additional evidence, which has been identified and entered into evidence without objection as Exhibit A. The case was assigned to this Administrative Judge on December 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 57 years old. She has been married since 1981, and she has two children. She graduated high school in 1977. Applicant was employed by a previous employer from 1990 to 2008, when she retired. She was then unemployed from approximately August 2008 until April 2009. Applicant has been employed as a Service Analyst since October 2013, by her present employer, 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 11 allegations (1.a. through 1.k.) regarding financial difficulties, specifically overdue debts for Federal Government tax liens, failure to file Federal and State taxes and overdue debts, under Adjudicative Guideline F. The delinquent debts in the SOR total approximately \$769,000. Credit Reports (CR) dated January 14, 2014; March 16, 2015; and October 9, 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 to the Federal Government for a tax lien entered against Applicant in 2014 is cited in the SOR for a delinquent account in the amount of \$32,092. (Item 1.) Applicant admitted this SOR allegation in her RSOR, but she wrote nothing further. (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 Federal Government for a tax lien entered against Applicant in 2010 is cited in the SOR for a delinquent account in the amount of \$92,708. (Item 1.) Applicant admitted this SOR allegation in her RSOR, but she wrote nothing further. (Item 2.) No independent evidence was introduced to establish that this debt has been resolved or reduced.

1.c. This overdue debt is cited in the SOR for a delinquent account in the amount of \$273. (Item 1.) Applicant admitted this SOR allegation in her RSOR, but she wrote nothing further. (Item 2.) No independent evidence was introduced to establish that this debt has been resolved or reduced.

1.d. This overdue debt is cited in the SOR for a delinquent medical account in the amount of \$331. (Item 1.) Applicant admitted this SOR allegation in her RSOR, but she wrote nothing further. (Item 2.) No independent 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 account in the amount of \$278. (Item 1.) Applicant admitted this SOR allegation in her RSOR, but she wrote nothing further. (Item 2.) No independent 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 account in the amount of \$5,418. (Item 1.) Applicant admitted this SOR allegation in her RSOR, but she wrote nothing further. (Item 2.) No independent 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 account in the amount of \$522. (Item 1.) Applicant admitted this SOR allegation in her RSOR, but she wrote nothing further. (Item 2.) No independent 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 mortgage account that went to foreclosure. Applicant remains indebted for any deficiency balance. (Item 1.) Applicant admitted this SOR allegation in her RSOR, but she wrote nothing further. (Item 2.) The credit reports show the amount owed on this loan for a second mortgage is \$114,964. (Item 5.) No independent evidence was introduced to establish that this debt has been resolved or reduced.

1.i. it is alleged in the SOR that Applicant failed to pay her Federal and State income taxes as required, for at least tax year 2010. (Item 1.) Applicant admitted this SOR allegation in her RSOR, but she wrote nothing further. (Item 2.) No independent evidence was introduced to establish that this debt has been resolved or reduced.

1.j. This overdue debt to the Federal Government is cited in the SOR for a delinquent account in the amount of \$113,000. (Item 1.) Applicant admitted this SOR allegation in her RSOR, but she wrote nothing further. (Item 2.)

In her Post-FORM submission, Applicant wrote that her Federal tax debt to the Federal Government was as a result of a Ponzi scheme, and the IRS had suspended collection of the delinquent tax debt pending the outcome of the case of the United States v [the alleged perpetrator of the Ponzi scheme]. She also wrote that she was a victim and witness in the case, which was filed in 2013. Finally, she asserted, "The Applicant and [her] accountant are confident that the delinquency will be eliminated once [her] case has been processed through the Internal Revenue Service System resulting in a \$0 balance to the Internal Revenue Service." (Item A.) While this case is pending, no evidence has been introduced to establish that this debt has been resolved or reduced.

1.k. This overdue debt to State A is cited in the SOR for a delinquent account in the amount of \$517,488. (Item 1.) Applicant wrote deny/partial this SOR allegation in her RSOR, but she wrote nothing further. (Item 2.)

Regarding her State A tax debt, Applicant wrote that State A lists no taxes due as of April 1, 2016, and Applicant has requested an official statement from State A Department of Taxation confirming that information. (Item A.) No statement 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.

While Applicant has submitted some evidence to suggest that her debt to the IRS may be settled in a lawsuit, that matter has yet to be resolved in the court. However, even if the debt listed as 1.j., is resolved, it is not clear if that also resolves the two liens to the IRS, listed as 1.a., and 1.b., above. Also, as the record reflects, there are several additional debts listed on the SOR, for which no evidence has been introduced to establish that they have been resolved or reduced.

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.” While part of Applicant’s financial difficulties may have occurred because of a period of unemployment, I do not find that evidence has been introduced to establish that Applicant has acted responsibly to resolve or reduce her non IRS delinquent debts. Therefore, I do not find that this mitigating condition is applicable.

Whole-Person Concept

(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.

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 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:

Subparagraphs 1.a. - 1.k.:	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