



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



In the matter of: )  
)  
) ADP Case No. 15-03605  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Chris Morin, Esquire, Department Counsel  
For Applicant: *Pro se*

May 22, 2017

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On November 13, 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 DoD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); 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 DoD for SORs issued after September 1, 2006.

Applicant furnished an undated reply 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 April 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 five documentary exhibits. (Items 1-5.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on May 29, 2016. Applicant did not submit any additional evidence. The case was assigned to this Administrative Judge on

January 26, 2017. Based upon a review of the pleadings and exhibits, eligibility for access to a sensitive position is denied.

## **Findings of Fact**

### **Findings of Fact**

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the FORM, and the exhibits, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 47 years old. She is married and she has no children. Applicant seeks access to sensitive information in connection with her current employment. (Item 3.)

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

The SOR lists 15 allegations (1.a. through 1.o.) regarding financial difficulties, specifically overdue debts totaling \$11,652. All of the allegations have been established by Items 2 through 5. Applicant admitted all of the SOR debts in her RSOR. Regarding 1.k., she wrote that she was currently making payments. No evidence has been introduced to establish that Applicant has resolved or reduced any of her delinquent debts, or that she has established any payment plan with any of the creditors.

## **Policies**

Positions designated as ADP I/II/III are classified as "sensitive positions." (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to the DoD and DOHA by the Defense Security Service and Office of Personnel Management. DoD contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AGs. 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 AG ¶ 2(a), describing the adjudicative process. The administrative judge's overarching 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] 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 the applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who applies for access to sensitive information seeks to enter 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 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.

### **Analysis**

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

The 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 [or sensitive] 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 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 over several years, which has not been satisfied.

AG ¶ 20 provides conditions that could mitigate concerns from financial difficulties. Since no independent evidence has been submitted to show Applicant has resolved or reduced any of her significant delinquent debt, I cannot find that she has acted responsibly, and thus I cannot find that any mitigating condition is a factor for consideration in this case.

Until Applicant is able to significantly resolve or reduce her overdue debts, 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 sensitive position by considering the totality of the applicant's conduct and all relevant 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 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. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a sensitive position. For all these reasons, I conclude Applicant failed to mitigate the Financial Consideration concerns.

### **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 through 1.o.:              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