



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



In the matter of: )  
)  
) ADP Case No. 15-06570  
)  
)  
Applicant for Public Trust Position )

**Appearances**

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

October 6, 2017

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**Decision**

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MOGUL, Martin H., Administrative Judge:

**Statement of the Case**

On March 2, 2016, in accordance with Department of Defense (DoD) Directive 5220.6, as amended (Directive), the DoD issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F.<sup>1</sup> (Item 1.) The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's access to sensitive persona information.

On April 26, 2016, Applicant submitted a written reply to the SOR with two credit report attachments (RSOR A and B), and she requested that her case be decided on the written record in lieu of a hearing. (Item 3.) On June 10, 2017, Department Counsel issued the Department's written case. A complete copy of the file of relevant material

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<sup>1</sup> I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

(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 July 24, 2016. Applicant submitted no additional documents. The case was assigned to this Administrative Judge on May 10, 2017. Based upon a review of the pleadings and exhibits, eligibility for access to a sensitive position is denied.

### **Findings of Fact**

After a thorough and careful review of the pleadings, and exhibits, I make the following findings of fact.

Applicant is 49 years old. She is currently separated from her spouse, and she has three children. Applicant received an Associate's degree in 1996. Applicant seeks access to sensitive information in connection with her current employment. (Items 2,3.)

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

The SOR lists eight allegations (1.a. through 1.h.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. All of the SOR allegations will be discussed below in the order they were listed on the SOR:

1.a. This overdue debt is cited in the SOR for a judgment filed against her in June 2009, in the amount of \$5,660. Applicant admitted this debt in her RSOR, but she wrote that the debt was based on a vehicle that she had purchased, which needed several repairs during the six months she made payments on the car. When she fell behind on payments for the seventh month the car was repossessed, and she was advised that the vehicle was resold. (Item 2.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.b. This overdue debt is cited in the SOR for a judgment filed against her in April 2008, in the amount of \$1,177. Applicant denied debt in her RSOR, since it was not listed on her credit report. (Item 2.) This debt was established by a credit report, dated March 10, 2015. (Item 4.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.c. This overdue debt is cited in the SOR for a judgment filed against her in January 2009, in the amount of \$434. Applicant denied debt in her RSOR, since it was not listed on her credit report. (Item 2.) This debt was established by a credit report, dated March 10, 2015. (Item 4.) No independent evidence has been 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 \$574. Applicant denied debt in her RSOR, since it was not listed on her credit report. (Item 2.) This debt was established by a credit report, dated March 10, 2015. (Item 4.) No independent evidence has been 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 \$1,093. Applicant admitted this debt in her RSOR, and she wrote that this debt was for a vehicle she purchased in 2013. She did make payments through December 2014, even after she became unemployed, but ultimately she could not continue to make payments and the car was repossessed. (Item 2.) No independent evidence has been 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 \$700. Applicant denied this debt in her RSOR, and she wrote that she does not believe she owes this debt, which was for a storage units, for which she failed to make the required payments. The unit's contents were sold, and she believed that should have paid off her debt. (Item 2.) No independent evidence has been 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 \$1,025. Applicant denied this debt in her RSOR, since it was not listed on her credit report. (Item 2.) This debt was established by a credit report, dated March 10, 2015. (Item 4.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.h. This overdue debt is cited in the SOR for a delinquent account in the amount of \$294. Applicant wrote in her RSOR, that she was unaware of this debt, and she planned to contact the creditor shortly to pay at least \$10 a month until she could pay off the debt. (Item 2.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

Applicant wrote in her RSOR that her financial problems began in approximately 2007, when she and her partner of eight years separated, and she was left to support her three young children and pay all of their household expenses on her single income. She also had additional family health and death related expenses over the years which continued to 2015, when she was hired in her current position.

The evidence has established that Applicant currently owes more than \$10,000 in delinquent debts. Applicant did not submit a Personal Financial Statement or provide any other information or evidence about her current financial status. She also has failed to submit any positive character letters or any other documents in mitigation.

### **Policies**

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.

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 national security eligibility 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 security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure 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. Financial distress can also be

caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

Applicant had many delinquent debts for several years. No independent evidence has been introduced to establish that any of her SOR delinquent debts have been reduced or resolved. Also there has been no evidence introduced to establish that Applicant will be able to be more responsible in resolving her debts in the future.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The evidence is sufficient to raise disqualifying conditions (a) and (c) as potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators;
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required;
- (g) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that are inconsistent with known legal sources of income;
- (h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and
- (i) concealing gambling losses, family conflict, or other problems caused by gambling.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

(f) the affluence resulted from a legal source of income; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

No independent evidence has been submitted to show Applicant has resolved or reduced any of her delinquent debt. Also, no evidence has been introduced to establish that Applicant is current with all her recent debt, or will be able to live within her means in the future. Until Applicant is able to significantly resolve or reduce her overdue debts, I find that Applicant has not mitigated the Financial Consideration concerns under AG ¶ 20, 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	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