



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



In the matter of:

ISCR Case No. 15-05277

Applicant for Security Clearance

Appearances

For Government: Pamela C. Benson, Esq., Department Counsel

For Applicant: *Pro se*

August 20, 2018

Decision

MOGUL, Martin H., Administrative Judge:

Statement of the Case

On March 10, 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 Guidelines F and E.¹ (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 national security eligibility.

On June 21, 2016, and July 25, 2016, Applicant submitted written replies to the SOR, and requested the case be decided on the written record in lieu of a hearing. (Item 1.) On November 15, 2016, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to

¹ 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.

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 December 22, 2016. Applicant submitted no additional documents. The case was assigned to this Administrative Judge on October 21, 2017. Based upon a review of the pleadings and exhibits, eligibility for access to classified information 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 32 years old. She is unmarried, and she has no children. She received a Bachelor's degree in 2009. Applicant is employed as an Analyst by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector. (Item 2.)

Guideline F, Financial Considerations

The SOR lists 21 allegations (1.a. through 1.u.) regarding financial difficulties, specifically concerning delinquent debts, under Adjudicative Guideline F. The debts total approximately \$74,000. All of the debts were established by Items 3 and 4.

1.a. This overdue debt is cited in the SOR for a delinquent account in the amount of \$536. Applicant admitted this debt in her RSOR, and she wrote that she is currently on a payment plan with this account. (Item 1.) 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 delinquent account in the amount of \$384 Applicant admitted this debt in her RSOR. She wrote that this account has been paid off, and she will submit a bank account receipt upon request. (Item 1.) 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 delinquent account in the amount of \$424, with a balance of \$4,524. Applicant admitted this debt in her RSOR, and she wrote that she is currently on a payment plan with this account. (Item 1.) 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 student loan account in the amount of \$1,001, with a balance of \$22,629. Applicant admitted this debt in her RSOR. She wrote that a forbearance was processed on this student loan to cover payments, and she is currently on an approved payments plan. Attached to her RSOR was a letter from this creditor which establishes that she received a forbearance for the debts to this creditor, and that a payment plan was in place for Applicant to pay monthly payments of \$184 and \$199, each for 120 months, to resolve these debts. (Item 1.) No

independent evidence has been introduced to establish that this debt has been resolved or reduced or that any payments were made. All of the subsequent debts listed below as 1.e. through 1.m., were to the same creditor as 1.d., for Applicant's student loans and the same payment plan applies to each one.

1.e. This overdue debt is cited in the SOR for a delinquent student loan account in the amount of \$1,162, with a balance of \$24,704. Applicant admitted this debt in her RSOR. She wrote that a forbearance was processed on this student loan to cover payments, and she is currently on an approved payments plan. (Item 1.) See 1.d., above. No independent evidence has been introduced to establish that this debt has been resolved or reduced or that any payments were made.

1.f. This overdue debt is cited in the SOR for a delinquent student loan account in the amount of \$508, with a balance of \$10,243. Applicant admitted this debt in her RSOR. She wrote that a forbearance was processed on this student loan to cover payments, and she is currently on an approved payments plan. (Item 1.) See 1.d., above. No independent evidence has been introduced to establish that this debt has been resolved or reduced or that any payments were made.

1.g. This overdue debt is cited in the SOR for a delinquent student loan account in the amount of \$719, with a balance of \$15,296. Applicant admitted this debt in her RSOR. She wrote that a forbearance was processed on this student loan to cover payments, and she is currently on an approved payments plan. (Item 1.) See 1.d., above. No independent evidence has been introduced to establish that this debt has been resolved or reduced or that any payments were made.

1.h. This overdue debt is cited in the SOR for a delinquent student loan account in the amount of \$416, with a balance of \$8,860. Applicant admitted this debt in her RSOR. She wrote that a forbearance was processed on this student loan to cover payments, and she is currently on an approved payments plan. (Item 1.) See 1.d., above. No independent evidence has been introduced to establish that this debt has been resolved or reduced or that any payments were made.

1.i. This overdue debt is cited in the SOR for a delinquent student loan account in the amount of \$138, with a balance of \$2,935. Applicant admitted this debt in her RSOR. She wrote that a forbearance was processed on this student loan to cover payments, and she is currently on an approved payments plan. (Item 1.) See 1.d., above. No independent evidence has been introduced to establish that this debt has been resolved or reduced or that any payments were made.

1.j. This overdue debt is cited in the SOR for a delinquent student loan account in the amount of \$373, with a balance of \$7,732. Applicant admitted this debt in her RSOR. She wrote that a forbearance was processed on this student loan to cover payments, and she is currently on an approved payments plan. (Item 1.) See 1.d., above. No independent evidence has been introduced to establish that this debt has been resolved or reduced or that any payments were made.

1.k. This overdue debt is cited in the SOR for a delinquent student loan account in the amount of \$149, with a balance of \$3,101. Applicant admitted this debt in her RSOR. She wrote that a forbearance was processed on this student loan to cover payments, and she is currently on an approved payments plan. (Item 1.) See 1.d., above. No independent evidence has been introduced to establish that this debt has been resolved or reduced or that any payments were made.

1.l. This overdue debt is cited in the SOR for a delinquent student loan account in the amount of \$292, with a balance of \$6,266. Applicant admitted this debt in her RSOR. She wrote that a forbearance was processed on this student loan to cover payments, and she is currently on an approved payments plan. (Item 1.) See 1.d., above. No independent evidence has been introduced to establish that this debt has been resolved or reduced or that any payments were made.

1.m. This overdue debt is cited in the SOR for a delinquent student loan account in the amount of \$146, with a balance of \$3,133. Applicant admitted this debt in her RSOR. She wrote that a forbearance was processed on this student loan to cover payments, and she is currently on an approved payments plan. (Item 1.) See 1.d., above. No independent evidence has been introduced to establish that this debt has been resolved or reduced or that any payments were made.

1.n. This overdue debt is cited in the SOR for a delinquent student loan account in the amount of \$9,378. Applicant admitted this debt in her RSOR. She wrote that a forbearance was processed on this student loan to cover payments, and she is currently on an approved payments plan. Attached to her RSOR was a letter from this creditor which establishes that she received three disbursements from this creditor in 2004, 2005, and 2006, and the creditor has set up new payment plans for her to pay these three debts over the course of 119 months. (Item 1.) No independent evidence has been introduced to establish that this debt has been resolved or reduced or that any payments were made.

1.o. This overdue debt is cited in the SOR for a delinquent student loan account in the amount of \$36,403. Applicant admitted this debt in her RSOR. She wrote that a forbearance was processed on this student loan to cover payments, and she is currently on an approved payments plan. This is the same creditor as 1.n., above and the same payment plan applies. (Item 1.) No independent evidence has been introduced to establish that this debt has been resolved or reduced or that any payments were made.

1.p. This overdue debt is cited in the SOR for a delinquent student loan account in the amount of \$150, with a balance of \$46,795. Applicant admitted this debt in her RSOR, and she wrote that she is currently on a payment plan with this account. (Item 1.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.q. This overdue debt is cited in the SOR for a delinquent student loan account in the amount of \$488, with a balance of \$43,735. Applicant admitted this debt in her RSOR, and she wrote that she is currently on a payment plan with this account. (Item

1.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.r. This overdue debt is cited in the SOR for a delinquent student loan account in the amount of \$20,970. Applicant admitted this debt in her RSOR. She wrote that this account was sold to another entity and she is currently negotiating payment arrangements. (Item 1.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.s. This overdue debt is cited in the SOR for a delinquent account in the amount of \$490, with a balance of \$4,836. Applicant admitted this debt in her RSOR, and she wrote that she is on a payment plan with this account. (Item 1.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.t. This overdue debt is cited in the SOR for a delinquent account in the amount of \$154. Applicant admitted this debt in her RSOR. She wrote that this account has been paid off, and she will submit a bank account receipt upon request. (Item 1.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1u. This overdue debt is cited in the SOR for a delinquent account in the amount of \$39. Applicant denied this debt in her RSOR. She wrote that she was not aware of this account, and that she has not lived at the place from which this debt originated for almost 10 years. (Item 1.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

Applicant did not provide any reasons for her delinquent debts on her RSOR. (Item 1.) Also, as reviewed above, no Post-FORM documents were submitted as to the status of her overdue debts. Finally, no evidence was offered to show that Applicant will be able to responsibly stay current with all of her more recent debts.

Guideline E, Personal Conduct

The SOR lists one allegation (2.a.) regarding Personal Conduct, under Adjudicative Guideline E.

2.a. The SOR alleges that Applicant deliberately falsified facts on an Electronic Questionnaires for Investigations Processing (e-QIP) that she executed on February 19, 2015. (Item 2.) She was asked questions about her finances, including: In the last seven years, had she had a judgment entered against her; had she defaulted on any type of loan; had any of her bills been turned over to a collection agency; had any account been suspended, charged off or cancelled for failing to pay as agreed, had she been over 120 days delinquent on any debt; and, was she currently over 120 delinquent on any debt? Applicant answered "No," to all of these questions, and she failed to disclose her defaulted or delinquent student loan accounts, collection debts, and charged off debts as set forth under paragraph 1, above. (Item 2.)

Department Counsel wrote on the FORM that Applicant denied allegation 2.a. However, on my copy of the RSOR, Applicant failed in her RSOR to address her failure to respond truthfully to the e-QIP. Clearly, at the time that Applicant completed her e-QIP, she had charged-off student loans and delinquent debts with other collection agencies, as established in paragraph 1, above. There is no reasonable explanation for her failure to cite any of her overdue and delinquent debts.

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 to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility will be resolved in favor of the 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.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified 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 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 (EO) 10865 provides that adverse 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The evidence has established that Applicant has had many delinquent debts for several years. No independent evidence was introduced to prove that any of these debts have been resolved. 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.

The credit report, dated February 12, 2016, establishes that Applicant's 10 student loans with a loan servicing company were delinquent, her two student loans to another creditor were charged-off, her account with a credit company was charged off, she was delinquent on a credit card, and she had a collection account with one her places of residence. Finally it was established that her other student loans were still delinquent. (Item 4.) Therefore, I do not find that any of the mitigating factors under AG ¶ 20 are applicable in this case, and I find against Applicant under Guideline F.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. An Applicant may not be aware of every delinquent debt she has, but Applicant failed to cite any of the debts listed on the SOR under Guideline F, and she provided no reasonable explanation for her failure to furnish honest answers. I find that the evidence is sufficient to raise disqualifying condition (a) in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

- (2) any disruptive, violent, or other inappropriate behavior;

- (3) a pattern of dishonesty or rule violations; and

- (4) evidence of significant misuse of Government or other employer's time or resources;

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

- (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing;

- (2) while in another country, engaging in any activity that is illegal in that country; and

- (3) while in another country, engaging in any activity that, while legal there, is illegal in the United States;

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and

(g) association with persons involved in criminal activity.

Applicant did not furnish the Government with any information about her delinquent debts on her e-QIP. Nor did she provide an explanation for her failure to include information to the Government about her significant past-due and delinquent debts. AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 listed below, but did not find that any of them are applicable in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies or omits material facts, it is extremely difficult to conclude that she nevertheless possesses the judgment, and honesty necessary for an individual given a clearance. Therefore, I find against Applicant under Guideline E.

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 Guidelines F and E 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 and Personal Conduct 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 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
Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	Against Applicant
Subparagraph 1.l.:	Against Applicant
Subparagraph 1.m.:	Against Applicant
Subparagraph 1.n.:	Against Applicant
Subparagraph 1.o.:	Against Applicant
Subparagraph 1.p.:	Against Applicant
Subparagraph 1.q.:	Against Applicant
Subparagraph 1.r.:	Against Applicant
Subparagraph 1.s.:	Against Applicant

Subparagraph 1.t.:
Subparagraph 1.u.:

Against Applicant
Against Applicant

Paragraph 2, Guideline E:

AGAINST APPLICANT

Subparagraph 2.a.:

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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge