



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



In the matter of:

ISCR Case No. 17-02470

Applicant for Security Clearance

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel

For Applicant: *Pro se*

July 20, 2018

**Decision**

MOGUL, Martin H., Administrative Judge:

**Statement of the Case**

On August 4, 2017, in accordance with Department of Defense (DoD) Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. 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.

Applicant replied to the SOR on September 26, 2017, and requested a hearing before an administrative judge. (RSOR.) The case was assigned to this administrative judge on November 15, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on November 27, 2017, setting the hearing for December 14, 2017. The hearing was convened as scheduled.

At the hearing, the Government offered Exhibits 1 through 6, which were admitted without objection. Applicant testified on her own behalf and presented no documentary evidence. The record was left open to January 2, 2018, to allow Applicant's to submit additional evidence. Several documents have been submitted and entered into evidence collectively and without objection as Exhibit A. DOHA received the transcript of the hearing (TR) on December 28, 2017. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is denied.

### **Findings of Fact**

After a complete and thorough review of the evidence in the record, as described above, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 58 years old. She has never been married, and she has two adult children. Applicant graduated high school and attended about three years of college. Applicant has been employed by a defense contractor for 12 years as an Administrative Specialist, and she seeks a DoD security clearance in connection with her employment in the defense sector. (Tr at 5, 22-24.)

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

The SOR lists 10 allegations (1.a. through 1.j.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. All of the SOR allegations were established by Applicant's credit reports, (Exhibits 3 through 6), and/or Applicant's admissions in her RSOR. The debts 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 delinquent account in the amount of \$1,667. Applicant admitted this debt in her RSOR. She wrote that a payment arrangement for this debt was made where she would pay \$418.03 for 12 months starting on October 2017, for a total to be paid of \$5,016.41.

At the hearing, Applicant tried to explain that this debt was for one of her cars that was repossessed. Exhibit 5 shows the amount of \$1,667 is overdue to this creditor, but it is not clear what actual amount is owed. Applicant admitted that she has not made any payment toward this debt. (Tr at 24-32.) No independent evidence has been submitted 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 \$11,237. Applicant admitted this debt in her RSOR. She wrote that she will make 3 monthly payments of \$50 and then \$180 thereafter.

At the hearing, Applicant admitted that she has not made any payment toward this debt. (Tr at 32-33.) No independent evidence has been submitted 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 \$10,971. Applicant admitted this debt in her RSOR. She wrote that payment arrangements of \$100 a month have been made.

At the hearing, Applicant testified that she had offered to pay \$100 a month, which the creditor did not accept, and she has not made any payments toward this debt. (Tr at 33-35.) No independent evidence has been submitted to establish that this debt has been resolved or reduced.

1.d. This overdue debt is cited in the SOR for a delinquent account in the amount of \$1,487. Applicant admitted this debt in her RSOR. She wrote that she made payment arrangements of \$25 a month, beginning in September, 2017.

At the hearing, Applicant testified that she thought \$25 a month had been withdrawn from her bank account by the creditor for this debt, but she had no evidence to establish that any money was withdrawn. (Tr at 35-36.) No independent evidence has been submitted 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 \$620. Applicant admitted this debt in her RSOR. She wrote that payment arrangements of \$155.05 a month have been made for four months to begin in October 2017.

At the hearing, Applicant testified that she has not made any payments toward this debt. (Tr at 36-37.) No independent evidence has been submitted 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 \$537. Applicant admitted this debt in her RSOR. She wrote that a payment arrangement of \$363.75 has been made, and she will pay it once she locates the telephone equipment.

At the hearing, Applicant testified that she has not located the equipment or made any payments toward this debt. (Tr at 37-39.) No independent evidence has been submitted 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 \$422. Applicant admitted this debt in her RSOR. She wrote that a payment arrangement has been made, and when it is complete she will receive a payoff letter.

At the hearing, Applicant testified that she has made two payments of \$25 each. (Tr at 39-40.) No independent evidence has been submitted 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 \$331. Applicant admitted this debt in her RSOR. She wrote that a payment

arrangement has been made, and she will pay \$200 on September 29, 2017. When the payment is made she will receive a payoff letter.

At the hearing, Applicant testified that she has made a payment of \$200 toward this debt. (Tr at 40-41.) Post-hearing Exhibit A included a letter from the creditor of this debt establishing that this debt was paid in full. I find that that this debt has been resolved.

1.i. This overdue debt is cited in the SOR for a delinquent account in the amount of \$229. Applicant admitted this debt in her RSOR. She wrote that a payment arrangement has been made, and she will pay \$95.50 in October and \$95.50 in November.

At the hearing, Applicant testified that she has made not made any payment toward this debt, because she is not sure the debt is hers. When she was asked if it might have been one of her children, she said she had not asked either of them. (Tr at 41-43.) No independent evidence has been submitted to establish that this debt has been resolved or reduced.

1.j. This overdue debt is cited in the SOR for a delinquent account in the amount of \$1,696. Applicant admitted this debt in her RSOR. She wrote that this debt had been paid in full in the amount of \$2,193, and a paid letter was attached to her RSOR.

At the hearing, Applicant testified that she had paid this debt. (Tr at 43-44.) Post-hearing Exhibit A included a letter from the creditor of this debt establishing that this debt was paid in full. I find that that this debt has been resolved.

Applicant explained that her delinquent debts arose in part because she helped her daughter when her daughter's husband left her, and also when her daughter was diagnosed with cancer. She also had insufficient funds to pay for the automobiles that she purchased, which caused several of them to be repossessed. (Tr at 50-51.)

Applicant did submit a Post-hearing document showing that she has now engaged the services of a law firm to try to help her resolve her debts. (Post-hearing Exhibit A.) Applicant did not furnish any reason for why she waited for so many year after the debts became delinquent before she engaged the services of someone to help her resolve her 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 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:

- (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.

Applicant has had several delinquent debts for many years, which have not been resolved. The evidence is sufficient to raise disqualifying conditions (a) and (c) in this case.

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.

Applicant attributed her delinquencies in part to her daughter's illness and the dissolution of her daughter's marriage. These are circumstances beyond her control. However, I do not find that she has established that she acted reasonably or responsibly with respect to her debts. At this time the evidence has established that only two of the SOR delinquent debts have been resolved. Therefore, I do not find she has demonstrated that she addressed her debts in a responsible or timely manner. Mitigation under AG ¶ 20(b) has not been established. Also, since only two debts have been resolved or reduced, I do not find that any of the other mitigating conditions apply in this case. Guideline F is 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 or continue national security eligibility 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 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:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For 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. National Security eligibility for access to classified information is denied.

Martin H. Mogul  
Administrative Judge