



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



In the matter of:

ISCR Case No. 17-02778

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 29, 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, with an enclosure, and requested a hearing before an administrative judge. (RSOR.) The case was assigned to me 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 on that date.

At the hearing it was discussed that Applicant had proceeded with a security clearance hearing in 2012 for the same Guideline F concerns, and the Department Counsel and the Administrative Judge were also the same as for the current hearing. A decision was issued from that hearing on August 22, 2013. Applicant was given the opportunity to request a different Department Counsel and Administrative Judge, but she stated that she did not have an objection to proceeding with the current Department Counsel and Administrative Judge. (Tr at 7-10.) Exhibit 11 is a copy of that decision, showing that Applicant was granted a security clearance after that hearing.

At the hearing, the Government offered Exhibits 1 through 12 which were admitted without objection. Applicant testified on her own behalf and presented one document, which was identified and entered into evidence without objection as Exhibit A. One additional witness testified on behalf of Applicant. 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 and the other witness, 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 39 years old. She is divorced, but she was married from 2005 to 2009. She has three children. Applicant earned two Master's degree, one in Information Systems in 2006 and the other in Business Administration in 2004. Applicant has been employed by a defense contractor as a Program Planning and Scheduling Analyst for five years, and she seeks a DoD security clearance in connection with her employment in the defense sector. (Tr at 6-7, 23-25.)

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

The SOR lists five allegations (1.a. through 1.e.) regarding financial difficulties, specifically delinquent and overdue debts, under Adjudicative Guideline F. 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 \$15,389. In her RSOR Applicant admitted this allegation and wrote that she had been trying to verify the correct amount owed, but she received a letter from the creditor indicating that they will cease all communication.

At the hearing, Applicant testified that this debt was for a car that she traded in for another car, but she had not resolved this debt. (Tr at 25-31, 45-50.) Exhibit 9 establishes that this debt is still delinquent.

1.b. This overdue debt is cited in the SOR for a delinquent account in the amount of \$696. In her RSOR Applicant admitted this allegation and wrote that she is currently paying the collection agency for this debt.

At the hearing, Applicant testified that she has made two monthly payments of \$36 to reduce this debt. This debt was for a credit card, and she had stopped making payments. While she is now starting to resolve this debt, it is only after the SOR had been issued, long after the debt became delinquent in 2016. (Tr at 31-33, 50-53.)

1.c. This overdue debt is cited in the SOR for a delinquent account in the amount of \$333. In her RSOR Applicant admitted this allegation. She wrote that she had an account with this creditor, but it was being reported incorrectly on her credit report, and it had been deleted from her report as of March 29, 2017.

At the hearing, Applicant testified that she disputed this debt as she believed she had paid this debt to an electrical company before she moved. (Tr at 33-34.) No independent evidence was submitted to establish that this debt has been resolved.

1.d. This overdue debt is cited in the SOR for a delinquent account in the amount of \$26,109, with a total balance of \$126,454. In her RSOR Applicant admitted this allegation and wrote that the house upon which this debt was based was sold on May 30, 2017.

At the hearing, Applicant testified that this debt was for a mortgage for a house she owned. She was renting the house, but when her renters moved out, she sold it in a short-sale for \$79,000. She stated that she received a letter from the creditor showing that she no longer owed anything for this house. (Tr at 34-40.) Exhibit A is a letter from the creditor of this debt, which states that Applicant owes \$0 toward this loan. I find that this debt has been resolved. Applicant was not aware if she would be receiving a Form 1099C, which would treat the amount of approximately \$46,000, the difference between what she owed and the amount for which she was able to sell the house, as income, and upon which she would have to pay income tax. She stated that if she received the form, it would be very difficult for her to pay the tax required. (Tr at .66-67.)

1.e. This overdue debt is cited in the SOR for a delinquent judgment in the amount of \$516. In her RSOR Applicant denied this allegation. She wrote that she has been disputing this debt, as it was being reported inconsistently, and it has been deleted from two of the collection reporting agencies.

At the hearing, Applicant testified that she was not aware of the origin of this debt, although she was treated by this medical facility, and despite her writing to the collection agency, she has received no verification establishing that she owes this debt. Applicant did concede that she never contacted the original health care provider to question what the basis of this debt was. (Tr at 40-44, 54-55.) I find that this debt is still delinquent.

Applicant testified that she currently lives in a townhouse that she rents for \$2,300 a month and she is current with her rent. She stated that she has no savings at this time, although she does have some savings in her companies' 401k. (Tr at 44-45.)

Applicant explained that her financial difficulties occurred in part because she was paying for her daughter's college education. She stated that she has a budget, but she cannot always keep her spending within the budget. Applicant stated that she has received a book from a credit counsellor but at the time of the hearing, she had not yet taken the counselor's class because she believed it was too expensive. (Tr at 60-67.)

## **Mitigation**

As stated above, one witness testified on behalf of Applicant, Applicant's aunt. She only sees Applicant on special occasions. She testified that Applicant is very conscientious and committed to her job, and that she is a very responsible mother to her three children. (Tr at 74-81.)

## **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 a number delinquent debts for several years. The evidence is sufficient to raise disqualifying conditions (a) and (c) in this case. The concern is also magnified as Applicant went through the security clearance process in 2012 and 2013 for the same Guideline F issues, and she has not been able to resolve her financial issues, and continues to have delinquent debts.

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 has not been able to provide documentation to establish that the SOR delinquent debts are either resolved, are being resolved, or are in legitimate dispute, with the exception of SOR 1.d. I also have considered that her financial difficulties resulted in a previous security clearance hearing in 2012, and yet the problems remain. Therefore, I do not find that any mitigation under AG ¶ 20 has been established. 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 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 failed to mitigate 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:	For Applicant
Subparagraph 1.e:	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 a security clearance. National security eligibility for access to classified information is denied.

Martin H. Mogul  
Administrative Judge