



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ADP Case No. 07-09002  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Stephanie C. Hess, Esquire, Department Counsel  
For Applicant: *Pro Se*

July 6, 2009

**Decision**

MOGUL, Martin H., Administrative Judge:

Applicant submitted her Questionnaire for Public Trust Positions (SF 85P) (Item 4), on October 6, 2004. On March 21, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) (Item 1) detailing the trustworthiness concerns under Guidelines F, J, and E for Applicant. The action was taken under Executive Order 10865, Safeguarding Classified Information within Industry (February 20, 1960), as amended; Department of Defense Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant filed an undated response to the SOR (RSOR) in writing (Item 3), in which she requested that her case be decided on the written record in lieu of a hearing.

On March 31, 2009, Department Counsel issued the Department's written case. A complete copy of the File of Relevant Material (FORM) was provided to Applicant on April 1, 2009, and in the FORM, Department Counsel offered 10 documentary exhibits (Items 1-10). There were erroneous statements in the FORM including: the Government issued an SOR on June 19, 2008, when it was actually issued on March 21, 2008, and it stated Applicant responded on March 21, 2008, when the copy of the ROSR in my file was undated. Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted no additional response. The case was assigned to this Administrative Judge on June 18, 2009.

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to sensitive information is denied.

### **Findings of Fact**

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

Applicant is 39 years old. She seeks to occupy a position, designated ADP-I/II/III to support a defense contractor.

#### **Paragraph 1 (Guideline F- Financial Considerations)**

The SOR lists 19 allegations (1.a. through 1.s.) regarding financial difficulties under Adjudicative Guideline F. Applicant admitted 12 of these allegations.

All of the allegations will be discussed in the same order as they were listed in the SOR:

1.a. This overdue debt is cited in the SOR in the amount of \$1,024. In Applicant's RSOR (Item 3), Applicant denied this allegation, stating that she paid this debt, but no evidence has been introduced to establish that any of this debt has been paid or resolved.

1.b. This overdue debt is cited in the SOR in the amount of \$141. In her RSOR, Applicant claims that this debt is "part of my bankruptcy," but no evidence was introduced to establish that a bankruptcy has been filed or that her debts have been discharged in bankruptcy.

1.c. This overdue debt is cited in the SOR in the amount of \$50. In her RSOR, Applicant claims that she "never received a bill about this debt," but no evidence has been introduced to establish that she has disputed this debt or any of this debt has been paid or resolved.

1.d. This overdue debt is cited in the SOR in the amount of \$126. In her RSOR, Applicant claims that this debt is "part of my bankruptcy," but no evidence was

introduced to establish that a bankruptcy has been filed or that her debts have been discharged in bankruptcy.

1.e. This overdue debt is cited in the SOR in the amount of \$74. In her RSOR, Applicant claims that this debt was not familiar to her, but no evidence has been introduced to establish that she has disputed this debt or any of this debt has been paid or resolved.

1.f. This overdue debt is cited in the SOR in the amount of \$71. In her RSOR, Applicant claims that she was not aware of this debt, but no evidence has been introduced to establish that she has disputed this debt or any of this debt has been paid or resolved.

1.g. This overdue debt is cited in the SOR in the amount of \$6,334. In her RSOR, Applicant claims that this debt is “part of my bankruptcy,” but no evidence was introduced to establish that a bankruptcy has been filed or that her debts have been discharged in bankruptcy.

1.h. This overdue debt is cited in the SOR in the amount of \$50. In her RSOR, Applicant claims that she “never received a bill about this debt.” but no evidence has been introduced to establish that she has disputed this debt or any of this debt has been paid or resolved.

1.i. This overdue debt is cited in the SOR in the amount of \$859. In her RSOR, Applicant claims that she “never received a bill about this debt”, but no evidence has been introduced to establish that she has disputed this debt or any of this debt has been paid or resolved.

1.j. This overdue debt is cited in the SOR in the amount of \$851 for a judgement entered against her. In her RSOR, Applicant claims that this debt is “part of my bankruptcy”, but no evidence was introduced to establish that a bankruptcy has been filed or that her debts have been discharged in bankruptcy.

1.k. This overdue debt is cited in the SOR in the amount of \$435. In her RSOR, Applicant claims that this debt is “part of my bankruptcy,” but no evidence was introduced to establish that a bankruptcy has been filed or that her debts have been discharged in bankruptcy.

1.l. This overdue debt is cited in the SOR in the amount of \$845 for a judgement entered against her. This debt is the same as 1.j., above.

1.m. This overdue debt is cited in the SOR in the amount of \$644. In her RSOR, Applicant claims that this debt is “part of my bankruptcy,” but no evidence was introduced to establish that a bankruptcy has been filed or that her debts have been discharged in bankruptcy.

1.n. This overdue debt is cited in the SOR in the amount of \$565. In her RSOR, Applicant claims that this debt is “part of my bankruptcy,” but no evidence was introduced to establish that a bankruptcy has been filed or that her debts have been discharged in bankruptcy.

1.o. This overdue debt is cited in the SOR in the amount of \$465. In her RSOR, Applicant claims that this debt is “part of my bankruptcy,” but no evidence was introduced to establish that a bankruptcy has been filed or that her debts have been discharged in bankruptcy.

1.p. This overdue debt is cited in the SOR in the amount of \$3,095. In her RSOR, Applicant claims that this debt is “part of my bankruptcy,” but no evidence was introduced to establish that a bankruptcy has been filed or that her debts have been discharged in bankruptcy.

1.q. This overdue debt is cited in the SOR in the amount of \$160. In her RSOR, Applicant claims that this debt is “part of my bankruptcy,” but no evidence was introduced to establish that a bankruptcy has been filed or that her debts have been discharged in bankruptcy.

1.r. This overdue debt is cited in the SOR in the amount of \$842. In her RSOR, Applicant claims that she cannot recall this debt, but no evidence has been introduced to establish that she has disputed this debt or any of this debt has been paid or resolved.

1.s. This allegation concerns subparagraphs 2.d. and 2.e., which will be reviewed below.

In reviewing the file, I saw no explanation for Applicant’s financial difficulties other than she is a single mother.

### **Paragraph 2 (Guideline J - Criminal Conduct)**

The SOR lists 5 allegations, regarding criminal conduct under Adjudicative Guideline J. All of the allegations will be discussed in the same order as they were listed in the SOR:

2.a. In 1994, Applicant was arrested and she ultimately plead guilty to Battery. She was sentenced to serve 2 days in jail and 36 months probation.

2.b. In 1997, Applicant was arrested and charged with (1) Battery and (2) Failure to Pay.

2.c. In 1997, Applicant was charged with (1) Battery on Person (2) Failure to Appear, and (3) Violation Probation.

2.d. In 2001, Applicant was charged with Fraud in obtaining Aid For Dependant Children (AFDC). She plead Guilty and was placed on three years probation and was ordered to pay restitution of \$8,575 and to complete 300 hours of volunteer work. In December 2002, she was charged with probation violation and a warrant was issued for her arrest. Applicant has not paid the restitution that she was ordered by the court to pay.

2.e. In 2003, Applicant was arrested and charged with (1) Fugitive of Justice, (2) Expired Registration, (3) No Proof of Insurance, and (4) No Driver's License. Applicant spent two days in jail, and was fined \$844, which she has not paid.

### **Paragraph 3 (Guideline E - Personal Conduct)**

3.a. Applicant submitted her Questionnaire for Public Trust Positions (SF 85P) (Item 4), on October 6, 2004. Question 20 asked, "Are you now over 180 days delinquent on any loan or financial obligation?" Applicant answered "No" to this question, and she listed no debts. The Government alleges that Applicant should have included the debts listed in the SOR under paragraph 1.

Clearly these debts had been delinquent for more than 180 days when Applicant completed and executed the (SF 85P), and they should have been listed in response to question 22.b. In her RSOR, Applicant acknowledged that her answer was incorrect, but claimed that she was not trying to hide anything, she just rushed through the questions (Item 4). Considering the history and extent of overdue debts, I do not find that explanation credible.

3.b. Question 16. of Item 4 asked, "in the last 7 years, have you been arrested for, charged with, or convicted of any offense(s)?" Applicant failed to list her 2003 arrest which has been reviewed in 2.e., above. In her RSOR, Applicant acknowledged that her answer was incorrect, but claimed that she was only thinking about the larger offense, which she included and has been reviewed under 2.d., above, at the time she completed Item 4.

Since this arrest happened the year before she completed the questionnaire, and she was in jail for two or three days for this incident, it is simply not believable that she would not consider this event, when completing the application.

### **Policies**

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, these guidelines are applied in conjunction with the

factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense 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 classified 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 applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters 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 10865 provides that 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 Government has established that Applicant has had a history of financial difficulties and overdue debts.

Regarding the Disqualifying Conditions (DC) under Guideline F, I conclude both DC 19. (a) and (c) apply, because of Applicant's inability or unwillingness to satisfy her debts, and her long history of not meeting her financial obligations.

I can not find that any Mitigating Condition (MC) applies, since no evidence was introduced to establish that Applicant has resolved any of her overdue debts. While she claims to plan to file for bankruptcy, there is no indication that she has done so or that her debts will be discharged if there is a bankruptcy filed. Finally, even if her debts are ultimately discharged, there is no indication that she will not have financial difficulties in the future. I, therefore, hold Guideline F against Applicant.

### **Guideline J - Criminal Conduct**

The Government has established by substantial evidence that Applicant engaged in criminal conduct, as she was arrested for, and convicted of criminal offenses from 1994 to 2003.

In reviewing the Disqualifying Conditions (DC) under Guideline J, DC 31. (a), a single serious crime or multiple lesser offenses, applies in this case. Under Mitigation Conditions (MC), I can not find that MC 32. (d) applies to this Applicant, as there is no evidence of successful rehabilitation, nor have I seen any evidence of sincere remorse. Applicant has not mitigated this allegation. Paragraph 2, Guideline J is found against Applicant.

### **Guideline E - Personal Conduct**

With respect to Guideline E, the evidence establishes that Applicant provided incorrect material information to the Government on the SF 85P that she executed on October 6, 2004. Applicant identified no debts that were over 180 days overdue in the last seven years prior to her completing the SF 85P, when clearly she should have identified the debts listed on the SOR. I find that Applicant's explanation that she rushed through the answers, as the reason for her failure to put the Government on notice that she had financial difficulties, is not sufficient or credible to consider it as mitigation.

Applicant also failed to correctly list her 2003 arrest on the SF 85P, and her explanation for this failure is also not credible.

The Government relies heavily on the honesty and integrity of individuals seeking access to sensitive information. When such an individual intentionally falsifies material facts or fails to furnish relevant information to the Government, it is extremely difficult to conclude that she nevertheless possesses the judgment, and honesty necessary for an individual given a clearance. In this case, based on Applicant's overall history, my inability to see the Applicant and judge her veracity in person, and the lack of any witness to provide testimony regarding Applicant's character, I can find no reasonable explanation for Applicant's failure to provide this very significant information to the Government on the SF 85P, and I must conclude that Applicant knowingly and willingly failed to give complete, honest information to the Government.

In reviewing the DCs under Guideline E, I conclude that DC 16. (a) applies because Applicant deliberately provided false and misleading information to the Government in her SF 85P. No Mitigating Condition applies under this Guideline. As a

result of the misinformation that Applicant knowingly provided to the Government, her long overdue debts, and her criminal conduct, I find that Applicant has exhibited questionable judgement, unreliability, and a lack of candor. I resolve Guideline E 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 the 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) 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 have considered the potentially disqualifying and mitigating conditions under Guidelines F, J, and E, in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited, including Applicant's history of financial difficulties, her failure to resolve the overdue debts, her willful omissions made to the Government, and her criminal conduct, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a sensitive position, under the whole person concept. For all these reasons, I conclude Applicant has not mitigated the trustworthiness concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through s.:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a through 2.e.:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a and 3.b.:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Martin H. Mogul  
Administrative Judge