



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 14-03228

**Appearances**

For Government: Phillip J. Katauskas, Esquire, Department Counsel

For Applicant: *Pro se*

April 27, 2016

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On January 20, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and G for Applicant. (Item 1.) 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 adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006.

On February 13, 2015, Applicant replied to the SOR (RSOR) in writing, and he requested that his case be decided on the written record in lieu of a hearing. (Item 3.) On August 17, 2015, Department Counsel issued the Department's written case. On August 17, 2015, a complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered nine documentary exhibits. (Items 1-9.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on October 18, 2015. Applicant did submit additional evidence, which has been identified and entered into evidence without objection as Exhibits A through D. The case was assigned to this

Administrative Judge on November 10, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

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

Applicant is 36 years old. He is unmarried and has one child. Applicant is a college graduate, and he served in the United States Navy from June 2002 to September 2010. Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector. (Item 4.)

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

The SOR lists 6 allegations (1.a. through 1.f.) regarding financial difficulties, specifically overdue debts totaling approximately \$27,000, under Adjudicative Guideline F. The debts will be discussed below in the same order as they were listed on the SOR:

1.a. This overdue debt is cited in the SOR for a tax lien to State A in the amount of \$1,049. In his RSOR, Applicant denied this SOR allegation, and he wrote that he had confirmed with State A that this debt was listed in error. (Item 3.) In his Post-Form documents, Applicant submitted a Lien Release Notice from State A, dated February 18, 2014, stating that this lien was recorded in error. (Item B.) I find that this debt has been resolved.

1.b. This overdue debt is cited in the SOR for a collection account in the amount of \$20,178. In his RSOR, Applicant admitted this SOR allegation, and he wrote that this debt had been from a bonus that was given to him while he was in the Navy. When he left the Navy he was required to repay the loan, which he indicated he plans to do, but he has been unable to do up to this point because the job market has not been as lucrative as he had hoped. (Item 3.) I find that this debt has not been resolved or reduced.

1.c. This overdue debt is cited in the SOR for a charged-off account in the amount of \$876. In his RSOR, Applicant admitted this SOR allegation, and he wrote that this debt arose from the purchase of a vacuum cleaner, which is now in the possession of his "ex." He has been unsuccessful in having her pay this debt, and he indicated that he will pay the debt, himself. (Item 3.) I find that this debt has not been resolved or reduced.

1.d. This overdue debt is cited in the SOR for a collection account in the amount of \$340. In his RSOR, Applicant denied this SOR allegation, and he wrote that this debt, is for a cable service, which he continues to use. (Item 3.) A full data credit report for Applicant, dated January 18, 2014, confirms that this debt in the amount of \$340 is in

collection status. (Item 6.) I find that Applicant submitted no independent evidence to dispute the fact that this debt has not been resolved or reduced.

1.e. This overdue debt is cited in the SOR for a student loan account in the amount of \$3,410. In his RSOR, Applicant admitted this SOR allegation, and he wrote that he had been under the impression that this debt had been resolved “a long time ago.” He indicated that he has been paying \$120 a month for this bill, but he did not furnish the information as to how long he has been making payments or how much he has paid thus far. (Item 3.) I find that this debt has not been resolved or reduced.

1.f. This overdue debt is cited in the SOR for a student loan account in the amount of \$1,505. In his RSOR, Applicant admitted this SOR allegation, and he furnished no further information. (Item 3.) I find that this debt has not been resolved or reduced.

Additionally, Applicant wrote in his RSOR that his plan to get out of debt consists of continuing to pay off his student loans and then to move to his Navy loan immediately after that. (Item 3.) He also wrote that he had a difficult financial transition from the Navy to civilian life. (Item C.) Applicant offered no evidence that with his current financial situation he would be able to resolve his past overdue debts or stay current with his present debts.

## **Guideline G, Alcohol Consumption**

The Government alleges that Applicant is ineligible for clearance because he has engaged in excessive alcohol consumption, which leads to the exercise of questionable judgement or the failure to control impulses. The following allegations are cited in the SOR as tending to show that:

2.a. It is alleged in the SOR that on or about February 2007, Applicant was arrested and charged with Driving Under the Influence of Alcohol (DUI). Applicant was found guilty of Reckless Driving, fined \$1,600 and his license was suspended for one year. In his RSOR, Applicant admitted this SOR allegation. (Item 3.)

2.b. It is alleged in the SOR that on or about August 2014, Applicant was arrested and charged with (1) Driving Under the Influence of Alcohol (DUI), (2) DUI Per Se, (3) Driving While Impaired by Alcohol, and (4) Unsafe Lane Change. The trial had been scheduled for February 2015. In his RSOR, Applicant admitted this SOR allegation, and wrote that he typically does not drink, but he believed that because at the time of this incident he weighed 30 pounds less than the previous time he had consumed alcohol, he did not realize that he had exceeded his alcohol limit. He also wrote, “I want to express that I truly do not drink on a normal basis and this incident will never happen again.” (Item 3.) In his post-FORM submission, Applicant wrote, “I want to express that I do not have an issue with alcohol consumption, I very rarely consume alcohol. I made a horrible mistake, I know that I should have used better judgment, and I truly am sorry.” (Item C.) No evidence was submitted as to the legal resolution of this 2014 incident.

Applicant submitted a positive character letter from a person who has known Applicant since he was two, and who served in the Navy with Applicant's parents. This person wrote that he has never known Applicant to have bad character, and that Applicant has attended and completed an alcohol awareness program (Item D.) No independent evidence was submitted to establish what, if any, kind of a program Applicant attended and whether it was court ordered.

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

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns and could potentially apply in this case. Under AG ¶ 19(a), “an inability or unwillingness to satisfy debts,” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. I find that both of these disqualifying conditions apply to Applicant in this case. The evidence has established that Applicant accumulated significant delinquent debt, much of it several years old, which has not been satisfied.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties. Under AG ¶ 20(b), it may be mitigating where, “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, or a death, divorce or separation), and the individual acted responsibly under the circumstances.” As reviewed above, Applicant explained his financial difficulties occurred, in part, because of his difficult transition from the Navy to civilian life. However, with the exception of the State A lien, listed as SOR 1.a., above, which appears to have been filed in error, no evidence was introduced to establish that Applicant has been responsible in attempting to resolve, or even reduce, any of his other overdue debt. Therefore, I find that this mitigating condition is not a factor for consideration in this case.

Since there is no evidence that Applicant has taken any kind of counseling to better manage his finances or has initiated a good-faith effort to repay overdue creditors, I do not find that either AG ¶ 20(c) or AG ¶ 20(d) is applicable. Finally, I do not find any other mitigating condition applies to this case, since no evidence was introduced to establish that Applicant’s current financial status is stable and that he is able to resolve his past debts or stay current with his recent debts. Therefore, I find Guideline F against Applicant.

## **Guideline G, Alcohol Consumption)**

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

Excessive alcohol consumption often leads to the exercise of questionable judgement or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

Applicant's alcohol consumption resulted in the criminal conduct and conviction listed in subparagraph 2.a. While his alcohol consumption also led to his arrest for DUI in 2014, evidence was not introduced as to the legal outcome of that arrest. The Government established that Applicant was involved in "alcohol-related incidents away from work," and "binge consumption of alcohol to the point of impaired judgement." Disqualifying conditions AG ¶ 22(a) and (c) apply to this case.

Because of the recency of the 2014 offense, and because of the lack of evidence about the legal outcome, I do not find that any mitigating condition under ¶ 23 applies at this time. Therefore, I find Guideline G 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) 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 the facts and circumstances surrounding this case. Based on all of the reasons cited above as to why the disqualifying conditions apply and no mitigating conditions are applicable, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the 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 Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:                      AGAINST APPLICANT

Subparagraphs 1.a.:	For Applicant
Subparagraphs 1.b. - 1.f.:	Against Applicant

Paragraph 2, Guideline G:                      AGAINST APPLICANT

Subparagraphs 2.a. - 2.b.:	Against Applicant
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### **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. Eligibility for access to classified information is denied.

Martin H. Mogul  
Administrative Judge