



**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. 15-00032

**Appearances**

For Government: Tovah Minster, Esquire, Department Counsel

For Applicant: *Pro se*

June 8, 2016

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On August 23, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and B 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 September 14, 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 2.) On October 28, 2015, Department Counsel issued the Department's written case. On October 30, 2015, a complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered four documentary exhibits. (Items 1-4.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on December 6, 2015. Applicant did not submit additional evidence. The case was assigned to this

Administrative Judge on January 7, 2016. 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 30 years old, unmarried, and he has no children. He is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

### **Guideline F - Financial Considerations**

The SOR lists 31 allegations (1.a. through 1.ee.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. Applicant admitted all of the allegations in his RSOR (Item 1.) The admitted delinquent debts totaling approximately \$18,000, are deemed to be owed by Applicant.

The Government has established all of Applicant's debts through Applicant's RSOR, and the credit report, dated July 23, 2014. (Item 4.) On his Electronic Questionnaires for Investigations Processing (e-QIP) that he signed on July 14, 2014, Applicant wrote that he planned to get a job to pay off these debts. (Item 2.) No evidence was introduced to establish that Applicant has contacted any of the creditors, made any payment plans, or resolved or reduced any of these overdue debts.

Additionally, Applicant offered no independent 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 H - Drug Involvement**

The SOR lists one allegation (1.a.) under Adjudicative Guideline H.

2.a. The SOR alleges that Applicant "used marijuana approximately one time per week from July 2000 until at least July 2014. Applicant denied this allegation in his RSOR, but furnished no additional information (Item 1.)

On his e-QIP, Applicant wrote that he had used marijuana in a recreational manner, once per week, from July 2000 to February 2014. To the question inquiring whether he planned to continue the use of marijuana in the future, Applicant answered "No."

## 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 indicated that his financial difficulties occurred, in part, because Applicant was unemployed or underemployed. However, despite Applicant's expressed intention to resolve his significant overdue debts, no evidence was introduced to establish that Applicant has contacted any of the creditors, made any payment plans, or resolved or reduced any of these overdue debts. 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 H - Drug Involvement**

The security concern relating to the guideline for Drug Involvement is set out in AG ¶ 24:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgement and because it raises questions about a person's ability or willingness to comply with laws, rules and regulations.

With respect to Guideline H, the Government has established its case, by Applicant's own admission in his e-QIP. Applicant's improper and illegal drug abuse, specifically the use of marijuana over the course of several years, from 2000 to as recently as 2014, is of great concern, especially in light of his continued desire to have access to the nation's secrets. Applicant's overall conduct pertaining to his illegal substance abuse clearly falls within Drug Involvement ¶ 25(a) "any drug abuse," and (c) "illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution."

No evidence was introduced as to Applicant's character, or his current or past employment records; nor was there any evidence in the record that would give insight as to Applicant's current reliability, trustworthiness or good judgment. Therefore, I am not convinced that Applicant's illegal drug use is not likely to recur, and so I cannot conclude that ¶ 26(a) "the behavior . . . was so infrequent" and "happened under such circumstances that it is unlikely to recur" is applicable. I also cannot find that any of the other mitigating conditions is applicable in this case.

In this case, the Government has met its initial burden of proving that Applicant has used illegal drugs under Guideline H. Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation, or mitigation, which is sufficient to overcome the Government's case against him. Accordingly, Guideline H of the SOR is concluded 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 under Guidelines F and H, 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. - 1.ee:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul  
Administrative Judge