



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 07-00616  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Rita C. O'Brien, Esquire, Department Counsel  
For Applicant: *Pro Se*

April 15, 2008

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**Decision**

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MOGUL, Martin H., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA), on September 6, 2006. On August 31, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F 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 responded to the SOR (RSOR) in writing, but unsigned and undated, and then with his signature on November 28, 2007. He requested that his case be decided on the written record in lieu of a hearing.

On December 19, 2007, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on February 6, 2008. Applicant did not submit any additional evidence. The case was assigned to this Administrative Judge on March 27, 2008.

In the FORM, Department Counsel offered nine documentary exhibits (Items 1-9). No documents were offered by Applicant. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

## **Findings of Fact**

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

In his RSOR (Items 3 and 5) Applicant admitted all of the SOR allegations under Guideline F and Guideline E. The admitted allegations are incorporated herein as 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 additional findings of fact:

Applicant is 46 years old. He works for a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

The SOR lists 6 allegations (1.a. through 1.f.) regarding financial difficulties under Adjudicative Guideline F. As reviewed above, Applicant admitted all of these allegations in his RSOR, and no evidence was introduced to modify or dispute these allegations and admissions. All of the allegations will be discussed in the same order as they were listed in the SOR:

1.a. Applicant failed to file Federal Income Tax returns for at least every tax year from 1995 through 2005. As of the time of Applicant's RSOR on November 28, 2007, Applicant had still not filed any of these tax returns. In a Personal Subject Interview, which was attached and ratified by Applicant in his response to interrogatories (Item 7), Applicant stated that he may not have filed Federal Income Tax returns for closer to 15 years, nor was he aware if he owed any Federal tax.

1.b. Applicant failed to file State Income Tax returns for at least every tax year from 1995 through 2005. As of Applicant's RSOR on November 28, 2007, Applicant had still not filed any of these State tax returns. In Item 7, Applicant also stated that he may not have filed State Income Tax returns for closer to 15 years.

No information was offered into evidence as to why Applicant failed to file his Federal Tax return for all of these years. In his SCA, Applicant indicated that he has been employed by a defense contractor from May 1984 until the present.

Additionally, Applicant refused to sign releases that would have permitted a review of his Federal or State Taxes, or records relating to any other debts (Item 7).

1.c. Applicant is indebted to the State for delinquent taxes in the amount of \$8,951. A lien was filed in June 1995. As of at least November 28, 2007, this debt has not been paid.

1.d. This overdue debt to is cited in the SOR in the amount of \$3,043 for a judgement entered against him in January 2005. As of at least November 28, 2007, this debt has not been paid.

1.e. This overdue debt is cited in the SOR in the amount of \$1,318. As of at least November 28, 2007, this debt has not been paid.

1.f. This second overdue debt is cited in the SOR in the amount of \$3,007. As of at least November 28, 2007, this debt has not been paid.

## **Paragraph 2 (Guideline E - Personal Conduct)**

2.a. Applicant executed a signed SCA on September 6, 2006 (Exhibit 6). Question 28.a. asks, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Applicant answered "No" to this question, and he listed no debts. The Government alleges that Applicant should have included the debts listed in the SOR as 1.d., 1.e., and 1.f.

2.a. Question 28.b. of the SCA asks, "Are you currently over 90 days delinquent on any debt(s)?" Applicant answered "No" to this question, and he listed no debts. The Government alleges that Applicant should have included the debts listed in the SOR as 1.d., 1.e., and 1.f.

There is no dispute that these debts were all long overdue and were still owing at the time Applicant completed the SCA, and they should have been included in the responses to 28. a. and b. In the PSI, Applicant claims that his omission of material facts on the SCA was not intentional. However, he could give no explanation for his failure to list any of the debts that he had owed for a significant period of time.

## **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 DC (c) apply, because of Applicant’s inability or unwillingness to satisfy his debts, and his long history of not meeting financial obligations. DC (g) also is applicable for Applicant’s failure to file annual Federal and State tax returns for many years as required by law.

I can not find that any Mitigating Condition (MC) applies as Applicant has failed to resolve any of his overdue debts, or even file the long overdue Federal and State tax returns. I, therefore, hold Guideline F 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 SCA that he executed on March 13, 2006. Applicant identified no debts that were over 180 days overdue in the last seven years prior to his completing the SCA, nor any current debts that were over 90 days overdue, when clearly he should have identified the debts listed on the SOR. Applicant had no explanation for his failure to put the Government on notice that he had financial difficulties.

The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts or fails to furnish relevant information to the Government, it is extremely difficult to conclude that he 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 his 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 SCA, and I must conclude that Applicant knowingly and willingly failed to give complete, honest information to the Government.

In reviewing the Disqualifying Conditions (DC) under Guideline E, I conclude that DC15. (a), failure to complete security forms or releases, applies to Applicant. This failure by Applicant results in an unfavorable clearance action.

DC16. (a) also applies because Applicant deliberately provided false and misleading information to the Government in a SCA. No Mitigating Condition applies under this Guideline. As a result of the misinformation that Applicant provided to the Government, his conduct exhibits questionable judgement, unreliability, and a lack of candor. I resolve Guideline E against Applicant.

On balance, it is concluded that the Applicant has not overcome the Government's evidence opposing his request for a security clearance. Accordingly, the evidence supports a finding against Applicant as to the allegations expressed in Paragraphs 1 and 2 of the Government's SOR.

### **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 and E, in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above, including Applicant's history of financial difficulties, his failure to resolve the overdue debts, his failure to file Federal and State tax returns for many years, and his willful omissions made to the Government, 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.

**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
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
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.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 security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul  
Administrative Judge