



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



In the matter of:	)	
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	)	ISCR Case No. 12-06923
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Pamela Benson, Esquire, Department Counsel  
For Applicant: *Pro se*

May 29, 2015

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On July 11, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F 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.

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 1.) On February 22, 2015, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered six documentary exhibits. (Items 1-6.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on April 9, 2015. Applicant submitted additional documents, which have been entered into evidence without objection as Item A. The case was assigned to this Administrative Judge on April 14, 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 44 years old. 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 nine allegations (1.a. through 1.i.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. The delinquent debts total approximately \$77,000. All of the overdue debts have been established by two credit reports, dated March 6, 2014, and February 19, 2015. (Items 4, 5.) 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 collection account in the amount of \$2,107. In his RSOR, Applicant admitted this SOR allegation. (Item 1.) While Applicant did submit a post-hearing document (Item A.), no evidence was introduced to prove that this debt has been resolved or reduced. I find that this debt is still outstanding.

1.b. This overdue debt is cited in the SOR for a medical account in the amount of \$50. In his RSOR, Applicant admitted this SOR allegation. (Item 1.) In a post FORM document, Applicant wrote that he had paid this debt, and a letter from the creditor shows that this debt was paid. (Item A.) I find that this debt has been resolved.

1.c. This overdue debt is cited in the SOR for a collection account in the amount of \$909. In his RSOR, Applicant admitted this SOR allegation. (Item 1.) No evidence was introduced to prove that this debt has been resolved or reduced. I find that this debt is still outstanding.

1.d. This overdue debt is cited in the SOR for a collection account in the amount of \$198. In his RSOR, Applicant admitted this SOR allegation. (Item 1.) No evidence was introduced to prove that this debt has been resolved or reduced. I find that this debt is still outstanding.

1.e. This overdue debt is cited in the SOR for a charged-off account in the amount of \$322. In his RSOR, Applicant admitted this SOR allegation. (Item 1.) No evidence was introduced to prove that this debt has been resolved or reduced. I find that this debt is still outstanding.

1.f. This overdue debt is cited in the SOR for a charged-off account in the amount of \$1,105. In his RSOR, Applicant admitted this SOR allegation. (Item 1.) No evidence was introduced to prove that this debt has been resolved or reduced. I find that this debt is still outstanding.

1.g. This overdue debt is cited in the SOR for a charged-off account in the amount of \$746. In his RSOR, Applicant admitted this SOR allegation. (Item 1.) No evidence was introduced to prove that this debt has been resolved or reduced. I find that this debt is still outstanding.

1.h. This overdue debt is cited in the SOR for a collection account in the amount of \$158. In his RSOR, Applicant admitted this SOR allegation. (Item 1.) In a post-FORM document, Applicant wrote that he had contacted this creditor and was informed that this account was closed, and he would not be allowed to settle the debt. (Item A.) No documentation from the creditor was submitted into evidence. I find that this debt has not been resolved and is still outstanding.

1.i. This overdue debt is cited in the SOR for a mortgage account that went to foreclosure in the amount of 72,185. In his RSOR, Applicant denied this SOR allegation, writing that he had, "signed over the house to my ex-wife during devorce [sic]. Will not pay until advised by attorney." (Item 1.)

In Applicant's Personal Subject Interview (PSI), he stated that when he and his wife were going through a divorce, he signed the ownership rights of the house, which he had purchased and owned with his wife, to her. He later learned from his ex-wife that the house had been lost in foreclosure. He indicated that he intended to seek legal advice as to what he could do to resolve this debt. (Item 7.) On his post-FORM letter, Applicant wrote that he has been unable to retain a lawyer to dispute this account. (Item A.) No evidence was introduced to prove that this debt has been resolved. I find that this debt is still outstanding.

Applicant also indicated that he would contact the creditors of the overdue debts listed on the credit reports, and attempt to resolve them. (Item 7.) Applicant also wrote on interrogatory responses, dated April 24, 2014, that he intended to make arrangements to pay off his overdue debts. (Item 6.) With the exception of SOR allegation 1.b., no evidence was introduced to show that Applicant had contacted the creditors and made any arrangements to settle said overdue debts.

Applicant described his current financial situation as poor, stating that his divorce and frequent moves have caused great financial difficulties, which kept him from paying his bills in a timely fashion. (Item 7.)

## **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 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, 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." Applicant stated that his financial problems occurred because of his divorce and frequent moves. While the divorce may come within this mitigating condition, there is no evidence as to whether his frequent moves were beyond his control. However, since the evidence has established that Applicant has only paid off one debt, and he has not contacted the other creditors or retained the services of an attorney to attempt to resolve the foreclosure, I do not find that this mitigating condition is a factor for consideration in this case.

AG ¶ 20(d) is also not applicable, since Applicant has not "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," as only one debt has been proven to be resolved. Therefore, I do not find that this mitigating condition or any other mitigating condition applies to this case.

Finally, Applicant has not submitted a Personal Financial Statement, nor was any other evidence offered about his current financial stability. Therefore, I cannot conclude that Applicant will be able to pay off his past debts or keep up to date on his current debts and expenses, especially if any new or unexpected debts are incurred. I conclude that Applicant has not mitigated the Financial Consideration concerns, which are found against him.

### **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.:	Against Applicant
Subparagraphs 1.b.:	For Applicant
Subparagraphs 1.c. - 1.i.:	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