



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



In the matter of:	)	
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	)	ISCR Case No. 13-00942
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

June 25, 2014

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On September 30, 2013, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F 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 adjudicative guidelines (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

On November 27, 2013, Applicant replied to the SOR (RSOR) in writing, and he initially requested a decision on the written record. On March 28, 2014, after understanding that he could have a hearing in a more advantageous geographical location, he requested a hearing before an Administrative Judge (AJ). The case was assigned to this AJ on April 14, 2014. DOHA issued a notice of hearing on that date, and the hearing was held as scheduled on May 1, 2014. The Government offered Exhibits 1 through 9, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through D, which were also admitted without objection. At the hearing, the record was kept open until May 15, 2014, to allow

Applicant to submit additional evidence. The documents that were timely received have been identified and entered into evidence without objection as Exhibits E through H. DOHA received the transcript of the hearing (Tr) on May 9, 2014. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, 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, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 52 years old. He has never been married, but he has one daughter. Applicant received a Master's degree in Mechanical Engineering in 1986. He has been employed by a defense contractor as an engineer since 1996, and he has been employed in the defense industry for approximately 26 years. Applicant is seeking a DoD security clearance in connection with his employment in the defense sector.

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

The SOR lists 15 allegations (1.a. through 1.o.) regarding financial difficulties, specifically overdue debts and financial problems related to gambling, under Adjudicative Guideline F. All of the SOR 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 \$315. At the hearing, Applicant testified that he resolved this debt. (Tr at 33.) Exhibit A establishes that Applicant paid this debt on October 28, 2013, to this creditor. I find that this debt has been paid in full.

1.b. the next two debts are cited in the SOR as being owed to the same creditor, WF. This overdue debt is cited in the SOR for a charged off account to WF in the amount of \$4,560. At the hearing, Applicant averred that the two debts to WF, listed as 1.b. and 1.c, plus a third debt to KB were combined in a judgement, for a total debt of approximately \$17,000. He was ordered to pay \$300 a month, which he has been doing since January 2012. (Tr at 34-41.)

On Exhibit E, Applicant wrote that he was ordered to make monthly payments of \$300 from January 25, 2012, through September 25, 2016, with a final payment of \$200. Per the settlement plan he still owes 28 more payments of \$300 and one payment of \$200, and he is behind by approximately \$1,519.64 or a little more than five payments. Currently, he still owes \$2,760.29 on this debt, but he is making payments. I find that this debt is being resolved.

1.c. This overdue debt is cited in the SOR for a charged off account to WF in the amount of \$7,359. Based on Exhibit E, reviewed above, Applicant has made payments

on 1.b., but he still owes the full amount of this debt. I find that this debt has not yet been resolved.

1.d. This overdue debt is cited in the SOR for a charged-off account in the amount of \$906. Applicant testified that he resolved this debt by making payments of \$80 and \$579. (Tr at 41-42.) Exhibit A establishes that Applicant did make the two payments. I find that this debt has been resolved.

1.e. This overdue debt is cited in the SOR for a past-due account in the amount of \$339. Applicant testified that he will be current on this debt for a loan from his credit union within a short time after he makes a payment of \$68. (Tr at 42-43.) I find that Applicant is current on this debt.

1.f. This overdue debt is cited in the SOR for a charged-off account in the amount of \$5,607. Applicant testified that he was working with an attorney to make an offer to the creditor to try to settle this debt, but the creditor would not accept the offer. He stated that he was then informed by his attorney that the case for this debt had been dismissed, although no explanation was given. (Tr at 44-49.) Exhibit 2 includes a document that shows the case by the creditor was dismissed. However, no evidence has been submitted that the debt was settled. Therefore, I do not find that this debt has been resolved.

1.g. This overdue debt is cited in the SOR for a charged-off account in the amount of \$18,837. Applicant testified that he has never been contacted by this creditor and the debt has not been paid. (Tr at 49-50.) I find that this debt has not been resolved.

1.h. This overdue debt is cited in the SOR for a collection account in the amount of \$16,590. Applicant testified that he has been contacted by this creditor, but he has been unable to set up a payment plan, and the debt has not been paid. (Tr at 50.) I find that this debt has not been resolved.

1.i. This overdue debt is cited in the SOR for a charged-off account in the amount of \$1,891. Applicant testified that he paid \$1,134.80 in November 2013, and this debt has been settled. (Tr at 51.) Exhibit A establishes that Applicant did make the payment to the creditor. I find that this debt has been resolved.

1.j. This overdue debt is cited in the SOR for a collection account in the amount of \$10,865. Applicant testified that he has been contacted by this creditor, but he has been unable to set up a payment plan, and the debt has not been paid. (Tr at 51-52.) I find that this debt has not been resolved.

1.k. This overdue debt is cited in the SOR for a collection account in the amount of \$1,631. Applicant testified that he set up a payment plan with this creditor wherein he would make monthly payments of \$135.94. Applicant made two payment and then there was a falling out between him and the collection agency for this debt so he stopped making payments. (Tr at 52-53.) I find that most of this debt is still due and owing.

1.i. This overdue debt is cited in the SOR for a collection account in the amount of \$826. Applicant testified that he paid \$496 in October 2013, and this debt has been settled. (Tr at 53-54.) Exhibit A establishes that Applicant did make the payment to the creditor. I find that this debt has been resolved.

1.m. This overdue debt is cited in the SOR for a past-due account in the amount of \$2,989. Applicant testified that the creditor made an offer to settle for \$500, and he paid \$500 in October 2013 to settle this debt in full. (Tr at 54.) Exhibit A establishes that Applicant did make the payment to the creditor. I find that this debt has been resolved.

1.n. This overdue debt is cited in the SOR for a collection account in the amount of \$315. Applicant testified that the creditor made an offer to settle for \$157.50, and he paid \$157.50 in November 2013, to settle this debt in full. (Tr at 54-55.) Exhibit A establishes that Applicant did make the payment to the creditor. I find that this debt has been resolved.

1.o. The SOR alleges that even though most of Applicant's financial problems resulted from gambling, Applicant continues to purchase lottery tickets on a weekly basis. Applicant confirmed that he spends \$24 a week for lottery tickets, purchasing them twice a week. (Tr at 55-57.)

Applicant testified that he started gambling when he was 27 or 28, but in 1997, when his daughter was born, he stopped gambling completely for three and a half years. After that his gambling increased and in 2006/2007, his gambling became a serious problem for him. Applicant increased his gambling so that he won \$72,000 in that time frame, but he also had major losses. He was not certain, but he estimated his losses to be approximately \$100,000 in 2007. Before 2006, when Applicant gambled it was limited to Las Vegas. In 2006 he started gambling at Indian casinos and he began gambling more frequently. (Tr at 57-60.) Applicant estimated that his total losses from gambling were \$200,000. (Tr at 76.)

In 2008, Applicant realized that he had a gambling problem. He reported his gambling problem to the security office of his employer. He received employee assistance, including counseling once a month for 10 months from a psychologist until May 2010, and he attended Gamblers Anonymous meetings for a year and a half. Applicant testified that he stopped gambling while he was receiving counseling, but in May 2010, he began gambling again, approximately once every other month until August 2012, when his security clearance was revoked by the DoD. With the exception of purchasing lottery tickets, Applicant averred that he has not gambled since August 2012. (Tr at 60-68, 77.)

Exhibit B included a letter from Applicant's therapist, dated May 28, 2009. The therapist, who is a licensed psychologist, wrote that Applicant received 15 counseling sessions from June 2008 to May 2009, rather than the 10 sessions ending in May 2010 as Applicant had testified. The therapist wrote that Applicant had "made tremendous strides in coming to grips with his gambling problem." However, Applicant admitted that

after he finished his counseling he began gambling again, and he only stopped when his security clearance was revoked. Therefore, I do not consider the therapist's evaluation as reliable or controlling evidence to consider in this case.

Applicant testified that his financial difficulties all were related to his gambling. He conceded that his gambling has caused a lot of damage, and he stated, "there is not a day that goes by that I don't regret it." He stated that because he stopped gambling for three and a half years when his daughter was born, he knew he could stop successfully, and he did not need to return to counseling or to Gamblers Anonymous. Applicant argued that losing his clearance was a serious enough issue that he now knows he cannot gamble anymore. (Tr at 71, 82-85.)

Applicant submitted his Performance Reviews for years 2009 to 2013. He received excellent evaluations, and in 2013, it was written in the review, "[Applicant] exhibits high company standards and values. He demonstrates personal integrity, works independently and proactively to raise issues and questions to supervisors if and when required. He follows company procedures." (Exhibit D.)

### **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, most of it several years ago.

Finally, because Applicant has testified that all of his overdue debts and financial problems resulted from his gambling. Because Applicant tried on at least two periods of time to stop gambling and then resumed gambling again, and because he continues to spend \$20 a week for lottery tickets, I find that AG ¶ 19(i) is applicable, “compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, . . . borrowing money to fund gambling or pay gambling debts family conflict or other problems caused by gambling”

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.” Since all of Applicant’s debts were the result of his gambling I do not find this condition applicable in this case.

Applicant has received counseling for his gambling as required by mitigating condition ¶ (c); However, because he abstained from gambling but then began gambling again at least twice, I do not feel that a sufficient amount of time has elapsed to conclude that he will not begin gambling again and “the problem is under control.” Therefore, it is too soon to conclude that this mitigating condition applies.

While ¶ 20(d) could be argued to be applicable, since Applicant has “initiated a good-faith effort to repay his overdue creditors or otherwise resolve debts,” I do not find it controlling since all of the debts, as reviewed above, resulted from gambling, and the majority of the larger debts, equal to more than \$60,000, are still outstanding and have not been resolved or even reduced. I also do not find any of the other mitigating conditions applicable. Therefore, until Applicant can reduce or resolve more of his overdue debts, and sufficient time has elapsed to establish that Applicant will not return to gambling, I find Guideline F 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 access to a classified position 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 are applicable and controlling, 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., b., d., e., i., l., m., n.:	For Applicant
Subparagraphs 1.c., f., g., h., j., k., o.:	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