



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



In the matter of:	)	
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	)	ISCR Case No. 13-01313
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray T. Blank, Jr., Esquire, Department Counsel  
For Applicant: *Pro se*

October 22, 2014

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**Decision**  
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MOGUL, Martin H., Administrative Judge:

On February 6, 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.

On March 10, 2014, 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 May 14, 2014, 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 seven documentary exhibits. (Items 1-7.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on July 3, 2014. Applicant did not submit any additional evidence. The case was assigned to this Administrative Judge on

September 15, 2014. 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 38 years old. He has been married to his current wife since March 2013. He was married two previous times, the first from March 1998 to June 2006, and the second from October 2009 to April 2011. He has two children and two stepchildren. (Item 4.) Applicant received a Master's Degree in Information Systems in 2013. (Item 5.)

Applicant served in the United States Marine Corps (USMC) Reserve from November 1997 to November 2005. Applicant seeks a DoD security clearance in connection with his employment in the defense sector. (Item 4)

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

The SOR lists eight allegations (1.a. through 1.h.) regarding financial difficulties, specifically overdue debts, 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 judgement in the amount of \$16,662. In his RSOR, Applicant denied this SOR allegation, and he wrote that this debt had been discharged in a Chapter 7 Bankruptcy on November 27, 2013. Applicant attached to his RSOR a Certificate of Notice from the United States Bankruptcy Court, indicating that the Chapter 7 Bankruptcy, filed by Applicant and that discharged Applicant's debts of approximately \$114,950, had been entered on November 29, 2013. Following the notice was a list of the creditors that received the discharge notice from the Bankruptcy Court. The creditor for the debt listed as 1.a. on the SOR was listed on the notice to creditors. (Item 2.) I find that this debt has been discharged in bankruptcy.

1.b. This overdue debt is cited in the SOR for a charged-off account in the amount of \$1,346. In his RSOR, Applicant denied this SOR allegation, and he wrote that this debt had been discharged in a Chapter 7 Bankruptcy on November 27, 2013. The creditor for the debt listed as 1.b. on the SOR was listed on the discharge notice to creditors. (Item 2.) I find that this debt has been discharged in bankruptcy.

1.c. This overdue debt is cited in the SOR for a charged-off account in the amount of \$6,116. In his RSOR, Applicant denied this SOR allegation, and he wrote that this debt had been discharged in a Chapter 7 Bankruptcy on November 27, 2013. The creditor for the debt listed as 1.c. on the SOR was listed on the discharge notice to creditors. (Item 2.) I find that this debt has been discharged in bankruptcy.

1.d. This overdue debt is cited in the SOR for a charged-off account in the amount of \$3,020. In his RSOR, Applicant denied this SOR allegation, and he wrote that this debt had been discharged in a Chapter 7 Bankruptcy on November 27, 2013. The creditor for the debt listed as 1.d. on the SOR was listed on the discharge notice to creditors. (Item 2.) I find that this debt has been discharged in bankruptcy.

1.e. This overdue debt is cited in the SOR for a charged-off account in the amount of \$2,796. In his RSOR, Applicant denied this SOR allegation, and he wrote that this debt had been discharged in a Chapter 7 Bankruptcy on November 27, 2013. The creditor for the debt listed as 1.e. on the SOR was listed on the discharge notice to creditors. (Item 2.) I find that this debt has been discharged in bankruptcy.

1.f. This overdue debt is cited in the SOR for a charged-off account in the amount of \$76,800. In his RSOR, Applicant denied this SOR allegation, and he wrote that this debt had been discharged in a Chapter 7 Bankruptcy on November 27, 2013. The creditor for the debt listed as 1.f. on the SOR was listed on the discharge notice to creditors. (Item 2.) I find that this debt has been discharged in bankruptcy.

1.g. This overdue debt is cited in the SOR for a collection account in the amount of \$7,249. In his RSOR, Applicant denied this SOR allegation, and he wrote that this debt had been discharged in a Chapter 7 Bankruptcy on November 27, 2013. The creditor for the debt listed as 1.g. on the SOR was listed on the discharge notice to creditors. (Item 2.) I find that this debt has been discharged in bankruptcy.

1.h. This overdue debt is cited in the SOR for a charged-off account in the amount of \$964. In his RSOR, Applicant denied this SOR allegation, and he wrote that this debt had been discharged in a Chapter 7 Bankruptcy on November 27, 2013. The creditor for the debt listed as 1.h. on the SOR was listed on the discharge notice to creditors. (Item 2.) I find that this debt has been discharged in bankruptcy.

Applicant explained that his current financial difficulties began in approximately 2007, because of his continuing use of credit cards to make the mortgage payments on the house that he purchased with his first wife, and to pay for other purchases and living expenses. (Items 6 and 7.) Applicant and his first wife separated in May 2007, and divorced in June 2007.

Applicant continued using his credit cards to make monthly mortgage payments of approximately \$2,000, and to pay for his living expenses of around \$300 to \$400 a month, even though he was aware that he did not have sufficient income to pay for the debts. Applicant indicated that while he was aware that he was falling further behind on his debts, he hoped to be able to sell his residence to resolve his overdue debts, but because of the downturn in the economy, Applicant was unable to do sell his house. Ultimately the house was lost in foreclosure, and Applicant was left with significant and substantial overdue credit card debts that he was unable to resolve or reduce. (Items 2, 4, and 5.)

Applicant also blamed his financial problems on his 2011 job reduction and ultimate job loss, although he conceded that he was aware his overdue debts were untenable even before his employment problems arose. Applicant contended that he had contacted his creditors and attempted to make payments arrangements with them, although many of them would not accept anything less than full payments. Applicant claimed that he did make payment to some of the creditors, but the payments increased and he could no longer make payments to any of the creditors. (Item 5.) No evidence was introduced to show that payments arrangements had been made or that Applicant followed through on his agreements.

During an investigation, Applicant stated that he hoped his bankruptcy would enable him to stabilize his finances, and that in the future he would make an effort to live within his income. (Item 5.) A Personal Financial Statement was introduced as part of Item 5. The document is undated, but it does show that Applicant still has outstanding debts of more than \$71,700, with no plan in place to resolve his none-dischargeable student loans of \$37,000.

### **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 had not been satisfied for several years.

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 because of his unemployment and the downturn in the economy, which did not allow him to sell his house. Applicant did ultimately act responsibly by using the legal remedy of bankruptcy to resolve his overdue debts. However, since Applicant continued for several years to incur additional debts that he knew he would be unable to resolve, and because no independent evidence was introduced to show that Applicant attempted to resolve his

overdue debts by making payment plans with the creditors, I do not find that Applicant acted responsibly throughout this process. Therefore, while I find that this mitigating condition is a factor for consideration in this case, because of Applicant's history of not dealing responsibly with his overdue debts, it is not controlling.

AG ¶ 20(d) is arguably applicable, since Applicant "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," by using the legal remedy of bankruptcy to resolve his past overdue debts. Therefore, I do find that this mitigation condition applies to this case, but again because of Applicant's financial history and his current financial status, as addressed below, I do not find it controlling.

After reviewing Applicant's history of financial difficulties, including his overdue debts and his recent bankruptcy, and because Applicant's Personal Financial Statement shows that Applicant still has outstanding debts of more than \$71,700, with no plan in place to resolve his student loans of \$37,000, I do not find that sufficient evidence has been offered to show that Applicant will be able to stay current with his present or future debts. Therefore, I conclude that Applicant has not mitigated the Financial Consideration concerns, which are found 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 why the mitigating conditions are not 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.

