



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



In the matter of: )  
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----- ) ISCR Case No. 14-01464  
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Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: Ryan C. Nerney, Esquire

February 17, 2015

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**Decision**

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**Synopsis**

Applicant currently has overdue debts totaling more than \$200,000, resulting from a downturn in the economy after he borrowed money to purchase and run two franchise restaurants. He has made three payments of \$500 toward one of the debts. He made no payments at all toward this debt, or any of the other debts listed on the SOR, for more than six years after they became overdue. Applicant only started making payments after the SOR was issued. Based on Applicant's history, it is too soon to conclude that he will reduce the vast majority of his overdue debt. Mitigation has not been shown. Clearance is denied.

MOGUL, Martin H., Administrative Judge:

On June 10, 2014, 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 August 11, 2014, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge (AJ). The case was assigned to this AJ on October 9, 2014. DOHA issued a notice of hearing on that date, and the hearing was held as scheduled on November 12, 2014. The Government offered Exhibits 1 through 8, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through R, which were also admitted without objection. At the hearing, the record was kept open until November 24, 2014, to allow Applicant to submit a current Personal Financial Statement (PFS). No post-hearing documents were received. DOHA received the transcript of the hearing (Tr) on November 20, 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 49 years old. He is married, and he has five children. Applicant received a Bachelor of Science degree in Professional Aeronautics in 2000. He has been employed by his current employer, a defense contractor, for 23 years, although not consecutively; first from 1986 to 2003 and then from 2009 to the present. He is seeking a DoD security clearance in connection with his employment in the defense sector.

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

The SOR lists seven allegations (1.a. through 1.g.) regarding financial difficulties, specifically overdue debts and filing bankruptcy, 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. The SOR alleges that in or about February 2012, Applicant filed a Chapter 13 bankruptcy in United States Bankruptcy Court. The bankruptcy was dismissed in March 2012. At the hearing, Applicant admitted that he had filed the bankruptcy and that it had been dismissed. He stated that he decided to have the bankruptcy dismissed because he wanted to pay the full amount of the debt to all of the creditors, which was why he did not file a Chapter 7. (Tr at 36-39.) Upon questioning, Applicant conceded that because of the current income of his spouse and him, approximately \$290,000 annually, he was informed by his attorney that he would not be eligible to file a Chapter 7. (Tr at 76-77.)

1.b. This overdue debt is cited in the SOR for a collection account in the amount of \$114,390. At the hearing, Applicant admitted this debt and 1.c., below, both to the same creditor, were incurred in approximately 2003 or 2004, when he borrowed money to purchase and build two Subway Restaurants as franchise investments. He testified that as the economy turned bad, the restaurants did not earn enough income to remain

viable. He first sold the smaller Subway restaurant, but ultimately he was forced to sell both Subway stores. He sold the first Subway in 2006 and the second, larger one in about 2007.

Applicant stated that he now has a stipulated judgement in place with this creditor that he will pay them \$500 a month, beginning in August 2014, and if a payment is missed, a judgment would be entered against him for the full amount owed. (Exhibit B.) Applicant testified that by the time of the hearing, he had made three payments of \$500 toward this debt. He contended that from 2007 until 2014, he was not financially able to start a payment plan with this or any other creditor, but he has received raises from his employer so now he can start making payments. (Tr at 39-48.)

Applicant testified that his payment of \$500 was for this debt and 1.c., below. (Tr at 47.) However, a review of the Stipulated Judgement shows that the \$500 monthly payment is just for this debt, and it is not for 1.c. (Exhibit B.)

While Applicant has begun making payments toward this debt, it is certainly noteworthy that Applicant made no payments at all toward this debt, or any of the other debts listed on the SOR for approximately seven years after they became overdue, and he has only started making payments in August 2014, after the SOR was issued on June 10, 2014. If Applicant continues to make monthly payments of \$500, it will take him approximately 19 years to pay off this debt. I find that this debt is not resolved and just barely reduced.

1.c. This overdue debt is cited in the SOR for a collection account in the amount of \$18,367 to the same creditor as 1.b., above. As reviewed in 1.b., above, Applicant testified that this debt also was for money borrowed to purchase and build Subway Restaurants. Also, as reviewed above, based on the Stipulated Judgment, the monthly payment of \$500 does not go toward this debt. I find that this debt has not been resolved or reduced.

1.d. This overdue debt is cited in the SOR for a collection account in the amount of \$20,874. Applicant testified that this debt was incurred from money he borrowed to operate his restaurants. Applicant stated that he has a payment plan in place to make monthly payments of \$200 to the creditor for this debt. At the time of the hearing, Applicant had not yet made any payments. (Tr at 48-51.) I find that this debt has not been resolved or reduced.

1.e. The next three SOR allegations, 1.e., f., and g. are for debts to the same creditor. This overdue debt is cited in the SOR for a past-due account in the amount of \$57,329. Applicant admitted that he owed this debt. He testified that all three debts were incurred for the running of the Subway Restaurants. He claimed that he had attempted to negotiate a settlement with the creditor for all three debts, but they wanted \$45,000 in one lump sum payment for all three accounts, which he could not afford. Applicant has no payment plan with regard to this debt. He stated that after he has paid off the debt listed as 1.f., below, he then plans to start making payments on 1.e., and 1.g. (Tr at 51-58.) I find that this debt has not been resolved or reduced.

1.f. This overdue debt is cited in the SOR for a past-due account in the amount of \$8,948. Applicant admitted that he owed this debt. (Tr at 51, 54-55.) He testified that he now has a payment plan for this debt to pay \$233.86 a month. At the time of the hearing, he had not yet made any payments; they were to set to begin on January 1, 2015. I find that this debt has not been resolved or reduced.

1.g. This overdue debt is cited in the SOR for a past-due account in the amount of \$24,073. Applicant admitted that he owed this debt. Applicant has no payment plan with regard to this debt. (Tr at 51-52.) I find that this debt has not been resolved or reduced.

As reviewed above, Applicant testified that he currently earns an annual salary of \$129,000 and his wife earns approximately \$161,000, for a total family income of \$290,000. (Tr at 35.) He claims to now have sufficient funds to pay all of his recent debts as well as any emergencies that may arise. (Tr at 59.) Applicant submitted a PFS, which based on Applicant's testimony, was not current. (Exhibit E.) (Tr at 88-90.) As reviewed above, although the record was left open to allow Applicant to submit a more current PFS, none was received.

## **Mitigation**

Applicant submitted four positive letters of recommendation from individuals who know Applicant professionally. (Exhibit I.) He was described in one letter as a "role model employee who consistently demonstrates exceptional ethics and exemplifies personal credibility and integrity." Applicant also submitted his Performance Appraisals for years 2010 through 2013. In both 2012 and 2013, he received an overall rating of "Consistently Meets Expectation."

## **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 several years ago.

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 Applicant’s debts were the result of a business downturn I find this mitigating condition is potentially applicable in this case.

However, I cannot find that Applicant acted responsibly under the circumstances. Applicant became overdue on these debts in 2007, and he returned to his current employer in 2009. Yet, the first documented evidence of his attempting to resolve his overdue debts occurred in July 2014, after the SOR was issued in April 2014. At the time of the hearing, Applicant had only made three payment of \$500 on one of the overdue debts, with no payments made toward any of the other debts. There is no way that this can be considered responsible behavior to resolve Applicant’s long overdue debts.

AG ¶ 20(d) could potentially be argued to be applicable, since Applicant has “initiated a good-faith effort to repay his overdue creditors or otherwise resolve debts,” However, I do not find it controlling since the vast majority of the debts are still outstanding and have not been resolved or even reduced, after being overdue for more than seven years. I also do not find any of the other mitigating conditions applicable. Therefore, until Applicant can reduce or resolve more of his overdue debts, 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, and no mitigating conditions apply, 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.g.:	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