



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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 ----- ) ISCR Case No. 14-02403  
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 Applicant for Security Clearance )

**Appearances**

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

May 28, 2015

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On August 22, 2014, the Department of Defense (DoD) 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) (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On September 15, 2014, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing in this case before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 9, 2015, and I convened the hearing by video teleconference, as scheduled, on April 28, 2015. The Government offered Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf and submitted Exhibits A and B, which were also admitted without objection. One additional witness testified on behalf of Applicant. DOHA received the transcript of the hearing (Tr) on May 7, 2015. Based upon a review

of the pleadings, exhibits, as well as the testimony of Applicant and his witness, eligibility for access to classified information is denied.

### **Findings of Fact**

After a complete and thorough review of the evidence in the record discussed above, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 51 years old. He is unmarried, and he has two children. He is a high school graduate and he attended trade school. Applicant is employed as an electronics technician by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

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

The SOR lists two allegations, 1.a. and 1.b., regarding financial difficulties of Applicant.

1.a. The SOR alleges that Applicant has an overdue debt for a second mortgage that is more than 120 days past due in the amount of \$58,916, with a balance in the approximate amount of \$130,000. In his RSOR, Applicant denied this allegation. The full data credit report (CR), dated July 25, 2012; and the two additional CRs, dated July 23, 2014; and November 5, 2014, establish that this debt is still overdue and has not been resolved. (Exhibits 3, 4, and 5.)

1.b. The SOR alleges that Applicant has an overdue debt for a mortgage account that is more than 120 days past due in the amount of \$204,273, with a balance in the approximate amount of \$640,626. In his RSOR, Applicant denied this allegation. All three CRs establish that this debt is still overdue and has not been resolved. (Exhibits 3, 4, and 5.)

Applicant testified that he purchased a home in 2003 or 2004, and he stopped making payments on the house in 2009, at which time he moved out of the premises. When he left the home, he understood that he still owed money on each of the two mortgages. Applicant contended that at some point after he left his home, he sold his interest in the home to another individual (Purchaser) and to a representative of the Purchaser, (Witness), whose testimony will be discussed below. Applicant never received any money for the sale from Purchaser, just the promise that the Applicant would receive some payment from this Purchaser if she was able to resolve the mortgage with the mortgage holder. Applicant also testified that he has received no notice, either in written or oral form, informing him that he does not owe the mortgage holders the amount of the two mortgages as listed on subparagraphs 1.a., and 1.b. Finally, Applicant also conceded that he never received approval from the mortgage holder for the transfer of the home from Applicant to the Purchaser. (Tr at 46-51.)

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

The Government alleges in this paragraph that Applicant is ineligible for clearance because he engaged in conduct that exhibited questionable judgement, unreliability, unwillingness to comply with rules and regulations, and untrustworthiness.

2.a. It is alleged in the SOR that Applicant failed to provide truthful and candid answers to Questions asked under section 26 of an Electronic Questionnaires for Investigations Processing (e-Quip), executed by him on July 10, 2012. (Exhibit 1.) The questions asked whether in the last seven years Applicant had been over 120 days delinquent on any debt. It also asked if Applicant is currently over 120 days delinquent on any debt. Applicant answered, "No," to these questions and listed no debts. It is alleged that Applicant deliberately failed to disclose that information concerning his finances and overdue debt as set forth in subparagraph 1.a. and 1.b., above.

In his RSOR, Applicant denied this allegation. During his testimony, Applicant stated that when he completed his security clearance application in 2014, he was not sure of his financial status after he had signed over the house to the Purchaser and the Witness, since he believed they were paying the bills for the house and the homeowner fees. Applicant conceded that he was never informed by the Witness or the Purchaser that they were paying all the required bills and fees, nor as discussed above, did the mortgage holder advise him that he did not owe the amount of the two mortgages as listed on subparagraphs 1.a., and 1.b., above. (Tr at 46-57.)

### **Witness Testimony**

As reviewed above, one additional witness testified on behalf of Applicant. The Witness is a 76 year old individual, who owns a business that helps people when they are having financial difficulties with their homes and mortgages. The Witness explained that in around 2008, Applicant was going through a divorce, his wife had separated from him, and with his responsibility for paying for all of the bills and taking care of their children, he was unable to make the payments on his mortgage. They attempted a short sale but were unsuccessful, in part because of the poor economy, and ultimately Applicant sold his property to an investor (Purchaser.) Witness testified that the property has never been foreclosed. (Tr at 25-33.)

Witness claims Purchaser has been attempting to negotiate a payoff with the mortgage holder since that time. As far as Witness knows the mortgage holder has not been paid on the mortgage for many years. The transfer of the property from Applicant to the Purchaser was made on September 11, 2013. Exhibit A is a quitclaim deed showing that the property was transferred from Applicant to Purchaser on September 11, 2013, and Exhibit B shows Purchaser is being billed by the city and county where the property is located for property taxes. (Tr at 34-44.) No evidence was introduced to show that the mortgage holder approved the transfer of the property from Applicant to Purchaser, or that Purchaser has made any payments on either mortgage to the mortgage holder.

## **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**

## **Paragraph 1 (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 had accumulated significant delinquent debt on two overdue mortgages.

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's overdue finances occurred as a result of his divorce and the downturn in the economy. However, I do not find that Applicant has acted responsibly because he failed to contact the mortgage holder to seek approval for the transfer of his property, and he has never ascertained the status of his home, and his two mortgages. Therefore, I find that this mitigating condition is not a factor for consideration in this case.

I also find that because Applicant has not contacted the mortgage holder to try to resolve the two mortgages, AG ¶ 20(d) is not applicable as Applicant has not "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

I conclude that at this time Applicant has not reduced or resolved his overdue debts. Additionally, no evidence was introduced to establish that his current financial situation is stable. Therefore, Applicant has not mitigated the financial concerns of the Government, and I resolve Guideline F against Applicant.

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

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgement, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The Government alleges in this paragraph that Applicant is ineligible for clearance because he engaged in conduct that exhibited questionable judgement, lack of candor, and dishonesty. In reviewing the disqualifying conditions under Guideline E, I conclude that while Applicant should have made a more concerted effort to ascertain the status of his overdue mortgages, there was no “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire” by Applicant, because he testified credibly that he had a belief that his overdue debts were being resolved. I do not find disqualifying condition ¶ 16(a) or any other disqualifying condition applies in this case against Applicant. I, therefore, resolve Guideline E for 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 the disqualifying conditions apply under Guideline F, 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a.-1.b.:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a.:	For 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