



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 14-02583  
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Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: Sean M. Bigley, Esquire

May 28, 2015

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On November 12, 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 December 16, 2014, Applicant replied to the SOR (RSOR) in writing, with RSOR Exhibits A through F, and he requested a hearing before an Administrative Judge (AJ). The case was first assigned to another AJ on February 10, 2015. Because of scheduling issues, the case was then assigned to this AJ on February 23, 2015. DOHA issued a notice of hearing on February 24, 2015, and the hearing was held as scheduled on March 24, 2015.

At the hearing, the Government offered Exhibits 1 through 6, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through O, which were also admitted without objection. At the hearing, the record was

kept open until April 7, 2015, to allow Applicant to submit additional documentation. Several post-hearing documents were received, which have been identified and entered into evidence without objection as Exhibits P through T. DOHA received the transcript of the hearing (Tr) on April 1, 2015. 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 58 years old. He is married, and he has one daughter and one stepson. Applicant served in the United States Navy from 1975 until 1979, when he received an Honorable discharge. Applicant is 20 credits away from graduating with a Bachelor's degree in Business Administration. He is employed as a Field Engineer by his current employer, a defense contractor, for whom he has worked for almost 35 years. 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 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 State A tax lien in the amount of \$3,069. At the hearing, Applicant testified that this State A tax debt is for tax year 2007, and he contended that he did not earn any income from State A in 2007. Applicant testified that he contacted the State A tax bureau, but they were not cooperative with him when he explained that he earned all of his income in 2007 in another state. Applicant ultimately hired a tax preparer to help him establish his claim, and this was sent to State A on March 4, 2015. (Tr at 54-59.) Exhibits D through G are documents submitted to State A to establish that none of his earnings in 2007 were from State A. I find that Applicant has been responsibly disputing a debt, which the evidence suggests he should not owe. Post-hearing document Exhibit Q shows that there is now a \$0 balance for tax year 2007. I find that this debt has been resolved.

1.b. This overdue debt is cited in the SOR for a charged-off account in the amount of \$289. At the hearing, Applicant admitted this debt, but claimed that he did not become aware of this debt until it was legally uncollectible. Applicant indicated that he would contact the creditor and see if he could resolve this debt. (Tr at 59-64.) No evidence has been introduced to establish that this debt has been resolved or reduced.

1.c. This overdue debt is cited in the SOR for a charged-off account in the amount of \$280. Applicant testified that he has paid off this debt in February or March 2015. (Tr at 64-65.) Exhibit H shows that Applicant is making payment of \$20 every

week until the debt is paid off, and the latest receipt shows a balance still owing of \$200.77. I find that Applicant is resolving this debt, although it is not paid off as Applicant testified.

1.d. This overdue debt is cited in the SOR for a collection account in the amount of \$14,145. Applicant testified that this debt was incurred from a credit card that he was using during a period when his employer lost the contract on which he was working so for a period of time he had no income. Applicant believed the amount owed should be approximately \$10,000, although it could have increased from interest and penalties. Applicant admitted that he still owed this debt, and he stated that he intended to contact the creditor to see if he could resolve this debt. (Tr at 66-71.) No evidence has been introduced to establish that this debt has been resolved or reduced.

1.e. This overdue debt is cited in the SOR for a collection account in the amount of \$287. Applicant testified that he had paid off this debt in March 2015. (Tr at 71-72.) Exhibit R shows a \$0 balance to this creditor. I find that this debt has been resolved.

1.f. This overdue debt is cited in the SOR for a medical collection account in the amount of \$102. Applicant testified that he had paid off a number of medical bills in early 2015, but he was not certain if this bill was one of the bills he resolved. (Tr at 72-74.) Exhibit S establishes that Applicant paid \$75 to this creditor, which was the amount due. I 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 \$11,841. Applicant testified that this debt was for his wife's car, which was voluntarily repossessed after he and his wife could no longer make payments on it, after he was injured and out of work. Applicant has been making payments of \$15 a week, but he has no payment plan with regard to this debt. (Tr at 74-78.) Exhibit I shows Applicant has made 10 payments of \$15 a week since January 9, 2015. I find that this debt has not been resolved but is being reduced. However, there is no accepted payment plan with this creditor, and the majority of the debt is still owing.

Applicant testified that in 2007, as a result of a promotion, he moved from State A to State B. While he received a small increase in salary, it did not cover the far greater cost of living in State B. RSOR Exhibit D is a 2010 United States census bureau cost of living index establishing the higher cost of living in State B. Applicant stated that he was not prepared for the very significant increase in his expenses after the move. (Tr at 35-42.)

Applicant furnished additional reasons for his financial difficulties. After he moved to State B, his wife had periods of unemployment which diminished the family income. After he moved to State B his company had some problems with their Government contract, which caused his income to be reduced by 40 % for three months in 2008. Applicant also had medical problems in 2009 and 2011, which forced him to be off work for periods of time, and added some unpaid medical bills to his financial position. (Tr at 43-45.)

Finally, in 2013, Applicant was involved in an automobile accident, when his vehicle was impacted from the rear, while he was stopped. This also contributed to additional time off from work and medical bills, not all of which were paid by his medical insurance. Applicant has engaged the services of an attorney, and he has a lawsuit pending against the driver of the vehicle that struck him. His attorney indicated to him that they have a good opportunity for a significant recovery, and Applicant averred that he would use some of that potential recovery to resolve his remaining overdue debts. (Tr at 45-48.) At the hearing, Applicant's attorney requested that I take administrative notice that compensation received as a result of physical injuries, whether through a lawsuit or a settlement, is not taxable. Exhibit C establishes this, and I have taken administrative notice of this information.

RSOR Exhibit F includes a Personal Financial Statement prepared by Applicant and current as of December 12, 2014. It shows that he currently earns a monthly salary of \$7,656 and his wife earns approximately \$1,280, for a total family income of \$8,936. After adding his debts and expenses and then withdrawing them from his income, Applicant has a monthly net remainder of \$2,027.

### **Mitigation**

Applicant submitted two positive letters of recommendation from his manager, and from a fellow team member and friend. (Exhibit T, RSOR Exhibit F.) He was described as, "A man of high character, an extremely caring father & husband and an all-around great person within our society."

### **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.” As Applicant’s debts were the result of a periods of unemployment for him and his wife, medical problems he suffered, and an automobile accident, I find this mitigating condition is potentially applicable in this case. I also find that Applicant did act responsibly under the circumstances with his tax lien as he hired a tax preparer and challenged the incorrect findings of State A. He has now resolved that tax debt. He has also paid off or is paying off many of his other debts. However, Applicant still has two unresolved and unreduced debts, one of them for more than \$14,000. Therefore, I find this mitigating condition is not applicable in this case.

AG ¶ 20(d) is also not applicable, as Applicant has “initiated a good-faith effort to repay some of his overdue creditors or otherwise resolve debts,” but as reviewed above, overdue debts, one quite significant, have not been resolved or reduced, in spite of Applicant’s \$2,000 monthly remainder. Therefore, 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 mitigating conditions do not apply, I find that the record evidence leaves me with 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.b., 1.d.:	Against Applicant
Subparagraphs 1.a., 1.c., 1e.-1.g.:	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