



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



In the matter of:	)	
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	)	ISCR Case No. 14-02638
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: Thomas D. Farrell

June 23, 2015

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On September 17, 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 October 6, 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 January 21, 2015. DOHA issued a notice of hearing on March 10, 2015, and the hearing was held by video teleconference on April 29, 2015. The Government offered Exhibits 1 through 6, which were admitted into evidence without objection. Applicant testified on his own behalf and submitted Exhibits A through L, which were also admitted without objection. Applicant's wife also testified on Applicant's behalf. At the hearing, the record was kept open until May 13, 2015, to allow Applicant to submit additional evidence. The documents that were timely received have been identified and

entered into evidence without objection as Exhibit M. DOHA received the transcript of the hearing (Tr) on May 8, 2015. Based upon a review of the pleadings, exhibits, and the testimony of Applicant and his wife, eligibility for access to classified information is granted

### **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 47 years old. He is married, and he and his wife have an adopted daughter. Applicant received a Bachelor's degree in Sociology in 1990, and a Masters degree in Information Systems in 1998. He is employed by a defense contractor, and he is seeking a DoD security clearance in connection with his employment in the defense sector.

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

The SOR lists six allegations (1.a. through 1.f.) 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 charged-off account in the amount of \$5,377. At the hearing, Applicant testified that he has been making payments on this debt, and the total amount owed as of October 2014 was \$4,327. (Tr at 65-67.) Exhibits C and G establish that Applicant started in September 2013, making monthly payments of \$250, and in May 2014, the payments increased to \$350 a month. The amount owed at the time of the hearing was \$4,327. In a post hearing letter, Applicant's attorney wrote that due to continued payments from Applicant in the amount of \$1,650, the amount now owed is \$2,677.30. I find that this debt is being resolved in a responsible manner by Applicant.

1.b. This overdue debt is cited in the SOR for a collection account in the amount of \$3,493. Applicant testified that he has been making monthly payments on this debt of at least \$205, and the total amount then owed was approximately \$1,432. (Tr at 67-68.) Exhibits D and G establish that Applicant initially owed \$2,260, and the amount owed at the time of the hearing was \$1,432. In a post hearing letter, Applicant's attorney wrote that due to continued payments from Applicant the amount now owed is \$1,232.83. I find that this debt is being resolved in a responsible manner by Applicant.

1.c. This overdue debt is cited in the SOR for a charged-off account in the amount of \$323. Applicant testified that this debt has been paid off. (Tr at 68-69.) Exhibit E establishes that this debt has been paid in full. I find that this debt has been resolved.

1.d. This overdue debt is cited in the SOR for a charged-off account in the amount of \$701. This debt is to the same creditor as that listed on 1.e., below. Applicant

testified that he has contacted the creditor for these debts, but they informed him that they could not find the debts, until recently. He had yet to begin making payments on this debt. (Tr at 69-72.) In a post hearing letter, Applicant's attorney wrote that Applicant has now made a payment of \$215.90 toward this debt and that listed on 1.e., below. The attorney did not know the exact current balance for the two debts, but he averred that it was less than \$600. I find that Applicant has been responsible in trying to resolve this debt.

1.e. This overdue debt is cited in the SOR for a charged-due account in the amount of \$99. Applicant has had the same difficulty getting the information from the creditor about the debt. (Tr at 69-72.) Applicant has made a payment toward this debt after contacting the creditor to attempt to resolve this debt. I find that Applicant has been responsible in trying to resolve this debt.

1.f. This overdue debt is cited in the SOR for a charged-off account in the amount of \$90. Applicant testified that this debt was approximately \$20 through the credit card company error, but Applicant was never notified, so it grew through penalties and interest to approximately \$300. Applicant has now paid off this debt. (Tr at 72-76.) Exhibit F establishes that this debt has been paid in full. I find that this debt has been resolved.

Applicant testified that they had adopted a daughter in China, and it appears that she was one of the babies who was given formula contaminated with melamine. Most of the other children did not survive the poison. Because of this, the child has had numerous very severe medical problems including seizures, heart problems, and vomiting. Applicant's wife lost significant amounts of income due to their daughter's illness, and also due to Applicant's wife's own illnesses. Applicant estimated that her income was reduced by half for a loss of \$4,000 a month for 18 months, totaling \$72,000 of lost income. (Tr at 76-79.)

### **Testimony of Applicant's wife**

Applicant's wife testified that she is the family member who pays the bills. Through Exhibits G and H, and her testimony she established that their current debts are all being paid on time, that they have significant assets, and they are resolving the debts listed on the SOR. She also confirmed that they had contacted the creditor for SOR allegations 1.d and 1.e, and it had taken the creditor about six months to give Applicant and his wife information about what creditor owned the debt and how much was owed. She also confirmed that they now had a payment plan for these two debts. (Tr at 24-39.)

Applicant's wife also confirmed that their adopted daughter from China had multiple, severe health problems. These included the daughter stopping breathing on five separate occasions, which caused her to lose consciousness, requiring intervention of CPR and hospitalization greater than a week at a time. The witness had to cut her work hours in half as she had to stay with and take care of her child. The witness also had surgery herself, which forced her to miss additional time from work. (Tr at 39-44.)

A letter from the doctor for Applicant's daughter confirms that she has had multiple seizures and has been diagnosed with partial seizure disorder. Her illness has required significant time for Applicant and his wife to be absent from work so they can care for their daughter. (Exhibit I.)

## **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 AG ¶ 2 describing 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 the applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.

A person who applies for access to classified information seeks to enter 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 adverse 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.

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 loss of earnings from his wife because of her surgery and the severe illness of their daughter, I find this condition potentially applicable in this case. Since Applicant and his wife have now resolved two of the debts listed on the SOR, and are in the process of paying off the other four debts from the SOR, I find that Applicant has acted responsibly and this mitigating condition is applicable in this case.

I also find that ¶ 20(d) is applicable, since Applicant has “initiated a good-faith effort to repay his overdue creditors or otherwise resolve debts.” Finally, I find that Applicant’s overall financial situation is stable and secure, and therefore, I find Guideline F 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 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 are applicable and controlling, I find that the record evidence leaves me with no significant questions or 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 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:	FOR APPLICANT
Subparagraphs 1.a. - 1.f.:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul  
Administrative Judge