



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



In the matter of: )  
 )  
----- ) ISCR Case No. 07-09195  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Candace Le'i, Esquire, Department Counsel  
For Applicant: *Pro Se*

January 28, 2008

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**Decision**

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MOGUL, Martin H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on October 10, 2005. On August 29, 2007, the Defense Office of Hearings and Appeals (DOHA) 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, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant replied to the SOR (RSOR) in writing on September 20, 2007, and requested a hearing before an Administrative Judge. I received the case assignment on November 1, 2007. DOHA issued a notice of hearing on November 8, 2007, and I convened the hearing as scheduled on December 17, 2007. The Government offered Exhibits (Ex.) 1 through 4, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through I, without objection. DOHA received the transcript of the hearing (Tr.) on January 4, 2007. I granted Applicant's request to

keep the record open until January 4, 2008, to submit additional matters. He timely submitted Exhibit J, without objection. The record closed on January 4, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his RSOR, Applicant admitted SOR allegations in paragraph 1: a., b., c., e., f., g., and I. He denied d. and h. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 47 years old. He is married and has two children.

Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

The SOR lists 9 allegations regarding financial difficulties under Adjudicative Guideline F. All of the allegations will be discussed in the same order as they were listed in the SOR:

1.a. This overdue debt to Creditor 1 is cited in the SOR in the amount of \$5,632 for past due child support. Applicant testified it was as a result of a child support order he received, he had a debt of \$17,000, even though he had physical custody and was taking care of his daughter. He further testified that he has been making payments on this debt since 2001, and Exhibit C shows that as October 31, 2007, he had reduced the debt to \$3,603. He has made additional payments since then reducing this debt further.

Finally, because Applicant was providing care for his child, he testified that the court had ordered the mother of his child to pay the arrearage for the child's previous support. Exhibit J, includes a copy of a Judgment Regarding Parental Obligations, dated December 7, 2007, in which the court ordered the mother to pay \$13,688 for the period of support of the life of the child, confirming that Applicant should not have been the one responsible for child custody, since he was the custodial parent. The mother is now ordered to pay Applicant \$255 a month in child support plus \$75 a month for arrearage. I find that regarding this debt, Applicant has been acting responsibly in this difficult situation.

1.b. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$2,327. Applicant testified that he had made a payment of settlement on this debt. A credit report, dated October 11, 2007, (Exhibit 2) shows a "settlement accepted on this account." The problem is that Applicant has at least two accounts to this creditor and it is not clear what the settlement has been accepted for and what, if anything, remains.

In Exhibit J, Applicant avers that he has been in contact with the credit collection agency for these debts , but they were not helpful on what debts are still owed. Based on the credit report, I find that at least one of the debts to this creditor is still outstanding.

1.c. This second overdue debt to Creditor 2 is cited in the SOR in the amount of \$482. As discussed in 1.b., above either 1b. or 1.c. has not yet been resolved, while the other debt has been paid. The evidence does not establish which is the outstanding debt, in Exhibit J, Applicant indicated that he plans to re-contact the credit collector, and resolve this issue.

1.d. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$41. At the hearing, Applicant testified that he had made a payment on this phone bill, and he believed that this debt was resolved. In his post hearing submission, (Exhibit J) Applicant said to resolve this debt he made a payment on this debt, and this debt has now been satisfied.

1.e. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$1,208. Applicant explained that this debt is to an attorney, whom Applicant hired to help him gain custody of his daughter, during a period when he believed the child's mother was abusing the child. He indicated that he paid him an initial retention fee of \$2,500 and then an additional \$1,000, but Applicant has disputed this bill because he believes that this attorney did not perform the services for which was paid, including appearing in court. Applicant testified that he is now paying \$75 a month on this debt. Exhibit D includes letters from a collection agency, showing that Applicant is paying \$75 a month for this debt and for the debts listed as 1.f. and 1.g., below.

1.f. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$1,138. This debt was for another attorney, who was employed by Applicant for the same purpose, but whom Applicant believed also did not performs his services. The \$75 a month Applicant is paying as discussed in 1.d., above, is also for this debt. While Applicant does not believe either attorney fulfilled his obligations to warrant being paid, he is resolving these debt.

1.g. This second overdue debt to Creditor 5 is cited in the SOR in the amount of \$995. This is also being resolved by the \$75 a month payment.

1.h. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$470. At the hearing, Applicant first testified that he was not aware of whom this creditor is, so he did not believe he owed this debt. Later during the hearing, Applicant realized who the original creditor was, and he testified that he has paid this debt. In Exhibit J, Applicant indicates that he contacted the listed creditor, and he sent a copy of an accounting to the collection agency and attached one to Exhibit J, showing that this debt had been paid in full. I find that this debt has been resolved.

1.i. Applicant petitioned the United States Bankruptcy Court in 1998 for a Chapter 7 Bankruptcy, in which he claimed liabilities of \$8,950, and assets of \$1,760. The SOR alleges that the bankruptcy was dismissed. At the hearing, Applicant testified that he

believed his debts had been discharged in the bankruptcy, because he had not been further contacted by his creditors, but he had no evidence to support his belief. A credit report, Exhibit 4, shows that this bankruptcy was dismissed.

Applicant cited several reasons for his financial difficulties, which will be discussed below. He sustained a serious back injury in October 1997, which required surgery, and kept him from being able to work from November 1998 until 2000. He was also a single parent, and he continued paying child support.

Applicant testified that he is not overdue on any of his current debts. He does not own any credit cards. His wife, who is employed, is on maternity leave at this time.

Finally, Applicant also offered into evidence four letters from individuals who know or have known him for many years in his professional and /or private life. (Exhibit G). They spoke in extremely laudatory terms, describing him as trustworthy, reliable and hard working.

## **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 common sense 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 trustworthiness 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 [sensitive] 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 trustworthiness concerns. 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. Applicant accumulated significant delinquent debt and was unable to pay some obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties.

AG ¶ 20 provides conditions that could mitigate security concerns:

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 noted above, the financial problems arose primarily from Applicant’s serious back injury that resulted in

surgery and loss of employment. Applicant acted responsibly in continuing to take care of his children while injured, and ultimately he has continued making an good faith effort to resolve these overdue debts. I find this potentially mitigating condition is a factor for consideration in this case.

Applicant is now more financially sound and better prepared for future contingencies. I conclude that he has mitigated the financial concerns.

### **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) 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 MC (b) applies, I also find that the record evidence leaves me without 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 mitigated the security concerns.

### **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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant

Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant

#### Conclusion

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

Martin H. Mogul  
Administrative Judge