



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 07-10065  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jennifer I. Goldstein, Esquire, Department Counsel  
For Applicant: *Pro Se*

August 4, 2008

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**Decision**

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MOGUL, Martin H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on March 29, 2006. On February 12, 2008, 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, 1960), 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 April 2, 2008, and requested a hearing before an Administrative Judge. I received the case assignment on April 29, 2008. DOHA issued a notice of hearing on May 27, 2008, and I convened the hearing as scheduled on June 24 2008. The Government offered Exhibits (Ex) 1 through 7, which were received without objection. Applicant testified on his own behalf and submitted Ex A through D, without objection. DOHA received the transcript of the hearing (Tr) on July 8, 2008. I granted Applicant's request to keep the record open until

July 8, 2008, to submit additional documents. He failed to submit any additional documents, and the record closed on June 13, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In his RSOR, Applicant admitted all of the SOR allegations, with the exception of 1.b., and 1.f., which he denied. 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 RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 36 years old. He is not currently married and he has two children. He is a high school graduate with several years of college.

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

The SOR lists 14 allegations (1.a. through 1.n.) regarding financial difficulties under Adjudicative Guideline F, with overdue debts totaling \$38,840. 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 \$2,649. In his RSOR, Applicant admitted that this allegation is correct, and at the hearing, Applicant testified that the total amount of this debt is still unpaid.

1.b. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$3,708. In his RSOR, Applicant denied that this allegation is correct, and at the hearing, Applicant testified that he has paid off this debt in full, although he had no documentation to establish that he had resolved this debt.

1.c. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$3,073. In his RSOR, Applicant admitted that this allegation is correct. At the hearing, Department Counsel questioned Applicant about Ex 2, in which Applicant had made arrangements to make 2 payments to resolve this debt by December 23, 2007. Applicant had no information as to whether he had made any payments and what was the status of this debt. I can not conclude that this debt has been resolved.

1.d. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$10,002. In his RSOR, Applicant admitted that this allegation is correct. At the hearing, he testified that he had recently been served with a notice that the creditor was suing him to recover this debt and the court date was shortly after the hearing. Clearly, this debt has yet to be resolved.

1.e. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$2,876. In his RSOR, Applicant admitted that this allegation is correct, and at the hearing, Applicant testified that he was unaware of the status of this debt. I can not conclude that this debt has been resolved.

1.f. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$3,000. In his RSOR, Applicant denied that this allegation is correct, and at the hearing, Applicant testified that he has paid off this debt in full, although he had no documentation to establish that he had resolved this debt.

1.g. This overdue debt to Creditor 7 is cited in the SOR in the amount of \$5,669. In his RSOR, Applicant admitted that this allegation is correct, and at the hearing, Applicant testified that he was unaware of the status of this debt. I can not conclude that this debt has been resolved.

1.h. This overdue debt to Creditor 8 is cited in the SOR in the amount of \$966. In his RSOR, Applicant admitted that this allegation is correct, and at the hearing, Applicant testified that he was unaware of the status of this debt, although he did testify that he had make a payment of \$677. I can not conclude that this debt has been resolved.

1.i. This overdue debt to Creditor 9 is cited in the SOR in the amount of \$1,446. In his RSOR, Applicant admitted that this allegation is correct, and at the hearing, Applicant testified that he was unaware of the status of this debt. I can not conclude that this debt has been resolved.

1.J. This overdue debt to Creditor 10 is cited in the SOR in the amount of \$262. In his RSOR, Applicant admitted that this allegation is correct. However, at the hearing, Department Counsel indicated to Applicant that in Exhibit 7, the most current credit report, dated June 23, 2008, it states that "settlement has been accepted on this account paid charge off." I find that this debt has been resolved.

1.k. This overdue debt to Creditor 11 is cited in the SOR in the amount of \$1,997. In his RSOR, Applicant admitted that this allegation is correct, and at the hearing, Applicant testified that except for a payment of \$90 that he made on this debt in 2007, the total amount of this debt is still unpaid.

1.l. This overdue debt to Creditor 12 is cited in the SOR in the amount of \$1,515. In his RSOR, Applicant admitted that this allegation is correct, and at the hearing, Applicant testified that he was unaware of the status of this debt. I can not conclude that this debt has been resolved.

1.m. This overdue debt to Creditor 13 is cited in the SOR in the amount of \$1,247. In his RSOR, Applicant admitted that this allegation is correct, and at the hearing, Applicant testified that except for a payment of \$100 that he made on this debt in 2007, the total amount of this debt is still unpaid.

1.n. This overdue debt to Creditor 14 is cited in the SOR in the amount of \$430. In his RSOR, Applicant admitted that this allegation is correct, and at the hearing, Applicant testified that except for a payment of \$100 that he made on this debt in 2007, the total amount of this debt is still unpaid.

Applicant testified that his financial difficulties primarily began in 2006, when he became divorced from his wife and he went from a two income family to a one income family, with the additional financial burden of child support of \$653 a month. He was also assigned in the marriage dissolution to pay some of the debts that his former wife had not paid. He did borrow \$17,000 from his 401(k) to pay off his Child Support payments and his gas and electric bills that were all overdue, as well as two of his overdue credit card debts.

Finally, Applicant testified that in his current financial position, he does not see himself being able to pay off his debts (Tr at 47).

### **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 has been unable to pay the majority of his 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 divorce. However I can not conclude that Applicant has acted responsibly under these circumstances because he has failed to contact the creditors of most of the overdue debts, and he has failed to attempt to seek some kind of financial counseling that might help him to ascertain a way to resolve these overdue debts. Therefore, I do not find that this potentially mitigating condition is a factor for consideration in this case.

Applicant has not resolved the great majority of his overdue debt. I conclude that until he is able to significantly reduce his overdue debt, he has not mitigated the financial concerns of the Government.

### **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 the Disqualifying Conditions apply and why no Mitigating Condition applies, 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.

### **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 through 1.n.:

Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul  
Administrative Judge