



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-02957
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro Se*

November 20, 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 26, 2006. On June 23, 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 July 7, 2008, and requested a hearing before an Administrative Judge. I received the case assignment on September 4, 2008. DOHA issued a notice of hearing on September 30, 2008, and I convened the hearing as scheduled on October 23, 2008, in Las Vegas, Nevada. The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A and B, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on October 31, 2008. I

granted Applicant's request to keep the record open until October 30, 2008, to submit additional documents. He timely submitted a cover letter and five character letters, which have been marked and entered into evidence without objection as Exhibit C. 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 all of the SOR allegations. 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 27 years old. He is married and he has one daughter. He is a high school graduate with several years of college.

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 12 allegations (1.a. through 1.l.) regarding financial difficulties of overdue debts under Adjudicative Guideline F, with the overdue debts. In his RSOR, Applicant admitted that this allegation is correct, and at the hearing, Applicant testified that none of the debts have been paid, except 1.g., but he is working with a credit counseling service (ccs) to resolve the debts. All of the allegations will be discussed in the same order as they were listed in the SOR, and then his effort to resolve the debts will be reviewed:

1.a. This overdue debt to Creditor 1 is cited in the SOR in the amount of \$857, and this debt is still unpaid. Exhibit A includes a letter from the ccs with whom Applicant is working, which indicates that they have been unable to verify this debt so they can not make arrangements to pay off this debt. They indicated that because of this they would be disputing this bill for possible deletion from Applicant's credit report. His work with the ccs will be discussed below.

1.b. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$704, and this debt is still unpaid.

1.c. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$60, and this debt is still unpaid. The letter from the ccs also indicates that initially they had been unable to verify this debt so they could not make arrangements to pay off this debt. However, they subsequently received a deletion letter from the last creditor for this debt, so this debt has been resolved (Exhibit A).

1.d. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$463, and this debt is still unpaid.

1.e. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$1,473, and this debt is still unpaid.

1.f. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$12,048, and this debt is still unpaid. The letter from the ccs also indicates that the creditor is willing to accept \$8,000 to settle this debt, and they are going to attempt to resolve this debt (Exhibit A).

1.g. This overdue debt to Creditor 7 is cited in the SOR in the amount of \$140. At the hearing, Applicant testified that this debt has been paid through the ccs with which he has been working. Exhibit A establishes that this debt has been paid.

1.h. This overdue debt to Creditor 8 is cited in the SOR in the amount of \$697, and this debt is still unpaid.

1.i. This overdue debt to Creditor 9 is cited in the SOR in the amount of \$1,305, and this debt is still unpaid.

1.J. This overdue debt to Creditor 10 is cited in the SOR in the amount of \$1,123, and this debt is still unpaid.

1.k. This overdue debt to Creditor 11 is cited in the SOR in the amount of \$562. Exhibit A indicates that this debt will be removed from Applicant's credit history, because it is for a two year contract, signed on March 8, 2006 for a health club membership. It is not clear why they believe that it will be dropped.

1.l. This overdue debt to Creditor 12 is cited in the SOR in the amount of \$501, and this debt is still unpaid.

Applicant testified that he has been paying \$100 a month to a ccs since June 2008, and thus far he has paid \$800, and will pay \$1,500 to them to help him resolve his debts. Exhibit A is a letter from this ccs, confirming that they are a "Licensed, Bonded and Registered Credit Service Organization" and that Applicant is currently a client. An additional letter from this ccs indicates that they are contacting and verifying the amounts owed by Applicant and attempting to make arrangements for payoffs to satisfy his debts. As discussed above some of these debt have been resolved by this ccs, and in their letter they indicate that they are waiting to hear back from other creditors to attempt to resolve the other outstanding debts. Applicant testified that he had contacted another ccs before, but they really did not do much to help him resolve his debts. The service he is now using was recommended to him by a friend.

Applicant testified that his financial difficulties primarily began when his current wife, who was his fiancée at the time, became pregnant and received healthcare for which her insurance did not adequately compensate her, resulting in unpaid hospital and doctor bills. Additionally, she was unable to work for the last months of her pregnancy. Applicant confirmed that before his wife's pregnancy, he had been current on his bills. He estimated that since 2005 he has been able to stabilize his finances, so while he has not resolved his past overdue debts, he has not incurred any new overdue debts.

Applicant, his wife, and his daughter recently moved into an apartment with his mother and sister so he could reduce his overhead and attempt to resolve his debts sooner.

Applicant testified that in he is current on all of his recent debts, and that he and his wife have a system so that they can remain current on all of their debts each month. He also testified very credibly that Applicant and his wife are extremely motivated to resolve all of their overdue debts so that they can build a better life for the family.

Finally, Applicant submitted five character letters (Exhibit C), one from his father-in-law and four from different levels of supervisors at Applicant's employer. All of them were extremely laudatory. His direct supervisor described Applicant as "helpful, reliable and a great team player," and his foreman wrote, "At all times, I have found [Applicant] to be dependable, organized, competent, hard-working, conscientious, honest and courteous with great integrity."

## **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 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 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 wife's pregnancy, both because of the medical bills without sufficient health insurance, plus her inability to work because he health was impaired during the latter part of her pregnancy. Prior to this incident, Applicant did not have overdue debts. Additionally, while it might have been delayed, I can conclude that Applicant has now acted responsibly under these circumstances by engaging the services of a company by paying it \$800 so far, that appears to be seriously involved in helping him resolve these overdue debts. Therefore, I find that this mitigating condition is a factor for consideration in this case.

While Applicant has not resolved the great majority of his overdue debt. I conclude he is responsibly pursuing a course to reduce this debt, and he has 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 Mitigating Condition (b) applies, and considering the exceptionally positive character letters in evidence, 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.

## **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

Subparagraphs 1.a through 1.l.: 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