



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



In the matter of:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 08-05522

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: Kenneth M. Roberts, Esquire

July 27, 2009

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On January 13, 2009, 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.

On February 9, 2009, Applicant replied to the SOR (RSOR) in writing, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on March 16, 2009. DOHA issued a notice of hearing on April 22, 2009, and I convened the hearing as scheduled on June 2, 2009, in La Vegas, Nevada. The Government offered Government Exhibits 1 through 6, which were received without objection. Applicant testified on his own behalf and submitted Applicant Exhibits A through T, which were also admitted without objection. Five additional witnesses testified on behalf of Applicant. DOHA received the transcript of the hearing (Tr) on

June 10, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, 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 his witnesses, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 50 years old. He is not currently married, and he has one child and one stepchild. He served in the United States Air Force from 1976 to 1980, when he received an Honorable Discharge.

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 six allegations (1.a. through 1.f.) regarding financial difficulties under Adjudicative Guideline F, for overdue debts. Applicant testified that all the overdue debts listed on the SOR were incurred, without his knowledge or permission, by a woman, who was his girlfriend at the time the debts were incurred. He first learned of these debts in 2007. The conduct of his former girlfriend will be discussed in greater detail below.

The debts 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 \$15,022. Applicant testified that this debt was incurred when his girlfriend wrote two checks of \$7,500 each against one of Applicant's credit cards, without his knowledge.

Applicant testified that he has resolved this debt. Exhibit E, a letter from the creditor of this debt, dated April 28, 2009, establishes that Applicant negotiated a settlement of this debt in the amount of \$7,250, which has been paid by Applicant. I find that this debt has been resolved.

1.b. This second overdue debt to Creditor 1 is cited in the SOR in the amount of \$1,293.

Applicant testified that he has resolved this debt. Exhibit F, a letter from the creditor of this debt, dated April 29, 2009, establishes that Applicant settled this debt on April 27, 2009. I find that this debt has been resolved.

1.c. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$1,351.

Applicant testified that he has resolved this debt. Exhibit G, a letter from the creditor of this debt, dated April 15, 2009, establishes that Applicant settled this debt on March 27, 2009. I find that this debt has been resolved.

1.d. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$1,041. Applicant testified that this debt is the same as that listed on 1.c., above. Exhibits 3 and 5 establish that this is the same debt as 1.c., and as reviewed above, it has been resolved.

1.e. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$65. Applicant testified that this debt is for a book club, which he did not believe he ever joined. However, Applicant testified that he has resolved this debt. Exhibit I, a letter from the creditor of this debt, dated February 12, 2009, establishes that Applicant settled this debt. I find that this debt has been resolved.

1.f. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$11,880. Applicant testified that this debt was incurred when his girlfriend charged \$10,000 against one of Applicant's credit cards, without his knowledge.

Applicant testified that he has resolved this debt. Exhibit J, a letter from the creditor of this debt, dated May 26, 2009, establishes that Applicant settled this debt on April 28, 2009. I find that this debt has been resolved.

In addition to the debts listed on the SOR and discussed above, Applicant testified that he had three other credit card debts, and in 2007, he withdrew approximately \$33,000 from his 401(k) to resolve these three debts.

As briefly reviewed above, Applicant testified that his financial difficulties occurred because of the acts of his former girlfriend. He estimated that she incurred approximately \$100,000 of debt without his knowledge, to help her pay for a very problematic gambling habit. It is his understanding and belief that he has now resolved all of the overdue debt.

The girlfriend's acts included writing checks on Applicant's credit cards without his knowledge, withdrawing money from Applicant's checking account, and failing to apply Applicant's money to pay their bills. Since she was the one who paid the bills, and she also got the mail most days, he did not learn about her actions until he was contacted by a creditor, who told Applicant that he had not received payments for a vehicle that Applicant had purchased, and he was preparing to repossess the vehicle.

Applicant and his former girlfriend owned a home together, in which they lived. Exhibit T is a Quitclaim Deed that the girlfriend signed, deeding the property to Applicant on June 1, 2009, for his payment to her of \$2,500. At the time of the hearing, she was in the process of moving out of the home. The only financial tie he continues to have with her is a vehicle that they purchased as cosigners, and for which she is required to make the payments. If she defaults on this loan he is prepared to resolve this debt.

At this point, Applicant has no credit cards, and he is current on all of his debts. Exhibit D includes a current Personal Financial Disclosure Form which shows that Applicant has a net reminder of \$592 a month.

## **Mitigation**

Applicant had five witnesses testify on his behalf. He also submitted nine character letters (Exhibit K through S), some of which were from the witnesses who testified. All of these individuals were very positive and laudatory in their descriptions of Applicant as “extremely security conscious, painfully honest, trustworthy,” and “fiscally responsible.”

## **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©, 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 most of his obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

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 noted above, Applicant argued that his financial problems were primarily the result of the fraudulent action of his girlfriend, who acted in such a manner to seriously damage his credit, without giving him any reason to suspect her actions. Since he became aware of the serious financial predicament in which she placed him, he has acted quite responsibly to resolve all of these overdue debts. Therefore, I find that this mitigating condition is a significant factor for consideration in this case. I also find (d) is a mitigating condition since Applicant has made a good-faith effort and now resolved all of his overdue debts.

Applicant has now resolved all of his very significant overdue debt. I conclude that 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 ©, 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 Mitigating Conditions apply, along with the extremely positive testimony from the witnesses for Applicant, I find that the record evidence leaves me with no 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 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.f.: 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