



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-09406
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

October 29, 2009

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**Decision**  
\_\_\_\_\_

MOGUL, Martin H., Administrative Judge:

On March 20, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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 May 13, 2009, Applicant replied to the SOR (RSOR) in writing, and requested a hearing before an Administrative Judge. I received the case assignment on May 27, 2009. DOHA issued a notice of hearing on June 10, 2009, and I convened the hearing as scheduled on August 12, 2009, in Las Vegas, Nevada. The Government offered Exhibits 1 through 20, which were received without objection. Applicant testified on his own behalf and submitted no documents. At Applicant's request, the record remained open until August 26, 2009, to allow Applicant to submit documents, but none were received. DOHA received the transcript of the hearing (Tr) on August 19, 2009. Based

upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **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 24 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.

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

The SOR lists 24 allegations (1.a. through 1.x.) regarding financial difficulties under Adjudicative Guideline F, for overdue debts. The debts will be discussed in the same order as they were listed in the SOR:

1.a. This overdue debt is cited in the SOR in the amount of \$1,020, for a judgement filed against him. Applicant testified that this debt has not been paid, nor has he taken any action to resolve this debt (Tr at 23-24). Applicant explained that since December 2008, he has made nine monthly payments of \$300, for a total of \$2,700, to a credit counseling service (CCS), and the plan is to pay off his debts over five years (Tr at 26-32). Exhibit 2 shows that of the \$300 that Applicant pays each month, the CCS takes \$269 as its fee, and up to this point no debts listed with this CCS have been paid. This debt has not been listed with the debt management program (DMP).

1.b. This overdue debt is cited in the SOR in the amount of \$67. Applicant testified that this debt has been paid (Tr at 24-25). Exhibit 20 establishes that this debt has been paid.

1.c. This overdue debt is cited in the SOR in the amount of \$1,350. Applicant testified that he has discussed a payment plan with the creditor, but thus far this debt has not been paid or listed in the DMP (Tr at 25-26).

1.d. This overdue debt is cited in the SOR in the amount of \$4,610. Applicant testified that this debt has not been paid, but it is one of the debts he has listed in the DMP.

1.e. This overdue debt is cited in the SOR in the amount of \$156. Applicant testified that he thought he had paid this debt, but he now believes that this debt has not been resolved (Tr at 32-33).

1.f. This overdue debt is cited in the SOR in the amount of \$1,244. Applicant testified that this debt has not been paid, but it is listed in the DMP (Tr at 34).

1.g. This overdue debt is cited in the SOR in the amount of \$823. Applicant testified that this debt has not been paid, but it is listed in the DMP (Tr at 34-35).

1.h. This overdue debt is cited in the SOR in the amount of \$401. Applicant testified that this debt has not been paid. It is not listed in the DMP, because Applicant wanted to try to resolve it himself (Tr at 36).

1.i. This overdue debt is cited in the SOR in the amount of \$3,576. Applicant testified that this debt has not been paid, but he has recently listed it in the DMP (Tr at 36).

1.j. This overdue debt is cited in the SOR in the amount of \$214. Applicant testified that this debt has not been paid. It is not listed in the DMP, because Applicant wanted to try to resolve it himself (Tr at 36-37).

1.k. This overdue debt is cited in the SOR in the amount of \$4,103. Applicant testified that this debt has not been paid, but it is listed in the DMP (Tr at 37).

1.l. This overdue debt is cited in the SOR in the amount of \$2,595. Applicant testified that this debt has not been paid, but it is listed in the DMP (Tr at 37).

1.m. This overdue debt is cited in the SOR in the amount of \$462. Applicant testified that this debt has not been paid, and it is not listed in the DMP, because Applicant wanted to try to resolve it himself (Tr at 37).

1.n. This overdue debt is cited in the SOR in the amount of \$585. Applicant testified that this debt has not been paid, and it is not listed in the DMP (Tr at 38).

1.o. This overdue debt is cited in the SOR in the amount of \$592. Applicant testified that this debt has not been paid, but it is listed in the DMP (Tr at 38).

1.p. This overdue debt is cited in the SOR in the amount of \$1,000. Applicant testified that this debt has been paid (Tr at 39), and the record was left open to allow Applicant to submit proof of payment. However, no documents were submitted to show it was paid.

1.q. This overdue debt is cited in the SOR in the amount of \$605. Applicant testified that this debt has not been paid, but it is listed in the DMP (Tr at 34-35).

1.r. This overdue debt is cited in the SOR in the amount of \$522. Applicant testified that this debt is the same as 1.a., above (Tr at 40, 44).

1.s. This overdue debt is cited in the SOR in the amount of \$3,022. Applicant testified that this debt has not been paid, but it is listed in the DMP (Tr at 41).

1.t. This overdue debt is cited in the SOR in the amount of \$18,526. Applicant testified that this debt has not been paid, but he believed that the correct amount owed

for a repossessed vehicle was \$11,599 (Tr at 41-42). No documents were submitted to show that this lesser amount was owed.

1.u. This overdue debt is cited in the SOR in the amount of \$1,136. Applicant testified that this debt has not been paid, but it is listed in the DMP (Tr at 42-43).

1.v. This overdue debt is cited in the SOR in the amount of \$537. Applicant testified that this debt has not been paid, but it is not listed in the DMP (Tr at 43).

1.w. This overdue debt is cited in the SOR in the amount of \$1,381. Applicant testified that this debt has not been paid, but it is listed in the DMP (Tr at 43).

1.x. This overdue debt is cited in the SOR in the amount of \$1,404. Applicant testified that this debt is the same as 1.w., above (Tr at 43).

Applicant testified that his financial difficulties began primarily because he made poor choices and he was immature during the period from March 2004 to June 2006, when he was in the United States Air Force. At one point, he was considering filing bankruptcy, but thus far he has not gone forward with bankruptcy proceedings, because he did not want it to hurt his potential to receive a security clearance (Tr at 45-47).

### **Paragraph 2 Guideline E, Personal Conduct**

2.a. The SOR alleged that on or about June 2006, Applicant was “separated from the United States Air Force with an Under Honorable Conditions (General) discharge due to a pattern of misconduct.”

Applicant testified that he believed he was only discharge because of his financial difficulties. However, the documents submitted by Department Counsel establish that Applicant received his discharge for the following reasons: (1) Applicant failed to go to his appointed place of duty at the proper time on more than one occasion, (2) Applicant failed to properly maintain his Government quarters on more than one occasion, (3) Applicant issued several checks knowing there were insufficient funds, (4) Applicant made false statements about his financial condition, and (5) Applicant failed to inform his supervisor about his financial condition. Despite multiple letters of reprimand and attempts at counseling and rehabilitation, Applicant’s Commanding Officer wrote that Applicant’s conduct did not improve. His discharge was for “A pattern of Misconduct, Conduct Prejudicial to Good Order and Discipline” (Exhibits 11 - 19).

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

Since Applicant has not resolved most of his very significant debt, I do not find that any Mitigating Condition (MC) is applicable. I conclude that until he is able to significantly reduce this debt, and establish a more stable financial picture, he has not mitigated the financial concerns of the Government.

### **Guideline E, Personal Conduct**

With respect to Guideline E, I conclude that AG 15 ¶ DC (d) "credible adverse information . . . which, when combined with all information supports a whole-person assessment of questionable judgement, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information" is applicable to Applicant. I do not find that any MC applies under this Guideline. I therefore, resolve Guideline E against 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 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 under Guidelines F and E, 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
Subparagraph 1.a.:	Against Applicant
Subparagraphs 1.c. through 1.q.:	Against Applicant
Subparagraphs 1.s. through 1.w.:	Against Applicant
Subparagraphs 1.b., 1.r., and 1.x.:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	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