



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 09-01733  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

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

April 30, 2010

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On July 21, 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 August 21, 2009, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. I received the case assignment on September 9, 2009. DOHA issued a notice of hearing on September 15, 2009, and I convened the hearing as scheduled on October 19, 2009. The Government offered Exhibits 1 through 5, which were received without objection. Applicant testified on his own behalf and submitted Exhibit A at the time of hearing, which was also admitted without objection. Applicant's father also testified on his behalf. DOHA received the transcript of the hearing (Tr) on October 27, 2009. I granted Applicant's request to keep

the record open until November 2, 2009, to submit additional documents. He timely submitted three additional documents, which have been identified and entered into evidence collectively as Exhibit B. Based upon a review of the case file, pleadings, exhibits, and the testimony of Applicant and his father, eligibility for access to classified information is denied.

### **Findings of Fact**

In his RSOR, Applicant admitted SOR allegations 1.b. through 1.r., and 1.u. He denied 1.a., 1.s., and 1.t. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record described above, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 35 years old. He is unmarried and has no 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 21 allegations (1.a. through 1.u.) regarding financial difficulties under Adjudicative Guideline F. The allegations will be discussed below in the same order as they were listed on the SOR:

1.a. This overdue debt to a state tax board is cited in the SOR in the amount of \$12,003. Applicant testified that this debt has been partially paid through a levy that has been placed on his income, in the amount of \$335 per paycheck, which he receives every two weeks. This has occurred for approximately two years. (Tr at 24-26.) Later at the hearing, Applicant amended his testimony to indicate the amount levied per paycheck was \$349 (Tr at 35.) Exhibit B includes a statement from a representative of the current employer of Applicant, in which she writes that the state tax board has thus far been paid \$6,769.36. The documentation upon which she is basing this statement was not submitted. Finally, no evidence was offered to show that this debt has been resolved.

1.b. This overdue debt to a state tax board is cited in the SOR in the amount of \$1,262. This debt has not been resolved. (RSOR and Tr at 28.)

1.c. This overdue debt to a state tax board is cited in the SOR in the amount of \$1,038. Based on a review of the latest credit report (Exhibit 5), it appears that this debt has been released by the state tax board. At the hearing, Department Counsel confirmed that this debt had been released and is therefore, resolved. (Tr at 28-29.)

1.d. This overdue debt to a state tax board is cited in the SOR in the amount of \$937. This debt has not been resolved. (RSOR and Tr at 30.)

1.e. This overdue debt to the Internal Revenue Service (IRS) is cited in the SOR in the amount of \$6,257. This debt has not been resolved. (RSOR and Tr at 30-32.)

1.f. This overdue debt to the IRS is cited in the SOR in the amount of \$36,993. This debt has not been resolved. (RSOR and Tr at 30-32.)

1.g. This overdue debt to the IRS is cited in the SOR in the amount of \$129. This debt has not been resolved. (RSOR and Tr at 30-32.)

1.h. This overdue debt to the IRS is cited in the SOR in the amount of \$2,593. Applicant also testified that the IRS has placed a levy on his paycheck. (Tr at 29.) Applicant's financial advisor also states that the IRS has thus far been paid \$1,788.86. (Exhibit B.) Based on a review of Exhibit 5, it also appears that this debt has been released by the IRS. At the hearing, Department Counsel also confirmed that this debt had been released and is therefore, resolved. (Tr at 28-29.)

1.i. This overdue debt to the IRS is cited in the SOR in the amount of \$3,292. This debt has not been resolved. (RSOR and Tr at 30-32.)

1.j. This overdue debt is cited in the SOR in the amount of \$143. This debt has not been resolved. (RSOR and Tr at 32.)

1.k. This overdue debt is cited in the SOR in the amount of \$372. This debt has not been resolved. (RSOR and Tr at 32.)

1.l. This overdue debt is cited in the SOR in the amount of \$2,706, with a balance of \$9,576. This debt has not been resolved. (RSOR and Tr at 32.)

1.m. This overdue debt is cited in the SOR in the amount of \$2,224. This debt has not been resolved (RSOR and Tr at 32.)

1.n. This overdue debt is cited in the SOR in the amount of \$11,260. This debt has not been resolved. (RSOR and Tr at 32.)

1.o. This overdue debt is cited in the SOR in the amount of \$1,184. This debt has not been resolved. (RSOR and Tr at 32-33.)

1.p. This overdue debt is cited in the SOR in the amount of \$114. This debt has not been resolved. (RSOR and Tr at 33.)

1.q. This overdue debt is cited in the SOR in the amount of \$86. This debt has not been resolved. (RSOR and Tr at 33.)

1.r. This overdue debt is cited in the SOR in the amount of \$3,773. This debt has not been resolved. (RSOR and Tr at 33.)

1.s. This overdue debt is cited in the SOR in the amount of \$5,669. In his RSOR, Applicant denied this allegation, but at the hearing Applicant admitted that this debt is still due and owing. (Tr at 33.)

1.t. This overdue debt is cited in the SOR in the amount of \$18,195. In his RSOR, Applicant also denied this allegation, but at the hearing Applicant admitted that this debt is still due and owing. (Tr at 33-34.)

1.u. Applicant's Personal Financial Statement (PFS), submitted on April 25, 2009, shows that he has a negative monthly net remainder. Applicant's PFS shows that his monthly income is \$1,950.18 and his monthly expenses are \$1,950, leaving him with a net remainder at the end of each month of \$.18. (Exhibit 2.) At the hearing, Applicant testified that this PFS is still accurate (Tr at 34-35.)

Applicant testified that he has a plan to pay off some of these debts, but thus far, with the exception of the state tax board and the IRS, he had not contacted any other creditor. (Tr at 37.) He further stated that he is scheduled to receive an increase in his salary of \$240 per pay period (every two weeks), and he plans to use that to pay some of these debts, although thus far he has not contacted any of the creditors with his new plan. (Tr at 38-39.)

Applicant testified that he started his own cell phone and pager business just after he completed high school, and he ran it from 1991 to 2006. In 2001 his brother died unexpectedly and in 2004 one of his uncles died. This resulted in him being in a depression, and he conceded that for a number of years thereafter he did not monitor the business properly. Also, there was more competition in the business, so he ultimately let the business dissolve. (Tr at 39-40.)

### **Mitigation**

As stated above, Applicant's father testified on his son's behalf. He confirmed that his son started his own business at 18 years of age, and after his brother died in 2001, Applicant did not pay enough attention to his business. He also confirmed that his uncle died in 2004. Finally, his father testified that Applicant does not have any credit cards at this time, and he is doing well in his current employment. (Tr at 48-54.)

Applicant submitted three positive character letters in Exhibit C, from individuals who know him in his current employment. He was described as someone who "has always exhibited good work habits and ethics." and "a trustworthy and dependable person displaying sound judgement and a good work ethic."

### **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 and could potentially apply in this case. 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. I find that both of these disqualifying conditions apply to Applicant in this case. The evidence has established that Applicant accumulated significant delinquent debt.

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 testified that his financial problems resulted from the failure of his business, significantly after the death of his brother put him into a deep depression. However, since he has not repaid or resolved the majority of his considerable overdue debt, I can not find that he has acted responsibly. Therefore, I do not find that this potentially mitigating condition is a factor for consideration in this case.

I conclude that until Applicant is able to significantly reduce his overdue debt, and show that he can maintain more financial stability, 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) 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 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. and 1.b.:	Against Applicant
Subparagraphs 1.d through 1.g.:	Against Applicant
Subparagraphs 1.i through 1.u.:	Against Applicant
Subparagraphs 1.c and 1.h.:	For 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