



ISCR Case No. 09-02450

## Appearances

November 4, 2009

## Decision

Applicant responded to the SOR (RSOR) in writing, on June 18, 2009 (Item 4). He requested that his case be decided on the written record in lieu of a hearing.

On August 31, 2009, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on October 9, 2009. Applicant submitted additional evidence in the form of two letters, which have been identified and entered into evidence collectively as Item A. In the FORM, Department Counsel offered seven documentary exhibits, which have been entered into evidence as Items 1 through 7. The case was assigned to this Administrative Judge on October 15, 2009. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

After a complete and thorough review of the evidence in the record, including the FORM, Applicant's RSOR and the other admitted documents, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 39 years old. He works for a defense contractor as a manufacturing engineer, and he seeks a Department of Defense security clearance in connection with his employment in the defense sector.

### **(Guideline F- Financial Considerations)**

The SOR lists 16 allegations (1.a. through 1.p.) regarding overdue debts under Adjudicative Guideline F. In his RSOR, Applicant admitted all of the allegations except 1.a. and 1.g. (Item 3). All of the allegations 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 \$7,780. Applicant denied this debt in his RSOR (Item 3), because he claimed that he did not recognize the name of the lender. Items 6 and 7 establish that this debt is owed by Applicant, and no evidence has been introduced to prove that this debt has been disputed or otherwise resolved. I find that this debt has not been paid.

1.b. This overdue debt is cited in the SOR in the amount of \$1,601. Applicant admitted this debt in his RSOR (Item 3), but stated that this debt has been placed with a "legal consolidation" agency. Item A includes a letter, which confirms that Applicant is enrolled in a debt settlement program. However, no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.c. This overdue debt is cited in the SOR in the amount of \$4,263. Applicant admitted this debt in his RSOR (Item 3), but stated that this debt has been placed with a "legal consolidation" agency. However, no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.d. This overdue debt is cited in the SOR in the amount of \$5,925. Applicant admitted this debt in his RSOR (Item 3), but stated that this debt has been placed with a

“legal consolidation” agency. However, no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.e. This overdue debt is cited in the SOR in the amount of \$5,753. Applicant admitted this debt in his RSOR (Item 3), but stated that this debt has been placed with a “legal consolidation” agency. However, no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.f. This overdue debt is cited in the SOR in the amount of \$2,890. Applicant admitted this debt in his RSOR (Item 3), but stated that this debt has been placed with a “legal consolidation” agency. However, no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.g. This overdue debt is cited in the SOR in the amount of \$99. Applicant denied this debt in his RSOR (Item 3). No evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.h. This overdue debt is cited in the SOR in the amount of \$11,050. Applicant admitted this debt in his RSOR (Item 3), but stated that this debt has been placed with a “legal consolidation” agency. However, no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.i. This overdue debt is cited in the SOR in the amount of \$5,033. Applicant admitted this debt in his RSOR (Item 3), but stated that this debt has been placed with a “legal consolidation” agency. However, no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.j. This overdue debt is cited in the SOR in the amount of \$4,732. Applicant admitted this debt in his RSOR (Item 3), but stated that this debt has been placed with a “legal consolidation” agency. However, no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.k. This overdue debt is cited in the SOR in the amount of \$6,942, with a balance of \$282,000. Applicant admitted this debt in his RSOR (Item 3), but stated that he has been working with a mortgage bailout agent to try modify this home loan. Item A includes a letter, which confirms that there is an attempt being made to negotiate a loan modification on this home loan. However, no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.l. This overdue debt is cited in the SOR in the amount of \$1,675, with a balance of \$69,212. Applicant admitted this debt in his RSOR (Item 3), but stated that the mortgage bailout agent is also attempting to modify this home loan. However, no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.m. This overdue debt is cited in the SOR in the amount of \$1,065. Applicant admitted this debt in his RSOR (Item 3), but stated that this debt has been placed with a

“legal consolidation” agency. However, no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.n. This overdue debt is cited in the SOR in the amount of \$10,324. Applicant admitted this debt in his RSOR (Item 3), but stated that this debt has been placed with a “legal consolidation” agency. However, no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.o. This overdue debt is cited in the SOR in the amount of \$11,029. Applicant admitted this debt in his RSOR (Item 3), but stated that this debt has been placed with a “legal consolidation” agency. However, no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.p. This overdue debt is cited in the SOR in the amount of \$6,617. Applicant admitted this debt in his RSOR (Item 3), but stated that this debt has been placed with a “legal consolidation” agency. However, no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

## **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 Government has established that Applicant has had a history of financial difficulties and overdue debts totaling at least \$86,778. Regarding the Disqualifying Conditions (DC) under Guideline F, I conclude both DC 19. (a) and DC 19. (c) apply, because of Applicant’s inability or unwillingness to satisfy his debts, and his long history of not meeting financial obligations.

While Applicant submitted evidence that he has begun working with two different organizations to attempt to resolve these debts, there has been no evidence submitted to show that any of these debts have been settled or even reduced. Additionally, there was no explanation given by Applicant as to how his financial difficulties occurred, or what he has done so that he will not find himself in this situation in the future. Therefore, I cannot find that any Mitigating Condition is applicable. I hold Guideline F 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 have considered the potentially disqualifying and mitigating conditions under Guideline F, in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above, including Applicant's history of financial difficulties and his failure to resolve the overdue debts, 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
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	Against Applicant
Subparagraph 1.l.:	Against Applicant
Subparagraph 1.m.:	Against Applicant
Subparagraph 1.n.:	Against Applicant
Subparagraph 1.o.:	Against Applicant
Subparagraph 1.p.:	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