



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 09-04084  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esquire, Department Counsel  
For Applicant: *Pro se*

April 30, 2010

---

**Decision**

---

MOGUL, Martin H., Administrative Judge:

On November 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. (Item 1.) 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 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 December 11, 2009, Applicant replied to the SOR (RSOR) in writing, and he requested that his case be decided on the written record in lieu of a hearing. On January 5, 2010, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered nine documentary exhibits. (Items 1-9.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on February 11, 2010. Applicant submitted timely an additional two page document, which has been marked as Item 10,

and entered into evidence without objection. The case was assigned to this Administrative Judge on March 11, 2010.

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

### **Findings of Fact**

In his RSOR, Applicant admitted all the SOR allegations 1.a., through 1.i. 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 additional document, and the FORM, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 29 years old. He 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 nine allegations (1.a. through 1.i.) regarding financial difficulties under Adjudicative Guideline F. The debts, which total more than \$37,000, will be discussed below in the same order as they were listed on the SOR:

- 1.a. This overdue debt is cited in the SOR in the amount of \$241.
- 1.b. This overdue debt is cited in the SOR in the amount of \$289.
- 1.c. This overdue debt is cited in the SOR in the amount of \$1,200.
- 1.d. This overdue debt is cited in the SOR in the amount of \$11,000.
- 1.e. This overdue debt is cited in the SOR in the amount of \$3,552.
- 1.f. This overdue debt is cited in the SOR in the amount of \$115.
- 1.g. This overdue debt is cited in the SOR in the amount of \$17,987.
- 1.h. This overdue debt is cited in the SOR in the amount of \$753.
- 1.i. This overdue debt is cited in the SOR in the amount of \$2,289.

As reviewed above, Applicant admitted every allegation in his RSOR. (Item 3.) In Item 8, Financial Interrogatories completed by Applicant on August 3, 2009, Applicant conceded, "I have made no effort to pay the debts and will include them in a bankruptcy in the future. There is not a bankruptcy currently underway."

In his post FORM submission (Item 10), dated February 12, 2010, Applicant wrote that all of these debts remain “outstanding and unpaid.” He further wrote that he has a plan to resolve all of these debts with the exception of the two largest, 1.d. and 1.g., which total \$28,987. He claims that these “will be removed from my credit,” but he gives no explanation for how this will occur. He also gives no indication of what kind of a payment plan he has to pay off these other debts or when they will be resolved. Nothing is stated in Item 10 about his previously mentioned plan to file a bankruptcy. In Item 10, Applicant does offer that he “has not had a delinquent account after 2005, and plan on maintaining that in the future [sic].”

Finally, Applicant has worked as a software engineer since March 2006. (Item 4.), No explanation was provided for his failure to resolve any of these significant overdue debts during his period of employment.

### **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 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. I do not find that Applicant has acted responsibly by resolving, or even attempting to resolve, these overdue debts so no mitigating condition is applicable.

Since Applicant has not resolved his overdue debt problem, I conclude that 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. through 1.i.:	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