



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 09-05650  
 )  
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Applicant for Security Clearance )

**Appearances**

For Government: Daniel f. Crowley, Esquire, Department Counsel  
For Applicant: *Pro Se*

February 3, 2011

**Decision**

MOGUL, Martin H., Administrative Judge:

On March 1, 2010, 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.

Applicant responded to the SOR (RSOR) in writing, on March 24, 2010. (Item 2.) He requested that his case be decided on the written record in lieu of a hearing.

On July 14, 2010, Department Counsel submitted 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 August 26, 2010. Applicant did not submit additional evidence. The case was assigned to this Administrative Judge on October 14, 2010.

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 40 years old. He works for 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 seven allegations (1.a. through 1.g.) regarding overdue debts under Adjudicative Guideline F. 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 \$6,499. Applicant admitted this debt in his RSOR (Item 2), and claimed that he had been making payments of \$25 a month since June 2009, but he stopped payments when he received a claim for this debt from another collection agency. No evidence has been introduced to establish that this debt has been resolved or reduced. I find that this debt has not been paid.

1.b. This overdue debt is cited in the SOR on a mortgage account that is past due in the approximate amount of \$10,000, for a home in foreclosure with a total loan balance of \$146,000. Applicant denied this debt in Item 2, stating that he has not been contacted regarding this debt. He wrote, "As the property has long since foreclosed I have no intentions regarding this debt at this time." Applicant listed this debt on a Security Clearance Application (SCA) (Item 4), and it is listed on all of the credit reports. (Items 5, 6, and 9.) No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.c. This overdue debt is cited in the SOR in the amount of \$7,557. Applicant denied this debt in Item 2, stating that he does not know the status of this debt, nor does he believe the amount stated is the actual amount owed. Applicant listed this debt on Item 4, and it is listed on all of the credit reports. (Items 5, 6, and 9.) No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.d. This overdue debt is cited in the SOR in the amount of \$6,543. Applicant denied this debt in Item 2, stating that he does not know the status of this debt, nor does he believe the amount stated is the actual amount owed. Applicant discussed this debt on his Response to Interrogatories (Item 7), but it is not clear if it is listed on the credit reports. (Items 5, 6, and 9.) The Government has not established that this debt is still outstanding.

1.e. This overdue debt is cited in the SOR on a mortgage account that is past due in the approximate amount of \$10,000, for a home in foreclosure with a total loan balance of \$238,000. Applicant denied this debt in Item 2, stating that he has not been contacted regarding this debt. He wrote, "As the property has long since foreclosed I have no intentions regarding this debt at this time." Applicant listed this debt on Item 4, and it is also listed on Item 5. No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.f. This overdue debt is cited in the SOR in the amount of \$41,952. Applicant denied this debt in Item 2, stating that he has not been contacted regarding this debt. He wrote, "As the property has long since foreclosed I have no intentions regarding this debt at this time." He also indicated that this debt was for a mortgage on a home that he owned, which was sold and settled on October 17, 2007. Item 5 lists two debts to this creditor with one debt of \$41,952 still owed. I find that this debt is still outstanding.

1.g. This overdue debt is cited in the SOR in the amount of \$6,274. Applicant admitted this debt in his RSOR (Item 2), and claimed that he had been making payments of \$25 a month since June 2009. No evidence has been introduced to establish that this debt has been resolved or reduced. I find that this debt has not been paid.

In his RSOR, Applicant stated that the reason he has only been making payments of \$25 is because since October 2007, he has only been employed for 17 months in total, spanning three different jobs. Also, in August 2009, Applicant's wife had a 10 level spine fusion and lost her job.

In a subject interview, Applicant blamed his financial problems on his unemployment and also bad real estate investments, including purchasing property that was consistently vandalized. (Item 7.)

### **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 the majority of which has not been resolved.

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 indicated that his financial problems resulted from his unemployment and that of his wife. However, since no evidence was introduced to establish that Applicant has repaid or resolved most of his considerable overdue debt, I cannot find that he has acted responsibly. Therefore, I do not find that this potentially mitigating condition is a factor for consideration in this case, nor do I find that any other mitigating condition can be considered to apply to 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.c.:	Against Applicant
Subparagraphs 1.d.:	For Applicant
Subparagraphs 1.e. through 1.g.:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul  
Administrative Judge