



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
| -----                            | ) |                        |
|                                  | ) | ISCR Case No. 10-00324 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: *Pro se*

April 4, 2013

---

**Decision**

---

MOGUL, Martin H., Administrative Judge:

On August 3, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F, J and G 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) (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On September 14, 2012, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on January 11, 2013. DOHA issued a notice of hearing on January 15, 2013, and I convened the hearing as scheduled on February 12, 2013. The Government offered Exhibits 1 through 10, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through C, which were also admitted without objection. An additional witness also testified for Applicant. DOHA received the transcript of the hearing (Tr) on February 21, 2013. The record was left open until February 26, 2013, to allow Applicant to submit additional evidence into the

record, which has been identified and entered into the record without objection as Exhibit D. Based upon a review of the pleadings, exhibits, and the testimony of Applicant and his witness, eligibility for access to classified information is denied.

### **Findings of Fact**

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

Applicant is 36 years old. He is divorced, and he has one son and one daughter. He served in the United States Marine Corps on active duty from 1997 to 2002, and in the Reserves from 2002 through 2005. He received an Honorable Discharge. 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 five allegations (1.a. through 1.e.) regarding overdue debts under Adjudicative Guideline F. In his RSOR, Applicant admitted all of the debts. The allegations 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 medical amount of \$617. At the hearing, Applicant testified that this debt has been resolved when he showed proof of insurance to the hospital creditor. (Tr at 31-33.) Based on Applicant's credible testimony and the fact that this debt is not listed on the credit reports (Exhibit 7 and 10), I find that this debt has not yet been resolved and is still owing.

1.b. This overdue debt for a charged off account is cited in the SOR in the amount of \$13,360. Applicant testified that the creditor would not agree to a payment plan, so he has not paid this credit card debt. (Tr at 33-35.) I find that this debt has not yet been resolved and is still owing.

1.c. This overdue debt for a second real estate mortgage is cited in the SOR in the amount of \$57,644. Applicant testified that this debt was for a home that he purchased in 2004, and first inhabited in 2005. The house was foreclosed upon in 2009, and Applicant claimed that he did not receive any documentation from the holder of this second mortgage so he is unaware what the status is of this debt. (Tr at 36-38.) Three credit reports all show approximately \$59,000 is owed by Applicant to this creditor. (Exhibits 3, 7, and 10.) I find that this debt has not yet been resolved and is still owing.

1.d. This overdue debt for a defaulted mortgage is cited in the SOR in the amount of \$234,357. Applicant testified that this debt was for the first mortgage for the home that he purchased in 2004, referred to in 1.c., above, and he believed he did not owe anything toward this debt. (Tr at 38-39.) Exhibit 3 shows that \$234,537 is still owed on this foreclosed home mortgage loan, but Exhibits 7 and 10, the more recent credit

reports show a \$0 balance on this foreclosed home mortgage. It appears that this debt was satisfied in foreclosure.

1.e. This overdue debt for a defaulted mortgage is cited in the SOR in the amount of \$105,000. Applicant testified that this debt was for the first mortgage for a home that he purchased in 2002, that also went into foreclosure in 2012. Applicant did not know if the house had been sold in foreclosure or what the current status of the debt was. (Tr at 40-44.) I find that this debt has not yet been resolved and is still owing.

Applicant explained that his financial problems occurred in part because he could not make payments on the houses he had purchased. He testified that he made 33 monthly payments of \$2,000 for the house that was the basis of the loans listed as 1.c. and 1.d., above, in an attempt to retain ownership of the house, but ultimately since he could not rent it or sell it, the house was foreclosed upon. Both houses were ultimately lost because he could not make the payments, partially as a result of his divorce. One of the houses that he rented out was so badly damaged that it would cost a great deal of money to rehabilitate it before it could be sold. (Tr at 73-75.)

### **Guideline J, Criminal Conduct**

The SOR alleges that Applicant has engaged in criminal acts which create doubt about a person's judgement, reliability, and trustworthiness. The SOR lists two allegations (2.a. and 2.b.) regarding criminal conduct under Adjudicative Guideline J.

2.a. The SOR alleges that on or about May 13, 2009, Applicant was arrested and charged with 1) Driving Under the Influence (DUI) alcohol/drugs and 2) Driving with BAC of over 8%. Applicant plead guilty, and was sentenced to 30 days confinement, suspended; fined; and sentenced to 5 years unsupervised probation. He was also ordered to participate in an alcohol education program. Applicant is on probation until June 17, 2014.

Applicant testified that he had attended a professional baseball game with co-workers, and it was his understanding that someone was to be the designated driver. As he had been deployed in Iraq for approximately two years before the incident, he was not used to consuming alcohol, and he believed that he was more affected by it than he would usually be. When he got back to the parking lot after the game, he could not find anyone to drive, and since the police were telling everyone to drive their cars out of the lot, he decided to drive his vehicle, even though he was intoxicated.

Applicant was stopped by the police before he even made it out of the parking lot, and he believed that his blood alcohol measured .13. Applicant conceded that he should have just left his car in the lot, even if it was later towed, and he could have taken the local train home. As a result of this conviction he lost his license for one year, he was ordered to attend 18 months of alcohol-related classes, and was had to be in his home for house arrest between 7 p.m. and 3:30 a.m. Applicant also had to pay several thousand dollars for the classes, fines and court costs. Applicant agreed that he is on probation for five years until June 2014. (Tr at 47-52.)

2.b. The SOR alleges that on or about May 22, 2006, Applicant was arrested and charged with 1) DUI, alcohol/drugs and 2) Driving with BAC of over 8%. Applicant plead guilty to count 2 and count 1 was dismissed. He was sentenced to confinement, suspended; and fined.

Applicant testified that he was going through difficulties in his marriage, and he made a poor choice by going out with friends and drinking before he drove home. He believed that his blood alcohol was found to be either .10 or .11, and he averred that he pled no contest and paid a fine of \$1,000. (Tr at 44-47.)

### **Guideline G, Alcohol Consumption**

The Government alleges that Applicant is ineligible for clearance because he has engaged in excessive alcohol consumption which leads to the exercise of questionable judgement or the failure to control impulses. The following allegations as they are cited in the SOR tend to show that:

3.a. That information set forth under subparagraphs 2.a. and 2.b., above.

Applicant still consumes alcohol. He estimated that once a month he might have “some beers” if he is watching a football game. He did not believe that he has consumed alcohol to the point of intoxication in the last few years, although he did concede that a few years ago when he was visiting his parents, he and his father consumed a few beers. (Tr at 52-53.)

### **Mitigation**

As stated above, one witness testified on behalf of Applicant. The witness is Applicant’s supervisor on a limited basis and has known Applicant since October 2011. They have socialized after work, and the witness has seen Applicant consume alcohol in the amount of two or three beers at a time, some of which could be in larger containers. The witness testified that he has not seen Applicant intoxicated. The witness confirmed that Applicant is someone that can be trusted at work. (Tr at 76-88.)

Applicant submitted seven letters of recommendation. Applicant was described as a “trustworthy and responsible person.” One letter from Applicant’s supervisor in the Marine Corps, dated June 10, 2009, stated that Applicant “is attending multiple meetings of AA, and has over 30 days of complete sobriety.” (Exhibit A.) As noted above, Applicant no longer practices complete sobriety as he does consume alcohol on a regular, if infrequent, basis. Applicant also submitted three AA meeting attendance sheets, showing that he attended 31 AA meetings from May 18, 2009 to June 18, 2009. (Exhibit B.)

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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 has 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 in significant part because of his divorce.

However, I do not find that Applicant has acted responsibly regarding these debts. Of the five debts included in ¶ 1 of the SOR, Applicant has completely resolved only the first debt on the SOR. The first mortgage listed on the SOR as 1.d. may also be resolved, although not because of any action of Applicant. Applicant has taken no action to resolve the other three significant debts.

Similarly, I find that AG ¶ 20 (d) is not applicable, since Applicant has not "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Finally, I do not find that any other mitigating condition is a factor for consideration in this case.

I conclude that until Applicant has significantly reduced his overdue debt, he has not mitigated the financial concerns of the Government.

### (Guideline J - Criminal Conduct)

The Government has established that Applicant engaged in two acts of criminal conduct, that occurred in 2006 and to 2009. I find that ¶ 31(a), "a single serious crime or multiple lesser offenses," applies in this case. ¶ 31(c), "allegations or admissions of

criminal conduct, regardless of whether the person was formally charged,” is also applicable to this case. Finally, ¶ 31(d), “individual is currently on parole of probation,” is also applicable to this case.

Since the two DUI arrests and convictions occurred as recently as 2006 and 2009, and Applicant is still on probation, I cannot find that any mitigating condition is applicable. Guideline J is found against Applicant.

### **(Guideline G - Alcohol Consumption)**

Applicant's alcohol consumption resulted in the criminal conduct and convictions listed in subparagraph 2.a. and 2.b.. The Government established that Applicant was involved in “alcohol-related incidents away from work,” and “binge consumption of alcohol to the point of impaired judgement.” Disqualifying conditions AG ¶ 22(a) and (c) apply to this case.

In reviewing the mitigating conditions, I note that Applicant attended AA meetings, and his former supervisor wrote a statement that Applicant had over 30 days of sobriety as of June 2009. However, I do not find any of the mitigating conditions apply because Applicant continues to consume alcohol, despite his AA attendance, and the DUI arrests and convictions. Therefore, I find Guideline G 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 the mitigating conditions do not apply, 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 under the whole-person concept.

### **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., 1.b., 1.c., 1.e.: | Against Applicant |
| Subparagraphs 1.d.:                   | For Applicant     |
| Paragraph 2, Guideline J:             | AGAINST APPLICANT |
| Subparagraphs 2.a.-2.b.:              | Against Applicant |
| Paragraph 3, Guideline G:             | AGAINST APPLICANT |
| Subparagraphs 3.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