



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 10-00925  
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Applicant for Security Clearance )

**Appearances**

For Government: Richard Stevens, Department Counsel  
For Applicant: *Pro se*

April 9, 2012

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On July 19, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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) effective within the Department of Defense for SORs issued after September 1, 2006.

On August 16, 2011, 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. (Item 4.) On January 5, 2012, 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 10 documentary exhibits. (Items 1-10.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on March 24, 2012. Applicant submitted one document, which was marked as Item A, and entered into evidence. The case was

assigned to this Administrative Judge on March 13, 2012. Based upon a review of the 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 Applicant's RSOR, the admitted documents, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 45 years old. He has recently married. Applicant was married three previous times, for the periods; 1990 to 1994, 1995 to 2000, and 2001 to 2007. He has two children. (Items 4 and 5.) Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

### **Paragraph 1 Guideline F, Financial Considerations**

The SOR lists 25 allegations (1.a. through 1.y.) regarding overdue, unpaid debts, 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 is cited in the SOR in the amount of \$339. Applicant admitted this debt in his RSOR. (Item 4.) No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.b. This overdue debt is cited in the SOR in the amount of \$319. Applicant admitted this debt in his RSOR. (Item 4.) 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 \$653. Applicant wrote that he "did not recall" this debt in his RSOR. (Item 4.) The credit report (CR), dated October 15, 2009, shows that this medical debt is overdue by Applicant. (Item 9 at 13.) 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 \$164. Applicant admitted this debt in his RSOR. (Item 4.) No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.e. This overdue debt is cited in the SOR in the amount of \$67. Applicant wrote that he "did not recall" this debt in his RSOR. (Item 4.) The CR shows that this debt is overdue by Applicant. (Item 9 at 9.) 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 \$30. Applicant wrote that he "did not recall" this debt in his RSOR. (Item 4.) The CR shows that this medical

debt is overdue by Applicant. (Item 9 at 12.) No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.g. This overdue debt is cited in the SOR in the amount of \$1,971. Applicant denied this debt in his RSOR. (Item 4.) The CR shows that this debt is overdue by Applicant. (Item 9 at 8.) No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.h. This overdue debt is cited in the SOR in the amount of \$303. Applicant admitted this debt in his RSOR. (Item 4.) No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.i. This overdue debt is cited in the SOR in the amount of \$514. Applicant wrote that he “did not recall” this debt in his RSOR. (Item 4.) The CR shows that this debt is overdue by Applicant. (Item 9 at 25.) No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.j. This overdue debt is cited in the SOR in the amount of \$679. Applicant denied this debt in his RSOR. (Item 4.) This debt has been shown to be overdue by Applicant by Item 7 at 18, and Item 10 at 2. No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.k. This overdue debt is cited in the SOR in the amount of \$56,284 for a student loan. Applicant admitted this debt in his RSOR, but he wrote that the “amount may be different due to recent payment schedule.” (Item 4.) The CR shows that this debt is overdue by Applicant in the amount of \$57,026. (Item 9 at 7.) No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.l. This overdue debt is cited in the SOR in the amount of \$34,848 for a student loan. Applicant admitted this debt in his RSOR, but he wrote that the “amount may be different due to recent payment schedule.” (Item 4.) The CR shows that this debt is overdue by Applicant in the amount of \$35,253. (Item 9 at 6.) No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.m. This overdue debt is cited in the SOR in the amount of \$210. Applicant admitted this debt in his RSOR. (Item 4.) No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.n. This overdue debt is cited in the SOR in the amount of \$1,025 for a judgment filed against him in 2003. Applicant denied this debt in his RSOR. (Item 4.) The CR shows that this debt for a judgment is overdue. (Item 9 at 4.) No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.o. This overdue debt is cited in the SOR in the amount of \$2,433 for a judgment filed against him in 2003. Applicant wrote that he “did not recall” this debt in his RSOR. (Item 4.) The CR shows that this debt for a judgment is overdue. (Item 9 at 4.) No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.p. This overdue debt is cited in the SOR in the amount of \$275. Applicant admitted this debt in his RSOR. (Item 4.) No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.q. This overdue debt is cited in the SOR in the amount of \$4,125. Applicant admitted this debt in his RSOR. (Item 4.) No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.r. This overdue debt is cited in the SOR in the amount of \$49. Applicant wrote that he “did not recall” this debt in his RSOR. (Item 4.) The CR shows that this debt is overdue by Applicant. (Item 9 at 12.) No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.s. This overdue debt is cited in the SOR in the amount of \$191. Applicant wrote that he “Never had a utility account in PA” in his RSOR. (Item 4.) The CR shows that this debt is overdue by Applicant. (Item 9 at 24.) No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.t. This overdue debt is cited in the SOR in the amount of \$117. Applicant wrote that he “did not recall” this debt in his RSOR. (Item 4.) The CR shows that this debt is overdue by Applicant. (Item 9 at 24.) No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.u. This overdue debt is cited in the SOR in the amount of \$287. Applicant admitted this debt in his RSOR. (Item 4.) No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.v. This overdue debt is cited in the SOR in the amount of \$20,676 for renter relocation and tuition reimbursement. Applicant denied this debt in his RSOR. (Item 4.) This debt has been shown to be overdue by Applicant by Item 6 at 7. No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.w. This overdue debt is cited in the SOR in the amount of \$12,385 for a student loan. Applicant wrote, “I recall the original amount as paid. I’ll have to look into it,” in his RSOR. (Item 4.) The CR shows that this debt is overdue by Applicant. (Item 9 at 11.) No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.x. This overdue debt is cited in the SOR in the amount of \$8,000 for a repossessed vehicle. Applicant denied this debt in his RSOR. (Item 4.) This debt has

been shown to be overdue by Applicant by Item 4 at 70, and Item 6 at 6. No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

1.y. This overdue debt is cited in the SOR in the amount of \$600. Applicant denied this debt in his RSOR. (Item 4.) This debt has been shown to be overdue by Applicant by Item 4 at 71, and Item 6 at 6. No evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

Applicant cited a number of reasons for his financial difficulties. They included periods of unemployment from October 2006 to February 2007, and May 2007 to August 2007, divorce, losing his family belongings, and the cost of family support.

As stated above, Applicant was given the opportunity to submit a response to the FORM, and to address the debts that were alleged to be overdue in the SOR. Applicant did respond to the FORM in a timely manner, but he did not submit any evidence to prove that any of the SOR debts had been paid, in any way resolved, or that a payment plan had been established for Applicant to resolve these debts.

## **Paragraph 2 Guideline E, Personal Conduct**

2.a. The SOR alleges that facts upon which 1.v. is based show conduct which shows questionable judgement, lack of candor, dishonesty, or unwillingness to comply with rules and regulations under Guideline E. In his RSOR, Applicant denied this allegation and gave an explanation. This allegation was not addressed in the FORM. I do not find that sufficient evidence was introduced to establish this allegation, particularly as it was alleged.

## **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 debts.

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 reviewed above, Applicant claimed that his poor finances were in part because of unemployment, divorce, and loss of his family belongings. However, no evidence was introduced to establish that he has resolved any of his considerable overdue debt, or 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 applies.

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

### **Guideline E, Personal Conduct**

With respect to Guideline E, I find that the Government has not introduced sufficient evidence to establish the allegation under Personal Conduct. I find that no disqualifying conditions are applicable under Guideline E. I therefore, resolve Guideline E for 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, including all of the reasons cited above as to why the Disqualifying Conditions apply and no Mitigating Condition is applicable under Guideline F. Therefore, 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.y.:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a.:	For 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