



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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 ----- ) ISCR Case No. 10-01360  
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 Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

May 10, 2011

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On June 9, 2010, 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. 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 July 7, 2010, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. I received the case assignment on August 18, 2010. DOHA issued a notice of hearing on September 23, 2010, and I convened the hearing as scheduled on November 22, 2010. The Government offered Exhibits 1 through 8, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through D at the time of hearing, which were received without objection. DOHA received the transcript of the hearing (Tr) on December 7, 2010. I granted Applicant's request to keep the record open until

December 13, 2010, to submit additional documents, and several additional documents were received, identified as Exhibits F through V, and entered into evidence without objection. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

### **Findings of Fact**

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

Applicant is 61 years old. He is married, and he has three daughters. He served in the United States Marine Corps (USMC) from 1969 to 1975, and 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 four allegations (1.a. through 1.d.) regarding financial difficulties 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 \$32,296 to the Internal Revenue Service (IRS) for a tax lien entered against him in 2002. In his RSOR, Applicant admitted this debt. During his testimony, he explained that he has been attempting to refinance his home, and use the money from a home equity loan, to pay off this lien to the IRS. Because the home, in which he has lived for 30 years, needs some repairs, he has been unable to receive the loan until the repairs are made. He believes he has about \$150,000 in equity in the home. Exhibit C includes a document showing that Applicant is still applying for a new home loan.

Applicant explained that this debt arose when his wife started a business as a financial broker for two or three years, but failed to pay her taxes from the business. The Applicant was not certain how he was assessed this much money from the IRS. He testified that when he inquired from the IRS as to how this amount was determined, they indicated that they no longer have the records for this tax although the lien has continued since 2002. (Tr at 30-36.)

Applicant also stated that he has filed a tax return every year, and the IRS has kept any amount that would otherwise have been refunded to him to pay off the debt. (Tr at 36-38.) However, despite not receiving a refund for several years, he never has been informed that the amount owed to the IRS has been reduced. In his post hearing documents, Applicant submitted his Federal tax Form 1040s for tax years 2004 through 2009. (Exhibit T 1-6.) It appears that for those years he would have been entitled to refunds totaling \$9,795, so that amount should have been applied to his debt, although no verification from the IRS shows what is actually owed. At this time, Applicant is still attempting to refinance his home loan to use the equity to pay off this debt to the IRS. I

find this debt is still due and owing, although the amount owed may have been reduced. Applicant confirmed that this tax lien, which arose because his wife failed to file taxes when she had her own business, was the only tax lien that was ever placed on his property. (Tr at 66-67.)

1.b. This overdue, charged off debt is cited in the SOR in the amount of \$563. Applicant testified that this debt has been paid. Exhibit A includes a letter from this creditor, dated July 25, 2005, establishing that this debt has “legally been paid in full for less than the full balance” based on an amount received from Applicant of \$1,045.94 on a debt of \$1,609.03. I find this debt has been resolved. (Tr at 39-44.)

1.c. This overdue, charged off debt is cited in the SOR in the amount of \$11,611. Applicant testified that he has made 17 payments of \$250 bi-monthly, without missing any payments, for a total of \$4,250 on this debt. (Tr at 39-46, 72.) Exhibit A includes a letter from the creditor establishing this payment plan, and Exhibit B shows Applicant’s most recent payment of \$250 on November 5, 2010 on this debt. Exhibit V is a letter from this creditor, dated December 6, 2010, showing that they have received \$4,500 on this debt. I find this debt has been significantly reduced, and Applicant is making a good faith attempt to resolve it.

1.d. This overdue debt is cited in the SOR in the amount of \$45. Applicant testified that he did not know the origination of this debt. He phoned the company, but they could not provide him with any information about the debt, nor did they identify him as having a debt, and he noted that the debt is no longer on his credit report. He indicated that he would certainly pay off this debt for the very small amount listed, if he could be informed whom to pay but the company had no record of him. (Tr at 47-49, 74.) I find Applicant has made a good faith attempt to resolve this debt.

As reviewed above, Applicant’s sole reason for his financial difficulties was that his wife did not pay her taxes and incurred other debts when she started her own business.

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

2.a. Applicant executed a Security Clearance Application (SCA) on September 29, 2009. (Exhibit 1.) It is alleged in the SOR that Applicant admitted in a Subject Interview, dated December 1, 2009, that he failed to list his debts on his SCA because of embarrassment. (Exhibit 3.) On the subject interview verification, Applicant wrote “It was more of an oversight than a [sic] embarrassment.” During his explanation at the hearing, he indicated that as a supervisor, his embarrassment was that he did not know of these debts. (Tr at 51-55.)

2.b. It is alleged in the SOR that Applicant failed to provide truthful and candid answers to several of the subsections of Question 26. They will be reviewed in the same order as they were addressed in the SOR: Question 26 of the SCA. c. asks, “Have you failed to pay Federal, state, or other taxes, or to file a tax return, when required by law or ordinance?”; g. asks, “Have you had bills or debts turned over to a

collection agency?"; h. asks, "Have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?"; and p. asks, "Are you currently delinquent on any Federal debt(s)?" Applicant answered "No" to each of these subsections of Question 26. It is alleged in the SOR that he failed to disclose that he was delinquent on the accounts set forth in paragraph 1, above.

Applicant testified that he was not aware of any of any of the overdue debts when he completed the SCA, because his wife handled the bills and he believed they were all up to date. This is why he answered "No" to questions 26 g. and h. He answered "No" to questions 26 c. and p., because the tax lien occurred more than 7 years ago, and the questions on the SCA only refer to the last 7 years. (Tr at 53-59, 66-67.) Applicant testified credibly that he did not mean to hide anything with his answers. (Tr at 60.)

Applicant now reviews his finances himself, instead of leaving it to his wife, so he will not find himself in the financial difficulties he did before. He also pays approximately \$15 every month to get a copy of his credit report and review it to make certain his debts are current. He also stated that he has raised his credit score from 512 to 699, which is confirmed by Exhibit U.

## **Mitigation**

Applicant submitted seven very positive character letter in Exhibits D, F and G. A retired Colonel and the president of Applicant's employer wrote, "As a person he exemplifies strong character traits . . . integrity, loyalty, humility, compassion, courage and high energy. He is dedicated to doing what is right and will do it when no one is watching. I have full confidence in his trustworthiness in all that he does."

Applicant also submitted a Personal Financial Statement that showed his monthly income is \$6,449.10, with his monthly expenses \$2,374.06 and his debts \$3,069.56, leaving a net remainder of \$1,005.48. (Exhibit S.) Additionally, Applicant submitted a Performance Management Review for 2010. His overall rating was a 4.58 with 5.0 being the best, and he was described as being an outstanding member of the leadership team. (Exhibit H.) Finally, Applicant offered a number of certificates establishing his continued training to be an outstanding employee. (Exhibits K through R. )

## **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 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 “[any 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: 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 solely from the failure of his wife’s business, and her failing to pay her debts including federal taxes. Applicant has submitted evidence to establish that he has repaid one of his overdue debts; 1.b. and is or resolving another one; 1.c. The third debt is minimal, and Applicant would pay off this debt if there was a creditor to whom he could pay it; 1.d. Applicant has attempted to get a home equity loan to pay off the tax lien, and based on his not receiving refunds to which he would otherwise be entitled, it does appear that this debt has been reduced. Therefore, I find that he has acted responsibly, and this potentially mitigating condition is a factor for consideration in this case.

AG ¶ 20(d) is also applicable since Applicant has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” I find that this mitigating condition is a factor for consideration in this case.

I conclude that Applicant has significantly reduced or resolved his overdue debts, and he has shown that he can maintain financial stability. Therefore, he has mitigated the financial concerns of the Government.

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

With respect to Guideline E, I find it credible that Applicant was not aware of his overdue debts when he completed his SCA, based on his credible testimony of his not receiving notice of the debts from his wife, and he did not identify the tax lien as it has been put in place more than seven years before he completed the SCA. I find that Applicant did not intend to mislead the Government regarding his financial situation.

In reviewing the disqualifying conditions under Guideline E, I conclude that there was no “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire” by Applicant. Therefore, I find neither ¶ 16 (a), nor any other disqualifying condition, applies against Applicant. I 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. Based on all of the reasons cited above as to why the Mitigating Conditions apply under Guideline F and no Disqualifying Conditions apply under Guideline E, considered with the excellent recommendations and his outstanding employment, I find that the record evidence leaves me with no significant questions or 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 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:	FOR APPLICANT
Subparagraphs 1.a. through 1.d.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a. and 2.b.:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul  
Administrative Judge