



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 10-03182  
 )  
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Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Department Counsel  
For Applicant: *Pro se*

May 10, 2011

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On October 19, 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. (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 November 10, 2010, 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 2.) On January 31, 2011, 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 March 9, 2011. Applicant submitted no additional evidence. The case was assigned to this Administrative Judge on March

24, 2011. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

In his RSOR, Applicant admitted all of the SOR allegations, 1.a. through 1.o. under Guideline F, and 2.a., under Guideline E. 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 documents, and the FORM, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 35 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.

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

The SOR lists fifteen allegations (1.a. through 1.o.) 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 \$224. Applicant admitted this debt in his RSOR (Item 2). He wrote, "It is my intention to have all the discrepant [*sic*] debts taken care of and it has never been my intention to not take care of them. In light of my financial situation concerning my debts, I will be receiving my Service Connected Disability compensation that I have not received in the last 4 to 5 years due to a loan that was explained to an investigator I met with." However, 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 \$37,253. Applicant admitted this debt in his RSOR (Item 2), and 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 \$889. Applicant admitted this debt in his RSOR (Item 2), and 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 \$1,015. Applicant admitted this debt in his RSOR (Item 2), and 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 \$1,049. Applicant admitted this debt in his RSOR (Item 2), and 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 \$3,503. Applicant admitted this debt in his RSOR (Item 2), and 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 \$12,545. Applicant admitted this debt in his RSOR (Item 2), and 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 \$795. Applicant admitted this debt in his RSOR (Item 2), and 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 \$709. Applicant admitted this debt in his RSOR (Item 2), and 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 \$272. Applicant admitted this debt in his RSOR (Item 2), and 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 \$259. Applicant admitted this debt in his RSOR (Item 2), and 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 \$76. Applicant admitted this debt in his RSOR (Item 2), and 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 \$85. Applicant admitted this debt in his RSOR (Item 2), and 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 \$46. Applicant admitted this debt in his RSOR (Item 2), and 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 \$252. Applicant admitted this debt in his RSOR (Item 2), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt is still outstanding.

In the Personal Subject Interview, Applicant cites a number of reasons for his financial difficulties. They include significant medical health issues, including surgery and chemotherapy, which limited his ability to work, poor financial decisions, and his student loans becoming due because his deferments ended. (Item 8.)

A Personal Financial Statement of Applicant was submitted with Applicant's response to Interrogatories. (Item 9.) While the statement is dated September 10, 2001,

it appears that it should be dated 2010 as the Leave and Earning statement attached to it is dated August 20, 2010. It shows that Applicant has a monthly net remainder of \$2,058.88. There is no explanation as to why some of this remainder has not been used to eliminate, or at least significantly reduce, Applicant's debt.

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

Applicant executed a Security Clearance Application (SCA) on September 10, 2007. (Item 4.) The SOR alleges that Applicant failed to provide truthful and candid answers to Question 28. They will be reviewed in the same order as they were addressed in the SOR:

2.a. Question 28 a. of the SCA asks, "In the last 7 years have you been over 180 days delinquent on any debts(s)?" Applicant answered, "No" to this question subsection.

Question 28 b. of the SCA, which was erroneously cited in the SOR as (h) asks, "Are you currently over 90 days delinquent on any debts(s)?" Applicant answered, "No" to this question subsection. It is alleged in the SOR that he deliberately failed to disclose that he has been delinquent on the accounts set forth in subparagraphs 1.a., 1.c., 1.d., 1.e., 1.l., 1.m., 1.n., and 1.o., above.

In his RSOR, Applicant wrote, "I understand that I did answer 'NO' to these 2 questions; I should have pulled a credit report to fill out my Security Clearance Application." While Applicant may not have been able to list all of the 15 debts that are listed on the SOR, no explanation was given for why he answered "No" to both questions and failed to list any of the overdue debts cited in the SOR.

## **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. 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 his medical problems, which caused some unemployment. 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.

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 Applicant knew or should have known of his extensive overdue debts that had been acquired over several years, and he should have included these overdue debts when he completed his SCA. Because of his lack of honesty and candor regarding very clearly written questions, I find that Applicant did intend to mislead the Government.

The Government relies heavily on the honesty and integrity of individuals seeking access to our nation’s secrets. If such an individual intentionally falsifies material facts, it is extremely difficult to conclude that he nevertheless possesses the judgment, and honesty necessary for an individual given a clearance.

In reviewing the disqualifying conditions under Guideline E, I conclude that because of Applicant’s “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire” that ¶ 16(a) applies against Applicant. I find no mitigating conditions can be applied. I therefore, resolve Guideline E 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, including all of the reasons cited above as to why the Disqualifying Conditions apply and no Mitigating Condition is applicable under either Guideline. Also, since this case is an Administrative Determination, I have not had the opportunity to assess the credibility of the Applicant in person, nor has any independent evidence concerning Applicant's character been submitted. 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.o.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a.:	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