



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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 ----- ) ISCR Case No. 10-06091  
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 Applicant for Security Clearance )

**Appearances**

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

April 25, 2012

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On October 14, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F 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 November 16, 2011, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. I received the case assignment on January 20, 2012. DOHA issued a notice of hearing on January 24, 2012, and the hearing was convened as scheduled on February 14, 2012. The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through H at the time of hearing, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on February 27, 2012. I granted Applicant's request to keep the record open until February

29, 2012, to submit additional documents, and additional documents that were received have been identified and entered into evidence without objection as Exhibits I through N. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

### **Findings of Fact**

In his RSOR, Applicant admitted SOR allegations 1.a., b., c., d., e., and f., and denied 1.g., and h. 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 testimony of Applicant, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 30 years old. He is not currently married, and he has no children. Applicant graduated high school and attended some college. He was born in Bolivia, and came to the United States in 1985. He became a United States citizen in 2011. Applicant served in the United States Marine Corps (USMC) from 2002 to 2008 and 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 eight allegations (1.a. through h.) regarding overdue 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 \$6,927. As reviewed above, Applicant admitted this allegation in his RSOR. Applicant testified that since the SOR was issued he has engaged the services of a credit counseling group (CCG) to help him resolve his debts and has paid them \$800. At the time of the hearing that debt was still unpaid. (Tr at 27-30.) Exhibit A is a letter from this CCG indicating that they have been employed by Applicant to "remove negative items currently being reported on his credit report erroneously." Exhibit K is a letter from the CCG to the credit reporting agencies, dated February 22, 2012, challenging seven debts listed on the SOR, including the debt listed as 1.a. No evidence of a response was introduced. I find that this debt is unresolved.

1.b. This overdue debt is cited in the SOR in the amount of \$6,933. As reviewed above, Applicant admitted this allegation in his RSOR. At the hearing, Applicant testified that this debt was paid in full by him on November 16, 2011. (Tr at 30-31.) Exhibit D is a Form 1099-C from the creditor, showing that this debt has been cancelled. It appears that this debt has been resolved.

1.c. This overdue debt is cited in the SOR in the amount of \$19,148. As reviewed above, Applicant admitted this allegation in his RSOR. Applicant testified that

this debt has not been resolved, and he is waiting for a reply from the creditor. (Tr at 31.) This debt was challenged by the CCG. (Exhibit K.) I find that this debt is unresolved.

1.d. This overdue debt is cited in the SOR in the amount of \$5,000. As reviewed above, Applicant admitted this allegation in his RSOR. Applicant testified that this debt is in the process of being settled, and he planned to pay off the debt shortly after the hearing. (Tr at 31-32.) Exhibit L is a letter from the creditor, dated February 7, 2012, indicating that this debt would be settled for one lump sum payment from Applicant of \$1,838.67. A receipt voucher shows that Applicant paid that amount to the creditor on February 22, 2012. I find that this debt has been resolved.

1.e. This overdue debt is cited in the SOR in the amount of \$154. As reviewed above, Applicant admitted this allegation in his RSOR. Applicant testified that this debt has been paid in full. (Tr at 32.) Exhibit C is a letter from the creditor, dated May 24, 2010, indicating that this debt had been paid in full. I find that this debt has been resolved.

1.f. This overdue debt is cited in the SOR in the amount of \$14,285. As reviewed above, Applicant admitted this allegation in his RSOR. Applicant testified that this debt has not been resolved, and he is waiting for a reply from the creditor. (Tr at 33.) This debt was challenged by the CCG. (Exhibit K.) I find that this debt is unresolved.

1.g. This overdue debt is cited in the SOR in the amount of \$1,205. As reviewed above, Applicant denied this allegation in his RSOR. Applicant testified that he contacted this creditor, and the creditor could not identify a debt owed to them by Applicant. Applicant further testified that he believed this debt was for a ticket, which he paid in full, but which inadvertently went to collections. (Tr at 33.) Exhibit G is a letter from the creditor, dated January 30, 2012, stating that they could not locate an account for Applicant. I find that this debt has been resolved.

1.h. This overdue debt is cited in the SOR in the amount of \$66. As reviewed above, Applicant denied this allegation in his RSOR. Applicant testified that when he contacted the creditor for this debt, they informed him that the debt was actually owed by Applicant's mother, and the creditor would remove the debt from his credit report. (Tr at 34.) This debt was not listed on Applicant's recent credit reports. (Exhibits 4-6 .) I find that this debt has been resolved.

Applicant testified that his financial problems occurred one year after he left the USMC, because he was laid off from his private employment for the period of February to April 2009. He was working two part time jobs to try to earn enough income to pay his debts, but he was earning less money. (Tr at 35-37.) Applicant testified that prior to his being laid off, he had not had any financial problems, and he does not have any current debts on which he is overdue. In his current employment, he is scheduled to deploy for one year, and he plans to use the extra income he earns during that period to pay off his debts. (Tr at 48-52.)

## **Mitigation**

Among the post hearing documents submitted by Applicant was Exhibit M, his DD Form 214, confirming Applicant served in the USMC from 2002 to 2008, received an Honorable Discharge, and received a number of Decorations and Medals during his service. He also submitted Exhibit N, an Equifax credit report dated February 4, 2012, which does not show any overdue debts that were not listed on the SOR. Exhibit I is Applicant's Performance Evaluation from his current employer, and he received all "Exceptional" or "Very Good" ratings from his manager. He was described as "Very Reliable and Hard Working." Exhibit J consisted of three extremely positive character letters from Applicant's supervisor and two co-workers. His supervisor described him as someone who, "has a high level of integrity and well developed sense of responsibility for any tasks assigned." Exhibit H had two additional extremely positive recommendations for Applicant.

## **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 "[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’s financial problems resulted from the time when he became unemployed and underemployed. I find that he has acted responsibly, since he has resolved his smaller debts and has consulted a debt reduction company, paying \$800 for their services to attempt to resolve his remaining overdue debts. Therefore, I find that this mitigating condition is a factor for consideration in this case.

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

Finally, I conclude that Applicant is maintaining more financial stability and not incurring additional overdue debts since he obtained his current employment. Therefore, Applicant has 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 mitigating conditions apply, considered with Applicant’s military history and the strong letters of recommendation, 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.h.: 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