



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 10-06098

**Appearances**

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

April 9, 2012

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On November 18, 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 December 15, 2011, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. I received the case assignment on February 13, 2012. DOHA issued a notice of hearing on February 17, 2012, and the hearing was convened as scheduled on March 7, 2012. The Government offered Exhibits 1 through 7, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through E, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on March 14, 2012. Based

upon a review of the pleadings, exhibits, and the testimony of Applicant, 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 testimony of Applicant, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 35 years old. He is married, and he has two children. He has a Bachelor of Science degree and is one class away from receiving his Masters degree. 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 six allegations (1.a. through f.) 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 \$13,587. Applicant testified that he is unaware of the origin of this debt and the debt listed as 1.b., below, which are both to the same creditors. He averred that he wrote a letter to the creditor approximately one and one half years ago, but he claimed that he never received a response, so he has taken no action to attempt to resolve either debts 1.a., or 1.b. (Tr at 33-37.) No evidence was introduced to show that a letter was sent to the creditor by Applicant. Exhibit 5, the credit report dated February 29, 2012, shows that both of these debts are charged off accounts owed by Applicant. I find that this debt is still due and owing and has not been paid.

1.b. This overdue debt is cited in the SOR in the amount of \$18,233. This debt has been reviewed with 1.a., above. I find that this debt is still due and owing and has not been paid.

1.c. This overdue debt is cited in the SOR in the amount of \$42,998. Applicant testified that this debt was for a second mortgage on his home. He claimed that when he had his first mortgage modified, the second mortgage just did not seem to be owed any longer, although he did not believe it was rolled over into the new modified first mortgage. Ultimately, he then wanted to have his first mortgage modified again, so he did not pay the amount due on his first mortgage for approximately ten months. Applicant testified that his family is still living in the home, although he purchased it for \$410,000, and he believes that its value at this time is approximately \$190,000. (Tr at 37-42.) Exhibit 5 shows that this debt of \$42,998 is a charged off account owed by Applicant. I find that this debt is still due and owing and has not been paid.

1.d. This overdue debt is cited in the SOR in the amount of \$3,927. Applicant testified that this debt was for a credit card and he has not made any payments for

approximately the last year and a half. He stated that the creditor attempted to negotiate a settlement for this debt, but since he was unemployed, he did not make any payment arrangement. (Tr at 42-44.) I find that this debt is still due and owing and has not been paid.

1.e. This overdue debt is cited in the SOR in the amount of \$17,315. Applicant testified that this debt was for his original first mortgage, for the amount he was in arrears. When his first mortgage was modified, this unpaid balance was added as additional unpaid debt. (Tr at 44-47.) Exhibit 4 shows that this debt of \$17,315 is owed by Applicant on a real estate mortgage. I find that this debt is still due and owing and has not been paid.

1.f. This overdue debt is cited in the SOR in the amount of \$250. Applicant testified that this debt was for a student loan for which he was paying \$50 a month, and he was five months behind. Appellant claimed that this debt is now current, but no evidence was submitted to show that the debt was not overdue. (Tr at 47-48.) Exhibit 5 shows that this debt is 180 days or more past the due date. I find that this debt is still due and owing and has not been paid.

Applicant testified that his financial problems occurred in the matter of two weeks, as he was a realtor making approximately \$150,000 a year, when the real estate industry collapsed. He did not explain how his entire business as a realtor could be completely wiped out in two weeks, even given the terrible real estate collapse of 2008. Applicant also stated that during the downturn of the economy, he was leasing a BMW vehicle, and when the lease ended, he requested that he be allowed to continue leasing the vehicle at the same monthly rate. He was told the rate would be increased. He decided to return the vehicle, and although he received a bill for more than \$20,000, because he had far exceeded the amount of miles allowed on the lease, he refused to make any payments, because he was upset that the dealer had not continued to allow him to rent the car at the previous monthly lease rate. (Tr at 49-52.)

## **Mitigation**

Applicant submitted an undated Personal Financial Statement showing that his net monthly income was \$4,748.93, and his monthly expenses were \$3,980, leaving him with a monthly net remainder of \$768.93. (Exhibit A.) Applicant also has a savings account with \$300, and stocks/bonds of \$1,500, leaving him with total assets of \$1,800. He also submitted a 1099-MISC form and a letter from a real estate consultant showing that Applicant earned \$6,074.85 in real estate commissions in 2011. (Exhibits D, E .)

## **Request for Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts relating to Deficiency Judgement in State law, and the attached documents were admitted into evidence as Exhibits 6 and 7, respectively. However, I do not find that these facts are relevant in this case, and therefore, I have not addressed them in this decision.

## 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 testified that his financial problems resulted from the downturn in the economy, especially real estate. However, since he has not paid off any of the debts, nor even attempted to ascertain if all of the debts are correct, I do not find that he has acted responsibly. Therefore, I find that this mitigating condition is not a factor for consideration in this case.

AG ¶ 20(d) is also not applicable since I do not find that Applicant has "initiated a good-faith effort" to "resolve debts." I find that this mitigating condition is not a factor for consideration in this case.

Until Applicant can begin to resolve some of his significant overdue debts, I conclude that he has not 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 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.

### **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 through 1.f.:	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