



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 11-02132  
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Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: Barry M. Sax, Esquire

February 13, 2012

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On July 15, 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 August 10, 2011, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. I received the case assignment on October 5, 2011. DOHA issued a notice of hearing on October 13, 2011, and the hearing was set for November 8, 2011. Because the case was continued, a second notice of hearing was issued on November 7, 2011, and the hearing was convened as scheduled on December 6, 2011. The Government offered Exhibits 1 through 9, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through Q at the time of hearing, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on December 15, 2011. I granted

Applicant's request to keep the record open until January 6, 2012, to submit additional documents, and additional documents that were received have been identified and entered into evidence as without objection as Exhibits R through W. 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., d., e., and g., and denied 1.c., and f. 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 55 years old. He is married, but going through a divorce, and he has two children. 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 seven allegations (1.a. through g.) 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 \$8,130. Applicant testified that this debt was for two credit cards that he used after he separated from his wife. Applicant stated that because of this credit card debt and others, he consulted a law firm that recommended he engage the services of a debt settlement company. He paid \$5,000 to the company to resolve his debt problems. Applicant was advised to stop making payments on all his credit card loans, so they could renegotiate his debts. He learned after five or six months that this company went out of business. (Tr at 65-69.) Exhibit S consists of documents Applicant completed with the debt consolidation company, and Exhibit T is a letter sent from Applicant to the debt consolidation company, dated October 7, 2011, requesting a refund of the \$5,000 that Applicant had paid to the company, because none of the creditors had ever been contacted.

Applicant testified that he has now filed for bankruptcy. (Tr at 76-78.) Exhibit P is a letter from Applicant's bankruptcy attorney, dated December 5, 2011, in which he wrote that as a result of Applicant's divorce and losses in real estate, a bankruptcy was filed on behalf of Applicant, and all of the debts listed on the credit report were included in the bankruptcy. He further wrote, "I fully expect [Applicant] to receive a discharge in his bankruptcy proceeding." Exhibit Q is a copy of the bankruptcy documents that were set to be filed for Applicant. I find that all of the debts listed on the SOR have been included in the bankruptcy, and this debt is scheduled to be discharged in bankruptcy.

1.b. This overdue debt is cited in the SOR in the amount of \$16,524. Applicant testified that this debt was for a credit card that he used to make payments on the mortgage for his property before he ultimately sold it. (Tr at 70.) I find that this debt is scheduled to be discharged in bankruptcy.

1.c. This overdue debt is cited in the SOR in the amount of \$45,276. Applicant testified that this debt was for a home equity line of credit, which had been held by his wife and him. He averred that the loan had been completely paid off, but then his wife began using the loan again when they were separated. (Tr at 71-72.) I find that this debt is scheduled to be discharged in bankruptcy.

1.d. This overdue debt is cited in the SOR in the amount of \$12,453. Applicant testified that this debt was for a credit card that he used to make payments for flood insurance and taxes for his home, and also to make some repairs on the home. (Tr at 72-73.) I find that this debt is scheduled to be discharged in bankruptcy.

1.e. This overdue debt is cited in the SOR in the amount of \$11,407. Applicant testified that this debt for a credit card that he used to make payments for flood insurance and taxes for his home, and also to make some repairs on the home. (Tr at 72-73.) I find that this debt is scheduled to be discharged in bankruptcy.

1.f. This overdue debt is cited in the SOR in the amount of \$122,000. Applicant testified that this debt was for the mortgage for the home that he deeded to his wife. As his name is still on the mortgage, he is still responsible for this debt, despite having deeded the property to his wife. (Tr at 74-75.) I find that this debt is scheduled to be discharged in bankruptcy.

1.g. This overdue debt is cited in the SOR in the amount of \$9,567. Applicant testified that this debt was for a credit card that he also used to make payments for flood insurance and taxes for his home, and to make some repairs on the home. (Tr at 75-76.) I find that this debt is scheduled to be discharged in bankruptcy.

Applicant testified that his financial problems first occurred during the period of 2008 and 2009, and that before that time, he had never had any financial difficulties. He traced his financial history by explaining that in approximately 1983 he and his wife purchased a small home where they live for about 15 years. Sometime in the 1990s they sold that house and purchased a lot, upon which he ultimately built his "dream house." After about two years he sold the house at a great profit, at which time they purchased two duplexes. They also acquired one additional piece of property. As he and his wife began the process of divorce, he deeded two of the properties to her, one of the duplexes and the other property, and he kept one duplex. The divorce had not been finalized at the time of the hearing, although Applicant testified that he expected it to be finalized shortly.

Eventually, Applicant was not able to make the payments on the property that he had purchased for \$1.6 million; so in 2010, a short sale was conducted on his property, and it sold for \$950,000. He testified that two banks owned the property, first Wachovia

and then Wells Fargo, and neither one would renegotiate his loan, so he had no choice but to sell it. He is still responsible for the other two properties that he deeded to his wife, and they will both be included in his bankruptcy. (Tr at 44-61.)

## **Mitigation**

Among the post hearing documents submitted by Applicant was Exhibit V, a second letter from Applicant's bankruptcy attorney, dated December 19, 2011, in which he wrote that bankruptcy was filed on behalf of Applicant on October 31, 2011, and that on December 15, 2011, the trustee indicated that he would be taking no adverse action in the case. The attorney also wrote that Applicant has already taken his required financial management course, and that Applicant should receive his discharge in approximately 70 days.

Exhibit W is a letter from Applicant's divorce attorney, dated December 29, 2011. The attorney wrote the Applicant's dissolution should be completed by June 2012, and that in his opinion, the amount Applicant has to pay in "spousal support will be reduced significantly if not terminated all together." Finally, Applicant submitted his Personal Financial Statement as of December 22, 2011. (Exhibit U.) It showed that his net monthly income is \$3,478 and his monthly expenses are \$3,455 leaving a net remainder of \$286 a month. He also has a savings account with \$1,500.

## **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 in part from his divorce, and part from the downturn in the economy, especially real estate. I find that he has acted responsibly, since he first consulted a law firm that advised him to engage the services of a debt reduction company. He thereafter consulted the debt reduction company and paid \$5,000 for their services to attempt to resolve his overdue debts. When that company went out of business, he engaged the services of an attorney in an attempt to avail himself of the legal remedy of bankruptcy. Based on his bankruptcy attorney’s representation, he has taken the required financial management course, and all of his debts should be discharged in bankruptcy. Therefore, I find that this mitigating condition is a factor for consideration in this case.

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

Finally, based on Applicant’s testimony and the Personal Financial Statement he submitted, I conclude that Applicant will be able to maintain more financial stability once the bankruptcy has discharged his debts. Therefore, he 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, 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.g.:              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