



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



In the matter of:	)	
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	)	ISCR Case No. 11-02789
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, 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 November 9, 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 20, 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 8, 2012. The Government offered Exhibits 1 through 9, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through D, which were also admitted without objection. The record was kept open until March 23, 2012, to allow Applicant to submit additional evidence. Applicant then requested the record remain open until March 30,

2012, to allow him to submit additional evidence. The documents that were timely received have been identified and entered into evidence without objection as Exhibits E, F, and G. DOHA received the transcript of the hearing (Tr) on March 21, 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 43 years old. He is married, and they have four children between them. He has a Bachelor of Science degree in Computer Technology. Applicant served in the United States Marine Corps (USMC) from 1984 to 1991. 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 three allegations (1.a. through c.) 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 \$10,767. Applicant admitted this allegation in his RSOR with an explanation. At the hearing, Applicant testified that this credit card debt has not been paid. He has contacted the creditor, but the creditor and he could not reach an agreement, as the creditor wants a full payment. Applicant plans to save some money and then attempt to resolve the debt. (Tr at 33-36.) I find that at this time the full debt is still due and owing.

1.b. This overdue debt is cited in the SOR in the amount of \$3,681. Applicant admitted this allegation in his RSOR with an explanation. Applicant testified that this debt for a car that was repossessed has been paid. (Tr at 36-40.) Exhibit A shows that a payment was made of \$2,300 by Applicant on this debt on March 6, 2012. Exhibit E shows that this debt has been paid in full. I find that this debt has been resolved.

1.c. This overdue debt is cited in the SOR in the amount of \$30,754. Applicant admitted this allegation in his RSOR with an explanation. Applicant testified that this debt was for a second mortgage on his home that he took out approximately one year after he purchased the home. This mortgage was to provide Applicant money so he could repair parts of his house that were damaged. He also had to replace original carpeting, which had caused allergic reaction to one of his daughters. Applicant stated that this debt is still due and owing to the creditor. (Tr at 40-44.) I find that this debt is still due and owing and has not been paid.

Applicant testified that he hopes to save enough money to pay these two debts off by the end of 2012. He indicated that he is saving \$200 to \$300 a month with that goal in mind. (Tr at 44.) It is not clear how he hopes to pay off these debts in 2012 with that amount saved.

Applicant testified that his financial problems occurred because the payments for the mortgage on his home continually increased. His home was ultimately foreclosed, but Applicant never received notification that he owed any additional amount for the foreclosed mortgage. Although not listed on the SOR, Applicant identified an additional debt that was overdue for a real estate class which Applicant attended on line. Applicant testified that there was some confusion with the debt, but the Applicant now owes \$375, and he and the creditor have formulated a payment plan so Applicant will pay \$200 a month in April and May, and the debt will be paid. Applicant testified that he is not overdue on any other debts than the ones reviewed above. (Tr at 45-54.)

Applicant did purchase a new 2010 vehicle for his wife, for which he paid \$2,500 down and he pays \$600 a month. (Tr at 74-75.) He was asked if he had considered purchasing a less than new vehicle and using some of the money saved to pay off the debts, but he said it was before he received the counseling, and he had not considered it. (Tr at 78-79.) Exhibit B show that while he is current on the debt, he still owes \$28,000 for the vehicle.

## **Mitigation**

Applicant testified that he took a two hour class from a financial counseling service to help him learn to manage his finances better. He also has attended two lunch seminars on financial planning and plans to attend more. (Tr at 55-59.) Exhibit A includes a letter from the financial counseling service, indicating that they created a budget and action plan for Applicant. There is also a flyer in Exhibit A showing the financial subjects covered during the luncheon seminars.

Applicant also testified that he is working at garage sales to earn some extra income, and his family is trying to save money by eating fewer meals outside of the home and purchasing groceries with coupons. (Tr at 61.) Exhibit B includes Applicant's Personal Financial Statement showing he has a net monthly remainder of \$115. It is not clear from this how he intends to save \$200 or \$300 a month to pay off his bills, as he testified was his intention. Exhibit D includes a letter from a creditor not listed on the SOR, dated October 12, 2011, showing that Applicant did pay off a debt with three payments totaling \$862.

Applicant submitted his DD Form 214 confirming that he served in the USMC from 1984 to 1991, and that he earned a number of Decorations and Medals during his service. (Exhibit C.) Exhibit C also included three very positive character letters submitted on behalf of Applicant. He was described as someone with "integrity, professionalism and trustworthiness." Finally, Applicant submitted performance evaluations from his current and previous employers, in which he was rated highly. (Exhibit C.)

## **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 8 and 9, respectively. However, I do not find that these facts are relevant in this case, as the debts in the SOR do not come within the Deficiency Judgement statute, 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 increase in the required payments of his home mortgage. However, since he has only paid off the smallest of the debts, and he purchased a new vehicle for more than \$30,000, rather than purchasing a used vehicle and using some of the money saved to pay off some of the remaining debt, I do not find that he has acted responsibly. Also, while Applicant did proffer a plan to pay off his remaining debt by the end of 2012, the numbers in his Personal Financial Plan do not appear to make that possible. 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.” While Applicant has paid one debt, I do not find that he has acted reasonably or has a realistic plan to pay off the other more significant debts. I find that this mitigating condition is not a factor for consideration in this case.

Until Applicant can begin to resolve 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. and 1.c.:	Against Applicant
Subparagraph 1.b.:	For 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