



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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 ----- ) ISCR Case No. 11-05994  
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 Applicant for Security Clearance )

**Appearances**

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

May 06, 2013

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**Decision**

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MOGUL, Martin H., Administrative Judge:

on July 13, 2012, the Department of Defense (DoD) 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 September 12, 2012, Applicant replied to the SOR (RSOR) in writing, and he included what have been identified as Enclosure 1 through 5. Applicant requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on November 2, 2012. DOHA issued a notice of hearing on January 3, 2013, and I convened the hearing as scheduled on January 30, 2013. The Government offered Exhibits 1 through 8, which were admitted without objection. Applicant testified on his own behalf and submitted Exhibits A-1 through A-5, B-1 through B-9, and C-1 through C-3, which were also admitted without objection. Two additional witnesses testified on behalf of Applicant. DOHA received the transcript of the hearing (Tr) on February 6,

2013. I granted Applicant's request to keep the record open until February 13, 2013, to submit additional documents. Additional documents were identified as Exhibit D, and entered into evidence without objection. Based upon a review of the pleadings, exhibits, and the testimony of Applicant and his witness, 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 all the testimony, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 53 years old. He is married, and he and his wife have two daughters. Applicant received a Bachelor of Science degree in engineering in 1981 from the United States Military Academy at West Point, New York. He thereafter served active duty in the United States Army until October 1986. Applicant is employed by a defense contractor, and he is seeking a DoD security clearance in connection with his employment in the defense sector.

### **Guideline F, Financial Considerations**

The SOR lists 16 allegations (1.a. through 1.p.) 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 \$9,111. At the hearing, Applicant testified that no payments have been made on this debt, but he has received an offer of settlement, which he plans to take. (Tr at 47-51.) Exhibit B-9 is a letter from the law firm representing this creditor offering a settlement of 17 monthly payments of \$200 the first month and \$300 each additional month for a total of \$5,000 for a debt, which was listed as \$11,690.38. Applicant submitted a post hearing document, establishing that he has made a payment of \$200 and a second payment of \$300 toward this debt. (Exhibit D.) I find that this debt has not been resolved, but there is now a settlement agreement in place, and Applicant has made the first two payments toward this agreement.

1.b. This overdue debt is cited in the SOR in the amount of \$5. Applicant testified that he believed he paid this debt. (Tr at 52-53.) Exhibit D included a copy of a canceled check of \$6.47 paid to this creditor on December 7, 2012. I find that this debt is paid in full.

1.c. This overdue debt is cited in the SOR in the amount of \$4,876. Applicant testified that he has a payment plan in place with this creditor. (Tr at 54-55.) Exhibit B-5 is a letter from this creditor indicating they would accept monthly payments of \$50 or \$100 to settle this account. No post hearing documents were submitted to show that any payments have been made toward this debt. I find that this debt is still unresolved.

1.d. This overdue debt is cited in the SOR in the amount of \$983. Applicant testified that he denies this account for a home equity loan is overdue, although he was overdue at one time. Applicant contended that RSOR Enclosure 1 establishes that Applicant is not overdue on this debt, although the letter only establishes that the principal balance on this home equity loan is \$213,479. (Tr at 55.) I cannot determine from the evidence that Applicant is current on this loan.

1.e. This overdue debt is cited in the SOR in the amount of \$676. Applicant testified that he has paid this debt in full. RSOR Enclosure 2 establishes that Applicant has resolved this debt. I find that this debt has been paid in full.

1.f. This overdue debt is cited in the SOR in the amount of \$25,719. Applicant testified that he received a notice from this creditor that they would be canceling this debt, and he received a tax form 1099-C, declaring this debt as income, since it has been forgiven by the creditor. Applicant does not plan to make any payments toward this debt. (Tr at 58-60.) Exhibit B6 includes tax form 1099-C, declaring this debt of \$25,829.73 as income, showing that this debt was cancelled by the creditor. I find that this debt is no longer owing, although Applicant did not take action to resolve the debt.

1.g. This overdue debt is cited in the SOR in an unstated amount. Applicant testified that pursuant to Exhibit B4, he owes \$991 toward this debt, and he has made an arrangement to begin making monthly payments of \$60 toward this debt. (Tr at 60-64.) Exhibit D includes a letter from the creditor confirming they have agreed to accept payments of \$60 a month for this debt and the additional debt listed as 1.o., below. Applicant also submitted a copy of a draft of \$120 for one monthly payment on this debt and 1.o. I find that this debt has not been resolved, but there is now a settlement agreement in place, and Applicant has made the first payment toward this agreement.

1.h. This overdue debt is cited in the SOR in the amount of \$6,461. Applicant testified that he has contacted the creditor of this debt, but because they are asking for too much in an initial payment, he has not reached an agreement with them. (Tr at 63-64.) I find that this debt is still due and owing.

1.i. This overdue debt is cited in the SOR in the amount of \$18,415. Applicant testified that he did not know the status of this debt, but he has not paid this debt. (Tr at 64-66.) Exhibit 4 shows that this debt is still due and owing. I find that this debt is still unresolved.

1.j. This overdue debt is cited in the SOR in the amount of \$18,415. Applicant testified that he believes that this debt to the same creditor and in the exact same amount as that as 1.i., above, is the same as 1.i. (Tr at 66-68.) Exhibit 4 only shows one debt in this amount to this creditor. I find that this debt is a duplicate of 1.i., above and not owing.

1.k. This overdue debt is cited in the SOR in the amount of \$206,000. While it was cited in the SOR as a home equity account, the SOR was amended to show it was a home mortgage, rather than equity loan. Applicant testified that this debt is for a first

mortgage for a property that he purchased for an investment, and which he ultimately abandoned. (Tr at 68-71.) RSOR Enclosure 3 includes tax form 1099-C, declaring this debt of \$68,708.89 as income, showing that this debt was cancelled by the creditor. I find that this debt is no longer owing, although Applicant did not take action to resolve the debt.

1.i. This overdue debt is cited in the SOR in the amount of \$203,000. This debt was also cited as a home equity account in the SOR, but was amended to show it was a home mortgage, rather than equity loan. Applicant testified that this debt is for a first mortgage for a different investment property that he purchased, and which he ultimately abandoned. (Tr at 68-71.) RSOR Enclosure 4 includes tax form 1099-C, declaring this debt of \$114,288.69 as income, showing that this debt was cancelled by the creditor. I find that this debt is no longer owing, although Applicant did not take action to resolve the debt.

1.m. This overdue debt is cited in the SOR in the amount of \$25,006. Applicant testified that he has contacted the creditor of this debt, but because they are asking for too much in an initial payment, he has not reached an agreement with them. (Tr at 71-74.) I find that this debt is still due and owing.

1.n. This overdue debt is cited in the SOR in the amount of \$35,815. Applicant testified that he still owes this debt. He contacted the creditor the day before the hearing, but no agreement was reached. (Tr at 74-75.) I find that this debt is still unresolved.

1.o. This overdue debt is cited in the SOR in the amount of \$443. Applicant testified that this debt has grown to \$780. As reviewed in 1.g., above, Applicant owes this debt as well as the debt listed in 1.g. to the same creditor. (Tr at 75-76.) Exhibit D includes a letter from the creditor confirming they have agreed to accept payments of \$60 a month for both debts: 1.g. and 1.o. Applicant made one monthly payment on this debt as well as 1.g. I find that this debt has not been resolved, but there is now a settlement agreement in place, and Applicant has made the first payment toward this agreement.

1.p. This overdue debt is cited in the SOR in the amount of \$1,665. Applicant testified that this debt for a leased vehicle is for late payments and interest, although he returned the car within mileage and made all of the required payments. (Tr at 76-79.) However, he did make payments that were late and he did not file a dispute, so I find that he still owes this debt. I find that this debt is still unresolved.

Applicant explained in great detail in RSOR that his financial problems occurred as a result of some periods of underemployment and unemployment. He also purchased three investment properties in 2005. As the economy collapsed, he attempted to retain the homes, but ultimately all three homes were foreclosed. During the period he was trying to retain his investments, he borrowed on his credit cards and

he found he could not make the required payments on the cards. Finally, Applicant had an adjustable rate mortgage on his primary residence that also created financial problems.

Applicant testified that he has considered filing bankruptcy, but at the present time he does not have enough money to pay a retainer to an attorney to file bankruptcy. He also explained that it would not be his preference to file bankruptcy, but he is not certain what he will do. (Tr at .86-88.)

## **Mitigation**

As stated above, two witnesses testified on behalf of Applicant. One witness has known Applicant for seven years in a management capacity. He described him as someone who “has high standards of ethics, of integrity, honesty.” (Tr at 126.) The second witness is supervised by Applicant, and they have worked together for less than two years. This witness also spoke in laudatory terms about Applicant.

Additionally, Applicant submitted 17 outstanding, positive character letters from people who have known him in his professional and private life. (RSOR Enclosure 5.) He is clearly a man who is much admired and respected by people in many facets of his life. Finally, Applicant submitted his most current performance evaluation for 2012. (Exhibit D.) His overall rating was “High Performance” and his Manager wrote that Applicant, “did a fantastic job leading and managing one of the most complex contracts in the company 300+ employees [sic] . . . [Applicant] would be an excellent choice for Director of Operations with great potential to serve as VP for Operations in the next 2-5 years.”

## **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 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 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 several factors beyond his control, including periods of unemployment and underemployment, and the collapsing economy that resulted in his three investment properties being foreclosed. Also, Applicant borrowed on his credit cards in an attempt to prevent the foreclosures.

While I find that Applicant has attempted to act responsibly regarding these debts by making some small payments on a few of the smaller debts, I find that he is still overdue on more than \$100,000 of past debt, so I cannot consider this mitigating condition applicable.

Similarly, I can not find that AG ¶ 20 (d) is applicable, because, as discussed above, while Applicant has “initiated a good-faith effort to repay [a few of the smaller] overdue creditors.” There is still far too much outstanding debt to allow this mitigating condition to be applied. I also can not find that any other mitigating condition is a factor for consideration in this case.

I conclude that until Applicant has significantly reduced or resolved his overdue debt in a far more significant amount, 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 disqualifying conditions apply and 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., 1.c., 1.d.:	Against Applicant
Subparagraphs 1.f.-1.i., and 1.k.-1.p.:	Against Applicant
Subparagraphs 1.b., 1.e., and 1.j.:	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