



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 11-06775  
 )  
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Applicant for Security Clearance )

**Appearances**

For Government: Eric H. Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

January 15, 2013

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On February 2, 2012, in accordance with **Department of Defense** (DoD) Directive 5220.6, the DoD issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. (Item 1.) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD 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 after September 1, 2006.

On April 21, 2012, Applicant replied to the SOR (RSOR) in writing, and he requested that his case be decided on the written record in lieu of a hearing. (Item 2.) On June 13, 2012, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered 13 documentary exhibits. (Items 1-13.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on September 27, 2012. Applicant submitted a response, which has been identified and entered into evidence without

objection as Item A. The case was assigned to this Administrative Judge on November 28, 2012. Based upon a review of the pleadings and exhibits, 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 additional document, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 53 years old. He 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 1.g.) regarding financial difficulties, specifically overdue debts totaling \$28,205, under Adjudicative Guideline F. The debts 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 for a collection account in the amount of \$9,986, for a judgment filed against him in April 2006. Applicant denied this SOR allegation in his RSOR. (Item 2.) Applicant's credit reports (CR), dated November 29, 2011; and June 18, 2010; list this judgement debt. (Items 6 and 7.) Applicant admitted this debt in his response to DOHA interrogatories. (Item 14.) No evidence has been introduced to establish that this debt has been resolved or reduced.

1.b. This overdue debt is cited in the SOR in the amount of \$196. Applicant denied this SOR allegation in his RSOR. (Item 2.) Applicant's June 2010 CR lists this delinquent debt. (Item 7.) In a Personal Subject Interview (PSI), dated June 25, 2010, Applicant indicated that he disputed this debt. (Item 4.) However, no evidence has been introduced to establish that this debt has been resolved or reduced.

1.c. This overdue debt is cited in the SOR in the amount of \$122. Applicant denied this SOR allegation in his RSOR. (Item 2.) Applicant's June 2010 CR lists this delinquent debt. (Item 7.) No evidence has been introduced to establish that this debt has been resolved or reduced.

1.d. This overdue debt is cited in the SOR in the amount of \$10,402. Applicant denied this SOR allegation in his RSOR. (Item 2.) Applicant's June 2010 CR lists this delinquent debt. (Item 7.) No evidence has been introduced to establish that this debt has been resolved or reduced.

1.e. This overdue debt is cited in the SOR in the amount of \$708. Applicant admitted this SOR allegation in his RSOR. (Item 2.) Applicant's June 2010 and February 8, 2010 CRs list this delinquent debt. (Items 7 and 9.) No evidence has been introduced to establish that this debt has been resolved or reduced.

1.f. This overdue debt is cited in the SOR in the amount of \$6,264 on a judgment entered against Applicant in June 2006. Applicant denied this SOR allegation in his RSOR. This judgement was entered in State Civil Court Judgement and Lien Filings record, listing Applicant's home address. (Items 10 and 11.) No evidence has been introduced to establish that this debt has been resolved or reduced.

1.g. This overdue debt is cited in the SOR in the amount of \$527 on a judgment entered against Applicant in June 1990. Applicant admitted this SOR allegation in his RSOR, but claimed that it had been "paid in full." (Item 2.) The State Civil Court Judgement and Lien Filings record lists this judgment and show that it is unpaid. (Item 13.) No evidence has been introduced to establish that this debt has been resolved or reduced.

In Applicant's Security Clearance Application, it is indicated that Applicant was unemployed from January to May 2010. (Item 3.) In his PSI, Applicant explained that he owned a used car business, which he closed in approximately 2003. Applicant did not report the closure of the business to the State Secretary of State as required by law. In 2005 he received a bill from the state for penalties and back taxes, which he was unable to pay. Applicant claims to have resolved his outstanding State tax bill in May 2010 as part of a state tax amnesty program. Applicant also indicated in his PSI that he planned to contact the creditors of his overdue debts to attempt to resolve said overdue debts. (Item 4.) As reviewed above, no evidence has been introduced to establish that these debts have been resolved or reduced.

## **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 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.” Applicant’s unemployment in 2010, in addition to the closure of his business in 2003 could potentially make this mitigation condition applicable. However, since Applicant failed to follow the law of his state by notifying the State Secretary of State when he closed his business, in addition to the fact that there is no evidence that Applicant has made any attempt to resolve his overdue debts, I do not find that Applicant has acted responsibly. Therefore, this mitigating condition is not applicable in this case.

Additionally, I do not find that AG ¶ 20(d) is applicable, since Applicant has not “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” Finally, I do not find that any other mitigating condition applies to this case. Therefore, I find Guideline F against Applicant.

### **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 the lack of evidence to establish that Applicant has made any attempt to resolve the past-due debts listed on the SOR, plus his failure to follow the law of his state by notifying the State Secretary of State when he closed his business, 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 under the whole-person concept.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:                      AGAINST APPLICANT

Subparagraphs 1.a. - 1.g.:                      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