



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



In the matter of:	)	
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	)	ISCR Case No. 12-00475
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline E. Heintzelman, Esquire, Department Counsel  
For Applicant: *Pro se*

April 10, 2014

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On September 26, 2013, the Defense Office of Hearings and Appeals (DOHA) 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; 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 after September 1, 2006.

On November 4, 2013, 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 4.) On November 19, 2013, 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 10 documentary exhibits. (Items 1-10.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on February 13, 2014. Applicant submitted a two page letter that he wrote, a one page character letter, and a bill from an

auto repair creditor, which have been entered into evidence without objection as Items A through C. The case was assigned to this Administrative Judge on March 12, 2014. 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 documents, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 51 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 nine allegations (1.a. through 1.i.) regarding financial difficulties under Adjudicative Guideline F. The debts and the bankruptcy will be discussed below in the same order as they were listed on the SOR:

1.a. Applicant filed a Chapter 13 bankruptcy on or about May 2011. The SOR alleges that Applicant is \$4,610 delinquent in making his payments according to the bankruptcy plan, and the Chapter 13 Trustee filed a motion to dismiss the bankruptcy. In his RSOR, Applicant admitted this SOR allegation. He wrote, "I have been in contact with our bankruptcy attorney regarding this situation, and [the attorney] has been in contact with the Trustee regarding late payment. We are working out a plan in order to bring account current." (Item 4.)

In a letter by Applicant, dated February 18, 2014, he wrote, "There were months in which the monthly bankruptcy payment fell behind. These were during times that we faced the costly car repairs, during the times that I was out of work, and during the times that repairs needed to be made to our home. We have always kept in constant contact with our bankruptcy attorney so that she could keep the trustee informed of the situation." (Item A.)

Item 6 included a "Trustee's Motion to Dismiss for Delinquent Plan Payments and Notice of Intent to Lodge Order Dismissing Case Without Hearing," dated August 13, 2013. This motion states that the bankruptcy can be summarily dismissed without further notice or hearing if the Debtor has not (a) made payments of the full amount stated as delinquent, (b) converted the bankruptcy to a Chapter 7, or (c) filed and served a request for a moratorium of delinquent plan payment. Since Applicant failed to furnish information to indicate that the bankruptcy is still active, but rather has continued to reiterate that he is delinquent on the bankruptcy payments, it does appear that the Trustee's Motion to Dismiss the bankruptcy should have been granted and that the bankruptcy would be dismissed. At this point, I cannot assume that the debts are being satisfied in bankruptcy.

1.b. This overdue debt is cited in the SOR for a medical account in the amount of \$58. In his RSOR, Applicant admitted this SOR allegation and he wrote that this debt had not been paid nor was it included in his bankruptcy. He also wrote that he did not know the source of this debt. (Item 4.) I do not find that this debt has been resolved.

1.c. This overdue debt is cited in the SOR for a charged-off account in the amount of \$6,231. In his RSOR, Applicant denied this SOR allegation because this debt was listed in his bankruptcy. (Item 4.) Since Applicant has not met his requirements under the bankruptcy, I do not find that this debt has been resolved.

1.d. This overdue debt is cited in the SOR for a charged-off account in the amount of \$7,664. In his RSOR, Applicant denied this SOR allegation because this debt was listed in his bankruptcy. (Item 4.) Since Applicant has not met his requirements under the bankruptcy, I do not find that this debt has been resolved.

1.e. This overdue debt is cited in the SOR for a charged-off account in the amount of \$9,359. In his RSOR, Applicant denied this SOR allegation because this debt was listed in his bankruptcy. (Item 4.) Since Applicant has not met his requirements under the bankruptcy, I do not find that this debt has been resolved.

1.f. This overdue debt is cited in the SOR for a medical account in the amount of \$150. In his RSOR, Applicant admitted this SOR allegation and he wrote that this debt had not been paid nor was it included in his bankruptcy. He also wrote that he did not know the source of this debt. (Item 4.) I do not find that this debt has been resolved.

1.g. This overdue debt is cited in the SOR for a medical account in the amount of \$112. In his RSOR, Applicant admitted this SOR allegation and he wrote that this debt had not been paid nor was it included in his bankruptcy. He also wrote that he did not know the source of this debt. (Item 4.) I do not find that this debt has been resolved.

1.h. This overdue debt is cited in the SOR for a medical account in the amount of \$164. In his RSOR, Applicant admitted this SOR allegation and he wrote that this debt had not been paid nor was it included in his bankruptcy. He also wrote that he did not know the source of this debt. (Item 4.) I do not find that this debt has been resolved.

1.i. This overdue debt is cited in the SOR for a collection account in the amount of \$1,466. In his RSOR, Applicant denied this SOR allegation because this debt was listed in his bankruptcy. (Item 4.) Since Applicant has not met his requirements under the bankruptcy, I do not find that this debt has been resolved.

As reviewed above, Applicant explained the reason for his current financial difficulties was that he had costly car repairs, he was unemployed for periods of time, and repairs needed to be made to his home. Additionally, because his son was having problems, he sent his son to a private high school, which cost a significant amount. Finally, Applicant concluded in response to interrogatories propounded to him that he and his wife mismanaged their funds, including taking their family to Hawaii in 2009 for

a seven day vacation. Ultimately, their “financial difficulties became a heavy burden and at times I chose to take a blind eye to the situation.” (Item 7.)

Finally, Applicant offered no evidence that with his current financial situation he would be able to resolve his past overdue debts or stay current with his present debts, if any additional or unexpected bills should arise.

## **Mitigation**

In Applicant’s FORM letter, he wrote that he needed to repair two of his two vehicles, one that cost almost \$3,000 and the other costing almost \$2,000. (Item A.) Applicant submitted a bill for one of the vehicles, dated January 8, 2014, showing the actual amount of the bill to be \$1,608.64. (Item C.) Finally, Applicant submitted a letter from his direct supervisor, dated January 22, 2014. The supervisor wrote that Applicant “always proved himself to be a trust worthy (sic) employee. In the eight years that he worked for me I never doubted his personal integrity.” (Item B.)

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the revised 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, which has not been satisfied.

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 reviewed above, Applicant explained his financial difficulties occurred, in part, because Applicant was unemployed. Also, the cost of significant unforeseeable automobile repairs would be considered in this category. However, some of Applicant’s debt is due to conditions he could control, including his self-professed mismanagement of his funds, such as taking his family to Hawaii for a vacation, and when his financial difficulties

became a heavy burden, taking a blind eye to the situation. Therefore, I find that this mitigating condition is not a factor for consideration in this case.

AG ¶ 20(d) is arguably applicable, since Applicant “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” by using the legal remedy of filing a bankruptcy to resolve his debts. However, since Applicant has not met his financial obligations under Chapter 13 bankruptcy, I do not find that this mitigation condition or any other mitigating condition applies to this case. Finally, I cannot conclude that Applicant will be able to pay off his past debts or keep up to date on his current debts and expenses, especially if any new or unexpected debts are incurred.

Therefore, I conclude that Applicant has not mitigated the Financial Consideration concerns, which are found 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 all of the reasons cited above as to why the disqualifying conditions apply and no mitigating conditions are applicable, 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. - 1i.:                    **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