



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 12-07874

**Appearances**

For Government: Adrienne Strzelczyk, Esquire, Department Counsel

For Applicant: *Pro se*

June 27, 2016

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On July 23, 2015, the Department of Defense (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; 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 August 22, 2015, 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 1.) On October 26, 2015, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant on October 27, 2015. In the FORM, Department Counsel offered seven documentary exhibits. (Items 1-7.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on December 5, 2015. Applicant did submit additional evidence, a one page letter dated November 16, 2015, which has been marked and entered into evidence as Item A. The case was

assigned to this Administrative Judge on December 15, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

### **Findings of Fact**

After a complete and thorough review of the evidence in the record, including Applicant's RSOR and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 55 years old. He is currently married, and was married one time before. He has three children. Applicant earned an Associates degree in 1984.

Applicant has been employed as a Technician for his current employer a DoD contractor, since 1984, and he seeks a DoD security clearance in connection with his employment in the defense sector. (Item 2.)

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

The SOR lists 11 allegations (1.a. through 1.k.) regarding financial difficulties, specifically delinquent debts, totaling more than \$60,000, under Adjudicative Guideline F. (Item 1.) 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 for a medical account in the approximate amount of \$304. Applicant admitted this allegation in his RSOR, and wrote, "still making payments." Applicant included an account summary from this creditor showing that they have received payments of \$230.26 and that the balance due is \$278.95. (Item 1.) I find that Applicant is making payments to resolve this debt.

1.b. This overdue debt is cited in the SOR for a medical account in the amount of \$140. Applicant admitted this allegation in his RSOR, and wrote, "paid off 8/19/15." Applicant included an account summary from this creditor showing that the balance due is \$140.66. Applicant wrote that he paid \$140 on August 19, 2015 toward this debt. (Item 1.) I find that Applicant has resolved this debt.

1.c. This overdue debt is cited in the SOR for a medical account in the amount of \$78. Applicant admitted this allegation in his RSOR, and wrote, "paid off." Applicant included an account summary from this creditor showing that they have received payments of \$104.32 and that the balance due is \$0. (Item 1.) I find that Applicant has resolved this debt.

1.d. This overdue debt is cited in the SOR for a charged-off account in the amount of \$9,991. Applicant admitted this allegation in his RSOR, and wrote, "have set up payment plan on 8/25/15." (Item 1.) I find that Applicant has begun making payments to resolve this debt.

1.e. This overdue debt is cited in the SOR for a medical account in the amount of \$234. Applicant denied this allegation in his RSOR, and wrote, "Not my debt. Wrong info. I am writing to the credit bureau." (Item 1.) I find that Applicant has made a good-faith attempt to dispute this debt that he does not believe he incurred.

1.f. This overdue debt is cited in the SOR for a medical account in the amount of \$1,646. Applicant admitted this allegation in his RSOR, and wrote, "paid \$127.00 on payment plan." Applicant included an account summary from this creditor showing that they have received a payment of \$50 and that the balance due is \$77.52. (Item 1.) I find that Applicant is making payments to resolve this debt.

1.g. This overdue debt is cited in the SOR for a collection account in the amount of \$23,699. Applicant admitted this allegation in his RSOR, and wrote, "on going [sic] payments." Applicant included an account summary from this creditor showing that they received a payment of \$62.95 and that the balance due is \$22,525.01. (Item 1.) I find that Applicant still owes a significant amount toward this debt, but he has begun the process of making payments to resolve this debt.

1.h. This overdue debt is cited in the SOR for a medical account in the amount of \$355. Applicant admitted this allegation in his RSOR, and wrote, "balance \$202.90 as of 8/12/15." He also wrote that this balance should be paid off by the end of 2015. (Item 1.) I find that Applicant is making payments to resolve this debt.

1.i. This overdue debt is cited in the SOR for a collection account in the amount of \$327. Applicant admitted this allegation in his RSOR, and wrote, "paid off 4/21/15." Applicant included an account summary from this creditor showing that they have received a payment of \$215 and that the balance due is \$0. (Item 1.) I find that Applicant has resolved this debt.

1.j. This overdue debt is cited in the SOR for a collection account in the amount of \$78. Applicant admitted this allegation in his RSOR, and wrote, "Called [Creditor] - [Creditor] has no record of us owing anything." He also wrote after talking numerous times to Creditor there are no records showing they owe any money. (Item 1.) I find that Applicant has made a good-faith attempt to resolve this debt.

1.k. This overdue debt is cited in the SOR for a charged-off account in the amount of \$24,762. Applicant admitted this allegation in his RSOR. He wrote that this case, based on a lawsuit filed by the creditor, has been dismissed. He enclosed an "Order of Dismissal With Prejudice," which dismissed the lawsuit filed by the creditor. (Item 1.) I find that Applicant has resolved this debt.

Applicant explained his financial difficulties on his RSOR by writing, "Several years back we made some poor choices with our finances. We also went from a two income family to one income. We fell behind on our payments and almost lost our home." He added that his wife completed her degree in August 2014 and is now a full-time teacher, and they are now "trying to take care of all our past debts." They also have borrowed money from their retirement plans to continue to resolve their overdue debts,

which he avers will eliminate all of their credit card bills and lower the interest rates and required payments. Finally, Applicant wrote, "Taking all these actions will allow the freedom of not living paycheck to paycheck. Also we will be cutting up many of our credit cards." (Item 1.)

Finally, in a Post-FORM letter submitted by Applicant, he conceded that he has made some "poor financial decisions in the past," but at the time of the letter, November 16, 2015, he has "paid off most of his debt." Currently he is making monthly installments to take care of the remaining outstanding balances, and his credit score has increased from the 500s to the low 700s. He also wrote that in his more than 31 years working for his current employer, he has never been accused of any inappropriate or illegal conduct. (Item A.)

### **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.” As reviewed above, Applicant explained his financial difficulties occurred in part because his family went from two incomes to one. Now that his wife is fully employed, Applicant has been responsible in attempting to resolve his overdue debts, all of which are resolved or are being resolved. Therefore, I find that this mitigating condition is a factor for consideration in this case.

AG ¶ 20(d) is also applicable as reviewed above, because Applicant has “initiated a good-faith effort to repay overdue creditors or otherwise resolve [his] debts.” Therefore, I find that as long as Applicant continues to make the payments according to his

payment plans, and continues to live within his means, he has mitigated the Financial Consideration concerns, which are found for 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 mitigating conditions are applicable, and Applicant's long, positive employment history, 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 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: FOR APPLICANT

Subparagraphs 1.a. - 1k.: 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