



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



In the matter of: )  
)  
) ISCR Case No. 14-05762  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew H. Henderson, Esquire, Department Counsel  
For Applicant: *Pro se*

September 29, 2016

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On May 19, 2015, 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 3, 2015, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge (AJ). The case was assigned to this AJ on November 2, 2015. DOHA issued a notice of hearing on December 9, 2015, and the hearing was held as scheduled on January 26, 2016.

At the hearing, the Government offered Exhibits 1 through 6, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through O, which were also admitted without objection. At the hearing, the record was kept open until February 12, 2016, to allow Applicant to submit additional documentation. Several post-hearing documents were received, which have been

identified and entered into evidence without objection as Exhibits P through EE. DOHA received the transcript of the hearing (Tr) on February 2, 2016. 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 58 years old. He was married from 1983 to 2012, and he has one daughter and one stepson. Applicant served in the United States Navy from 1983 until 2006, when he received an Honorable discharge. Applicant attended three years of college. He is employed as a Senior System Field Engineer by his current employer, a defense contractor, for whom he has worked since 2006. He is seeking a DoD security clearance in connection with his employment in the defense sector.

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

The SOR lists six allegations (1.a. through 1.f.) regarding financial difficulties, specifically overdue debts and failure to file Federal and state tax returns, under Adjudicative Guideline F. All of the SOR 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 charged-off mortgage account in the amount of \$77,759. Among his post-hearing documents, Applicant submitted a Form 1099-C, issued on September 1, 2011, which states that Applicant's debt in the amount of \$77,759, has been cancelled. (Exhibit Q.) I find that this debt has been resolved.

1.b. This overdue debt is cited in the SOR for a delinquent account in the amount of \$9,706. In one of Applicant's post-hearing documents, he wrote that after using an attorney who was unsuccessful in trying to resolve this debt, Applicant contacted the creditor himself. He paid the debt in full on February 4, 2016. (Exhibit P.) Exhibit U shows that Applicant paid this debt in full. I find that this debt has been resolved.

1.c. This overdue debt is cited in the SOR for a delinquent account in the amount of \$7,730. In Exhibit P, Applicant wrote that this debt had been settled by his attorney. It was established at the hearing by Exhibit H that Applicant paid \$6,571.30 on September 9, 2015, to settle this debt in full. I find that this debt has been resolved.

1.d. This overdue debt is cited in the SOR for a delinquent account in the amount of \$4,364. In Exhibit P, Applicant wrote that this debt had been settled by his attorney. It was established at the hearing by Exhibit G that Applicant paid \$1,965 on October 23, 2014, to settle this debt in full. I find that this debt has been resolved.

1.e. It is alleged in the SOR that Applicant failed to timely file his Federal tax returns for tax years 2008 through 2011, and he failed to pay his Federal taxes for those years. Applicant testified that his wife had been filing and paying their taxes for most of their married life, but while he was traveling a lot for work he was unaware that she had not been taking care of their bills, including their taxes. On July 5, 2011, Applicant finally filed his Federal tax returns for tax years 2008, 2009, and 2010. He also finally filed his 2011 Federal tax return after it was due. (Tr at 50-53, 56-59.)

Applicant testified that he finally finished paying off all of the debts he owed to the IRS, for tax years 2008 to 2012, on August 3, 2015. He also averred that he has now filed his Federal tax returns for tax years 2013 and 2014, and at the time of the hearing he was working on the tax return for 2015. (Tr at 76-78.) Applicant submitted documents from the IRS verifying that on August 3, 2015, he paid \$2,979.94 for tax year 2009; he paid \$7,935.52 for tax year 2011, and he paid \$882.29 for tax year 2012. (Exhibit F.) I find that these debts have been resolved.

Applicant testified that he was having a continuing conflict with his wife about paying the bills and filing their tax returns. However, he conceded that he knew the importance of filing his tax returns, but he did not take action to finally resolve his issues with the IRS until 27 months after they were past due. (Tr at 59-60.)

1.f. It is alleged in the SOR that Applicant failed to timely file his state tax returns for tax years 2009 and 2010, and he failed to pay his state taxes for those years. At the hearing, Applicant was asked if he filed his state tax returns in 2011. He answered "I think so." (Tr at 59.) Applicant failed to affirmatively confirm or establish in his RSOR or his post-hearing letter that he actually filed his state tax returns for tax years 2009 and 2010, and I do not find that any evidence has been introduced to establish that Applicant filed his past-due state tax returns for those years.

At the hearing, Applicant explained that during the period of his financial difficulties, 2008 through 2013, he was going through marriage problems, which ultimately led to a divorce, he was traveling extensively for his employment, and he had to take his mother back to her homeland where she died shortly after her return. (Tr at 79-81.) He also stated that he contacted the creditors to attempt to establish a payment plan, but when they did not work with him, he engaged the services of an attorney on July 16, 2013, to help him settle his debts. (Tr at 43-44.) As the record has shown, some of these debts were ultimately settled by Applicant himself.

## **Mitigation**

Applicant submitted a number of documents in mitigation, which I have reviewed and considered, including but not limited to: Applicant's DD Form 214 confirming that Applicant served in the United States Navy from October 1988 through May 2006, and received an Honorable Discharge as well as several service medals and ribbons (Exhibit V); a Personal Financial Statement prepared on February 5, 2016, showing that Applicant has a monthly income of \$8,568 and monthly liabilities of \$2,842, (Exhibit W); and Applicant's last two Navy Fitness Reports and Counseling Records. On the report

for 2004 through 2005, he was described as a “Superstar,” described as “a person who you can trust to be there when things get tough! A true team player who never fails when called to complete the most difficult assignments” (Exhibit X), and finally four positive and laudatory letters of recommendation from individuals who have known Applicant in his professional capacity. (Exhibits AA through DD.)

## **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 AG ¶ 2(a), describing 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 the applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance 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 adverse 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 potentially apply to Applicant in this case. The evidence has established that Applicant accumulated significant delinquent debt several years ago. AG ¶ 19(g), “failure to file Federal, state, or local income tax returns as required,” is also is potentially disqualifying, as Applicant failed to file his Federal and state tax returns for several years.

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 Applicant’s debts were the result of the failure of his wife to pay the debts and file the required taxes, during periods when Applicant was traveling for work, and the ill health of Applicant’s mother. I find this mitigating condition is potentially applicable in this case. I also find that Applicant did act responsibly in some respects as he hired an attorney to help him resolve his debts, and when his attorney was less than diligent with some of the debts, he took action himself, and has now paid off his other debts.

However, Applicant’s failure to file Federal and state tax returns for several years continues to remain a concern, and while he has finally filed his overdue Federal tax returns and resolved his Federal tax debt, no evidence was introduced to establish that he has filed his past-due state tax returns or resolved his state tax debt. Therefore, I find this mitigating condition is not applicable in this case.

AG ¶ 20(d) is initially applicable, but not controlling, as Applicant has not resolved his overdue state tax debt. 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 access to a classified position 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 may be applicable, but are not controlling, I find that the record evidence leaves me with 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.d.:	For Applicant
Subparagraphs 1.e.-1.f.:	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