



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



In the matter of: )  
)  
) ISCR Case No. 15-01168  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Esquire, Department Counsel  
For Applicant: *Pro se*

September 29, 2016

\_\_\_\_\_  
**Decision**  
\_\_\_\_\_

MOGUL, Martin H., Administrative Judge:

On August 22, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and G 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 October 21, 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 2.) On December 9, 2015, 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 eight documentary exhibits (Items 1-8). Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on February 3, 2016. Applicant did not submit additional evidence. The case was assigned to this Administrative Judge on April

1, 2016. 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 and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 37 years old. He has never been married and he has no children. Applicant is a high school graduate. Applicant has been employed since 2012 by a DoD Contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector. (Item 3.)

### **Paragraph 1 (Guideline F - Financial Considerations)**

The SOR lists seven allegations (1.a. through 1.g.) regarding financial difficulties, specifically failing to file tax returns and 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. It is alleged in the SOR that Applicant failed to file Federal income tax returns for tax years 2008 through at least 2011. Applicant admitted this allegation in his RSOR and wrote, "I obtained my W-2s for 2008 - 2011 on 10/20 [2015?]. I am currently in the process of filing them." (Item 2.) No evidence was submitted to show that Applicant has filed his Federal tax returns for tax years 2008 through 2011.

1.b. This overdue debt is cited in the SOR for a tax lien to State A, entered in 2012, in the approximate amount of \$1,125. Applicant denied this allegation in his RSOR and wrote, "I am in the process of a resolution." (Item 2.) A full data credit report, dated March 18, 2014, establishes that this tax lien is owed. (Item 5.) I do not find any evidence has been introduced to establish that this tax lien has been resolved or reduced.

1.c. This overdue debt is cited in the SOR for a delinquent account in the amount of \$2,877. (Item 1.) Applicant admitted this allegation in his RSOR and wrote, "I am currently trying to resolve." (Item 2.) I do not find any evidence has been introduced to establish that this debt has been resolved or reduced.

1.d. This overdue debt is cited in the SOR for a delinquent account to a city government in the amount of \$170. (Item 1.) Applicant admitted this allegation in his RSOR and wrote, "I am currently trying to resolve." (Item 2.) I do not find any evidence has been introduced to establish that this debt has been resolved or reduced.

1.e. This overdue debt is cited in the SOR for a delinquent account in the amount of \$451. (Item 1.) Applicant denied this allegation in his RSOR. (Item 2.) Item 5 establishes that this debt is owed. I do not find any evidence has been introduced to establish that this debt has been resolved or reduced.

1.f. This overdue debt is cited in the SOR for a delinquent account in the amount of \$451. (Item 1.) Applicant denied this allegation in his RSOR. (Item 2.) Item 5 establishes that this debt is owed. While this may be the same debt as 1.e., above, since the amount owed is the same, Applicant did not establish that this is the same debt, and I do not find any evidence has been introduced to establish that this debt has been resolved or reduced.

1.g. This overdue debt is cited in the SOR for a delinquent account in the amount of \$345. (Item 1.) Applicant denied this allegation in his RSOR. (Item 2.) Item 5 establishes that this debt is owed. I do not find any evidence has been introduced to establish that this debt has been resolved or reduced.

## **Paragraph 2 (Guideline G - Alcohol Consumption)**

The Government alleges that Applicant is ineligible for clearance because he has engaged in excessive alcohol consumption, which often leads to the exercise of questionable judgement or the failure to control impulses. The SOR lists four allegations (2.a. through 2.d.) regarding Alcohol Consumption. The allegations will be discussed below in the same order as they were listed on the SOR:

2.a. It is alleged in the SOR that in April 1997, Applicant was arrested and charged with Driving Under the Influence (DUI). (Item 1.) Applicant admitted this allegation in his RSOR and wrote, "Resolved." (Item 2.)

2.b. It is alleged in the SOR that in October 2001, Applicant was arrested and charged with DUI. (Item 1.) Applicant admitted this allegation in his RSOR and wrote, "Resolved." (Item 2.)

2.c. It is alleged in the SOR that in February 2006, Applicant was arrested and charged with DUI and was court-ordered to attend alcohol counseling. (Item 1.) Applicant denied this allegation in his RSOR and wrote that he was a resident of a different state than the one where the SOR alleged that he was arrested. (Item 2.) In his Electronic Questionnaires for Investigations Processing (e-QIP), Applicant confirmed that he had been arrested and found guilty in 2006 for DUI, for which he was fined \$800 and received counseling. (Item 3.)

1.d. It is alleged in the SOR that from about 1996 until at least 2014 Applicant has consumed alcohol, at times in excess and to the point of intoxication. (Item 1.) Applicant admitted this allegation in his RSOR and wrote, "I have alcohol consumption under control." (Item 2.)

## **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 apply to Applicant in this case. The evidence has established that Applicant has accumulated significant delinquent debt, which has not been satisfied. Additionally, AG ¶ 19(g), "failure to file Federal, state or local income tax returns as required," is applicable in this case as Applicant failed to file timely Federal tax returns for tax years 2008 through 2011.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties. Since no evidence has been introduced to establish that Applicant has filed his Federal tax returns or resolved any of his debts, I do not find that any of the mitigating factors can be considered to have been established in this case.

Finally, no evidence was submitted to allow me to 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 find that Applicant has not mitigated the Financial Consideration concerns, which are found against Applicant.

### **Guideline G - Alcohol Consumption**

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

Excessive alcohol consumption often leads to the exercise of questionable judgement or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

Applicant's alcohol consumption resulted in the criminal conduct and DUI charges listed in subparagraphs 2.a. through 2.c. The Government established that Applicant was involved in "alcohol-related incidents away from work," and "binge consumption of alcohol to the point of impaired judgement." Disqualifying conditions AG ¶ 22(a) and (c) apply to this case.

In reviewing the mitigating conditions, I find that ¶ 23(a) could be argued to apply because Applicant's last alcohol-related incident occurred in 2006. However, Applicant continues to consume alcohol, at times to excess and to the point of intoxication, and there has been no independent evidence introduced to establish that Applicant has taken

steps to insure that his alcohol consumption remains under control. Therefore, I find Guideline G 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 under Guidelines F and G, and no mitigating conditions were established. 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
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a. - 2.d.:	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