



**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. 15-01265

**Appearances**

For Government: Andrew Henderson, Esquire, Department Counsel

For Applicant: *Pro se*

August 24, 2016

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On September 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 October 14, 2015, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge (AJ). The case was first assigned to another AJ on January 7, 2016. Because of scheduling issues, the case was then assigned to this AJ on January 11, 2016. DOHA issued a notice of hearing on January 11, 2016, and the hearing was held as scheduled on January 26, 2016.

At the hearing, the Government offered Exhibits 1 through 5, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through D, 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 E through H. DOHA received the transcript of the hearing (Tr) on February 3, 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 41 years old. He is married, and he has three children. Applicant served in the United States Navy from 1995 until 2004, when he received an Honorable discharge. Applicant is a high school graduate with one year of college. He is employed by his current employer, a defense contractor, for whom he has worked since 2007. He is seeking a DoD security clearance in connection with his employment in the defense sector.

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

The SOR lists 13 allegations (1.a. through 1.m.) regarding financial difficulties, specifically overdue debts under Adjudicative Guideline F. All of the SOR 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 delinquent account in the amount of \$127. At the hearing, Applicant testified that this medical debt has not been paid. (Tr at 27.) I find that this debt has not been resolved or reduced.

1.b. This overdue debt is cited in the SOR for a delinquent account in the amount of \$389. Applicant testified that this medical debt has not been paid. (Tr at 27-28.) I find that this debt has not been resolved or reduced.

1.c. This overdue debt is cited in the SOR for a delinquent account in the amount of \$569. Applicant testified that this medical debt has not been paid. (Tr at 28-29.) I find that this debt has not been resolved or reduced.

1.d. This overdue debt is cited in the SOR for a delinquent account in the amount of \$347. Applicant testified that this debt has been paid. He had no documents to establish that the debt was paid so the record was left open to give him an opportunity to show he has paid the debt. (Tr at 29-30.) No documents were received regarding this debt. I do not find 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 \$154. Applicant testified that this medical debt has not been paid. (Tr at 30.) I find that this debt has not been resolved or reduced.

1.f. This overdue debt is cited in the SOR for a delinquent collection account in the amount of \$119. Applicant testified that this medical debt has not been paid. (Tr at 30.) I find that this debt has not been resolved or reduced.

1.g. This overdue debt is cited in the SOR for a delinquent account in the amount of \$28. Applicant testified that this medical debt has not been paid. (Tr at 30.) I find that this debt has not been resolved or reduced.

1.h. This overdue debt is cited in the SOR for a delinquent account in the amount of \$28,648. Applicant testified that this debt for a car loan that he co-signed for his mother has been paid. He had not been aware that his mother had defaulted on the loan until he met with a Government investigator. (Tr at 30-33.) Exhibits A through D establish that a debt to this creditor was paid. However, during questioning by Department Counsel, it was pointed out to Applicant that the debt discussed on Exhibits A through D appears to be a different debt than this debt listed on the SOR as 1.h. (Tr at 47-52.) Exhibits 4 and 5 establish that this debt is still outstanding. Therefore, I do not find that this debt has been resolved or reduced.

1.i. This overdue debt is cited in the SOR for a delinquent account in the amount of \$179. Applicant testified that this medical debt has not been paid. (Tr at 35.) I find that this debt has not been resolved or reduced.

1.j. This overdue debt is cited in the SOR for a delinquent account in the amount of \$150. Applicant testified that this medical debt has not been paid. (Tr at 35.) I find that this debt has not been resolved or reduced.

1.k. This overdue debt is cited in the SOR for a delinquent account in the amount of \$542. Applicant testified that this medical debt has not been paid. (Tr at 35.) I find that this debt has not been resolved or reduced.

1.l. This overdue debt is cited in the SOR for a delinquent account in the amount of \$125. Applicant testified that this medical debt has not been paid. (Tr at 35-36.) I find that this debt has not been resolved or reduced.

1.m. This overdue debt is cited in the SOR for a delinquent account in the amount of \$10,522, with a total balance of \$352,481. Applicant testified that he is no longer delinquent on this account. He explained that his mother now lives in this house, and she is making the payments for the mortgage. He had no documents to establish that the debt was no longer delinquent so the record was left open to give him an opportunity to show that this debt is current. (Tr at 36-38.) No documents were received regarding this debt. I do not find that this debt has been resolved or reduced.

Applicant testified that he was having difficulty after leaving the service so his wife took on the responsibility for paying the bills. She fell behind, but since she was afraid to tell Applicant that she was not able to pay all of the bills, he was unaware that they had delinquent accounts. During his testimony, he conceded that he should have checked to make sure the bills were being paid, but he trusted that she was taking care

of the financial issues, and if there was a problem she would let him know. Applicant testified that he did not become aware of all of their delinquent accounts until he met with the Government investigator. Finally, he averred that in the future he would be the one responsible for paying the bills. (Tr at 39-43.)

Applicant was asked why he had not resolved any of these debts, some of which were rather small, since he had known about the debts at least since the SOR was issued on September 19, 2015, if not when he first met with the Government investigator on June 10, 2014. Applicant stated that he planned to pay off all of his debts after he and his wife received their tax refund. (Tr at 52-45.)

## **Mitigation**

Applicant submitted several post-hearing exhibits. Exhibit F is a Personal Financial Statement prepared by Applicant after the hearing. It shows that he and his wife currently earn a net monthly salary of \$6,900. Applicant's expenses total \$4,475, leaving Applicant and his wife with a monthly net remainder of \$2,425. With this much of a monthly remainder it becomes more difficult to determine why Applicant failed to resolve or even reduce any of the delinquent debts listed on the SOR, especially when some of the debts were so small.

Applicant also submitted a letter in which he stated that he and his wife have made an appointment to meet with a credit counseling service on February 19, 2016. (Exhibit E.) Applicant also included a summary of evaluations that he has received from his current employer. It shows that in his most current review Applicant received "Achieves Expectations," but in the previous four reviews, he received a rating of "Exceeds Expectations." (Exhibit G .) Finally, Applicant's wife submitted a letter in which she wrote that she and her husband are now "in a good place [and] confident that we can fix our finances with the proper help and guidance; therefore we have made an appointment with a financial advisor." (Exhibit H.)

## **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 several years ago.

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.” Since so many of Applicant’s debts were the result of medical bills, I find this mitigating condition is potentially applicable in this case. However, based on Applicant’s failure to resolve his debts, even the extremely small ones, I do not find that Applicant has acted responsibly under the circumstances. While he now plans to receive financial counseling, there is no explanation as to why he and his wife had not attempted to receive counseling when he first became aware of their delinquent debts. Therefore, I find this mitigating condition is not applicable in this case.

AG ¶ 20(d) is also not applicable, as Applicant has not “initiated a good-faith effort to repay his overdue creditors or otherwise resolve debts.” Finally, I do not find that any other mitigating condition is applicable in 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 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 disqualifying conditions apply, and the mitigating conditions do not apply, 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. through 1.m.:                      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