



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



In the matter of:

ISCR Case No. 15-03120

Applicant for Security Clearance

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: *Pro se*

July 31, 2017

**Decision**

MOGUL, Martin H., Administrative Judge:

**Statement of the Case**

On July 1, 2016, in accordance with Department of Defense (DoD) Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F.<sup>1</sup> The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant replied to the SOR on August 19, 2016, and requested a hearing before an administrative judge. (RSOR.) The case was assigned to me on November 14, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of

---

<sup>1</sup> I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

hearing on November 22, 2016, scheduling the hearing for January 11, 2017. The hearing was convened as scheduled.

At the hearing, the Government offered Exhibits 1 through 6, which were admitted without objection. Applicant testified on his own behalf and presented nine documents, which were identified and entered into evidence without objection as Exhibits A through L. The record was left open until January 25, 2017, for receipt of additional documentation. Several additional documents were timely received and have been entered into evidence without objection as Exhibits M through Q. DOHA received the transcript of the hearing (TR) on January 18, 2017. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

### **Findings of Fact**

After a complete and thorough review of the evidence in the record, as described above, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 47 years old. He is married, and he has one son. He received a Bachelor's degree in Finance in 1993. Applicant is employed by a defense contractor as a Senior Software Quality Engineer, and he seeks a DoD security clearance in connection with his employment in the defense sector.

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

The SOR lists twelve allegations (1.a. through 1.l.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. All of the SOR allegations will be discussed below in the order they were listed on the SOR:

1.a. This overdue debt is cited in the SOR for a collection account in the amount of \$44. Applicant admitted this debt in his RSOR, but he wrote that the debt had been paid. At the hearing, Applicant reiterated that this debt has been paid. (Tr at 29-30.) Exhibit A establishes that this debt has been resolved. Applicant submitted a post-hearing receipt further establishing that this debt has been satisfied. (Exhibit N.)

1.b. This overdue debt is cited in the SOR for a tax lien entered against him by the Federal Government in September 2011, in the amount of \$736. Applicant admitted this debt in his RSOR, and he wrote that he was making arrangements for payment. At the hearing, Applicant testified that this debt has been paid. (Tr at 30-31.) Exhibit B establishes that this debt has been resolved.

Applicant explained that his tax liens occurred when he started his own business, in 2002. As explained below, he did not have sufficient funds to pay the IRS. He also withdrew some of his retirement savings which significantly increased the taxes he owed. (Tr at 73-79.)

1.c. This overdue debt is cited in the SOR for a tax lien entered against him by the Federal Government on September 2011, in the amount of \$3,999. Applicant admitted this debt in his RSOR, and he wrote that he was making arrangements for payment. Applicant testified that this debt has been paid. (Tr at 31-32.) Exhibit C establishes that this debt has been resolved.

1.d. This overdue debt is cited in the SOR for judgment filed against him in August 2009, in the amount of \$1,569. Applicant denied this debt in his RSOR, but he wrote that he was still investigating to ascertain the origin of the debt. At the hearing, he testified that he has determined that this is a valid debt, and it has now been paid. (Tr at 32-33.) Exhibit D establishes that this debt has been resolved.

1.e. This overdue debt is cited in the SOR for judgment filed against him in June 2009, in the amount of \$8,277. Applicant denied this debt in his RSOR, but he wrote that he had requested the creditor send him proof of this debt, but the creditor had not done so. At the hearing, Applicant testified that he had never received notice of this judgment, so the judgment had been vacated, and the creditor never pursued the matter further. (Tr at 33-34.) Exhibit E establishes that the order was vacated and an answer was deemed to be filed.

1.f. This overdue debt is cited in the SOR for judgment filed against him in March 2009, in the amount of \$3,469. Applicant denied this debt in his RSOR, but he wrote that he was still investigating to ascertain the origin of the debt. At the hearing, he testified that he has determined that this is a valid debt, and it has now been paid. (Tr at 34.) Exhibits F and Q establish that this debt has been resolved.

1.g. This overdue debt is cited in the SOR for a collection account in the amount of \$3,103. Applicant denied this debt in his RSOR, but he wrote that he was still investigating to ascertain the origin of the debt. At the hearing, he testified that after much research he determined that this debt had been sold. He finally was able to figure out who owned the debt, and he paid them \$1,469, which was the amount of the original debt. Applicant also stated that this debt is a duplicate of the debt listed as 1.k., below. (Tr at 34-37.) Exhibit A establishes that this debt has been resolved.

1.h. This overdue debt is cited in the SOR for a collection account in the amount of \$2,513. Applicant denied this debt in his RSOR, but he wrote that he was still investigating to ascertain the origin of the debt. At the hearing, he testified that he contacted the creditor, and they agree with him that this is not a valid debt. He said the creditor told him they would be sending him a letter to verify that he did not owe this debt. (Tr at 37-38.)

1.i. This overdue debt is cited in the SOR for a collection account in the amount of \$345. Applicant admitted this debt in his RSOR, and he wrote that he was making arrangements for payment. Applicant testified that he contacted the creditor, and was told the debt had been satisfied, but it had been transferred to a collection agency. Applicant indicated that after talking to the collection agency, they also told him the debt was satisfied. (Tr at 38-40.)

1.j. This overdue debt is cited in the SOR for a collection account in the amount of \$150. Applicant admitted this debt in his RSOR, and he wrote that he will be making arrangements for payment. At the hearing, Applicant testified that this debt has been paid. (Tr at 40-41.) Exhibits J and O establish that this debt has been resolved.

1.k. This overdue debt is cited in the SOR for a charged-off account in the amount of \$1,470. Applicant admitted this debt in his RSOR, and he wrote that he will be making arrangements for payment. As reviewed in 1.g. above, Applicant averred, and the evidence has established, that this is the same debt as 1.g., above, and it has been resolved.

1.l. This overdue medical debt is cited in the SOR for a collection account in the amount of \$695. Applicant denied this debt in his RSOR, but he wrote that he was still investigating to ascertain the origin of the debt. At the hearing, Applicant testified that this debt has been paid. (Tr at 42-31.) Exhibits A and P establish that this debt has been resolved.

Applicant explained his credit history, testifying that from the ages of 17 to 31, he had worked for 14 uninterrupted years in the banking and financial services business, and he understood the importance of handling credit responsibly. "When he was 31, the company for whom he worked, offered a severance package of a year's salary in lieu of a relocation to Europe. He started his own consulting business with a partner, but this was just after September 11, 2001, and his business quickly faltered. He withdrew money from his retirement savings, which resulted in dire tax implications and penalties. During this same period, his wife was laid off from her job. (Tr at 44-50.)

Two years later their son was born, they were living with his mother, and they withdrew funds from his wife's retirement account. His consulting business was not earning enough to support him and his family so he got a full-time maintenance job with his church. In around 2005, he got the chance to start a catering business with his wife, and even though he had no previous experience in food service, the business started to be successful. Unfortunately, because of the stress of trying to run the business while caring for their son, his wife had a nervous breakdown. His wife left the business, and in 2012, the business ended. However, shortly thereafter, he was able to become employed by a defense contractor across the country, and he has worked for this company since 2012. (Tr at 50-58.)

While his wife and he have been living apart, their plan is for his wife and son to come to live with him next year, when his son begins high school. (Tr at 70-71.)

Applicant has had additional issues of trying to renegotiate a mortgage he has for a home in the city where he previously lived. The mortgage is now current and the home is rented. He also has taken his grandmother, who is suffering from dementia, into his home. Finally, he suffered a stroke in 2015, from which he has now mainly recovered. (Tr at 112-118.)

Applicant submitted a post-hearing Personal Financial Statement, which shows that he has total assets of \$706,450, and total liabilities of \$339,520, for a net worth of \$366,930. (Exhibit M.)

## **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 to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility 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.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter 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 (EO) 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 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Disqualifying conditions (a), (c), and (f) are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators;
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required;
- (g) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that are inconsistent with known legal sources of income;

(h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and

(i) concealing gambling losses, family conflict, or other problems caused by gambling.

Applicant had several delinquent debts for several years. Also, while he regularly filed his tax returns, he was not able to always pay his taxes in a timely manner. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

(f) the affluence resulted from a legal source of income; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant attributed his delinquencies to loss of income of both him and his wife, as well as illness of his grandmother and a stroke that he suffered. These are circumstances beyond his control. He has established that he acted reasonably or responsibly with respect to his debts. While it took him a number of years to resolve all

of his debts, once his financial situation improved, he began paying all of his debts, and it now appears that he has no delinquent debts. I find that he has demonstrated that he addressed his debts in a responsible or timely manner. Full mitigation under AG ¶ 20(b) has been established.

Further, there are clear indications that his financial problems have been resolved and are under control. Mitigation under AG ¶ 20(d) and (g) has been established.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concerns.



## **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	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