



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



In the matter of: )  
)  
) ISCR Case No. 12-11509  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Pamela C. Benson, Esq., Department Counsel  
For Applicant: *Pro se*

November 1, 2017

**Decision**

MOGUL, Martin H., Administrative Judge:

**Statement of the Case**

On April 24, 2015, in accordance with Department of Defense (DoD) Directive 5220.6, as amended (Directive), the DoD issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F.<sup>1</sup> (Item 1.) 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.

On June 25, 2015, Applicant submitted a written reply to the SOR (RSOR) with attachments, 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

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<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.

provided to Applicant. 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 August 13, 2016. Applicant submitted additional documents that have been identified and entered into evidence without objection as Items A through G. The case was assigned to this Administrative Judge on June 5, 2017. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

### **Findings of Fact**

After a thorough and careful review of the pleadings, and exhibits, I make the following findings of fact:

Applicant is 53 years old, and he is married. He is employed as a flight line mechanic by a defense contractor, 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 10 allegations (1.a. through 1.j.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. The delinquent debts total more than \$30,000. All of the SOR allegations were established by Items 3, 4, and 5, and they 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 delinquent medical account in the amount of \$1,701. Applicant admitted in his RSOR that this debt has been on his credit report for many years, but he contends that he could not find enough information to settle it. He added that he disputed it with the credit reporting agencies in 2014, and he believed it to be removed. (Item 1.) In Post-FORM Item A, Applicant reaffirmed that he has disputed this debt, and it has been removed from his current credit report. (Item B.)

1.b. This overdue debt is cited in the SOR for a delinquent medical account in the amount of \$356. Applicant admitted this debt in his RSOR, and he wrote that he settled this debt on June 16, 2015. (Item 1.) RSOR attachments show that this debt was settled.

1.c. This overdue debt is cited in the SOR for a delinquent medical account in the amount of \$99. Applicant admitted this debt in his RSOR, and he wrote that he settled this debt on June 16, 2015. (Item 1.) RSOR attachments show that this debt was settled.

1.d. This overdue debt is cited in the SOR for a delinquent medical account in the amount of \$81. Applicant admitted this debt in his RSOR, and he wrote that he settled this debt on June 16, 2015. (Item 1.) RSOR attachments show that this debt was settled.

1.e. This overdue debt is cited in the SOR for a delinquent account in the amount of \$728. Applicant admitted this debt in his RSOR, and he wrote that he settled this debt in 2011, as reflected in his credit report. (Item 1.) RSOR attachments show that this debt was settled.

1.f. This overdue debt is cited in the SOR for a judgment filed against Applicant in December 2006 in the amount of \$1,058. Applicant admitted this debt in his RSOR, and he wrote that he settled this debt in 2006. (Item 1.) RSOR attachments show that this debt was settled.

1.g. This overdue debt is cited in the SOR for a delinquent account in the amount of \$16,057. Applicant admitted this debt in his RSOR, and he wrote that he paid \$4,000 toward this debt. He planned to borrow from his 401k to pay the rest of the amount due. While Department Counsel raised the issue that borrowing from a 401k raised tax issues, Applicant correctly stated that if the amount is borrowed rather than disbursed, no tax issues are raised. (Item 1.) Post-FORM Exhibits A, B, and C establish that this debt has been settled.

1.h. This overdue debt is cited in the SOR for a delinquent account in the amount of \$811. Applicant admitted this debt in his RSOR, and he wrote that this debt has been disputed for years because of service and equipment that he did not receive. (Item 1.) Post-FORM Exhibit F establishes that this debt has been settled.

1.i. This overdue debt is cited in the SOR for a delinquent account in the amount of \$108. Applicant admitted this debt in his RSOR, and he wrote that this debt should have been settled by his employer's disability insurance company in 2010; Applicant settled this debt on June 17, 2015. (Item 1.) Based on the other evidence introduced in this case, I find that this debt has been resolved.

1.j. This overdue debt is cited in the SOR for a delinquent account in the amount of \$10,000. Applicant admitted this debt in his RSOR, but wrote it was the same debt as that listed on 1.g., above. (Item 1.) Post-FORM Exhibits A, B, and C establish that this debt is the same as 1.g., above, and it has been settled.

Applicant explained that his delinquent debts began in 2009 after he had experienced an extremely serious illness and period of rehabilitation for 14 months. During this period he only received 70% of his regular income, and he also had endured a 3 month labor dispute, when he only collected \$75 as month from his union. Also, while he was out of work, his father-in-law became ill with cancer, and he and his wife helped to pay some of those bills. (Item 7.) Applicant also indicated that during his divorce from his first wife, some of these SOR debts had been ordered by the court to be paid by his ex-wife. (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 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. Applicant had many delinquent debts for several years. The evidence is sufficient to raise disqualifying conditions (a) and (c) as 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.

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 explained that his debts occurred for several reasons, including: his illness and subsequent loss of earnings, his underemployment during the work stoppage, the unexpected bills from his father-in-law's cancer and his divorce. Applicant has been working responsibly to resolve his delinquent debts and it appears that all of

his debts have now been resolved or reduced. Therefore, mitigating factors AG ¶ 20 (b) and (d) have been established and I find for Applicant under Guideline F.

### **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 significant 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 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 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:  
Subparagraph 1.j:

For Applicant  
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