



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



In the matter of: )  
)  
) ISCR Case No. 17-01177  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

March 28, 2018

**Decision**

MOGUL, Martin H., Administrative Judge:

**Statement of the Case**

On May 10, 2017, 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 May 24, 2017, including five enclosures, and requested a hearing before an administrative judge. (RSOR.) The case was assigned to me on July 5, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a

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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.

notice of hearing on July 26, 2017, setting the hearing for September 6, 2017. The hearing was convened as scheduled on that date.

At the hearing, the Government offered Exhibits 1 through 6, which were admitted without objection. Applicant testified on his own behalf and presented two documents, which were identified and entered into evidence without objection as Exhibits A and B. The record was left open until September 29, 2017, for receipt of additional documentation. Additional documents were timely received and have been entered into evidence without objection as Exhibits C through M. Applicant submitted one additional document on February 21, 2018, long after the record had closed; but because Department Counsel had no objection and the document is relevant, this document has been entered into evidence as Exhibit N. DOHA received the transcript of the hearing (TR) on September 14, 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 31 years old. He has never been married, and he has no children. Applicant earned a Bachelor's degree in Electrical Engineering in 2014. Applicant has been employed by a defense contractor as a Systems Engineer since 2016, and he seeks a DoD security clearance in connection with his employment in the defense sector. (Tr at 23-25.)

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

The SOR lists eight allegations (1.a. through 1.h.) regarding financial difficulties, specifically delinquent and overdue debts, under Adjudicative Guideline F. All of the SOR allegations were admitted by Applicant on his RSOR. The debts 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 account in the amount of \$21,487. In his RSOR Applicant wrote that this was not his debt, and he was in the process of resolving this debt. At the hearing, Applicant testified that all of his debts from education loans had been purchased by one creditor, and this debt was not included with his other education loans. He stated that the law firm that he had hired to help him resolve his debts was trying to confirm whether this was actually his debt before he began trying to pay it off. (Tr at 25-27.) I find that Applicant has a good faith belief that this debt is not his and he has been disputing this debt.

1.b. This overdue debt is cited in the SOR for a delinquent account in the amount of \$3,184. In his RSOR Applicant wrote that he was in the process of resolving this debt. At the hearing, Applicant testified that he has been trying to contact the creditor so

that he can pay off this debt, which he does not dispute, but the only creditor he could locate did not have information on this debt. He also has the law firm trying to determine who he should pay, but thus far he has not found the proper entity to pay to resolve this debt. (Tr at 30-31.) In post-hearing Exhibit D Applicant has established that he now has a payment plan in place to resolve this debt, and at the time of the submission, he had made one payment of \$125 toward this debt. I find that this debt is now being resolved, and is scheduled to be paid in full by May 2018.

1.c. This overdue debt is cited in the SOR for a delinquent account in the amount of \$625. In his RSOR Applicant wrote that he was in the process of resolving this debt. At the hearing, Applicant testified that he has paid off this debt. (Tr at 31-32.) Exhibits 6, B, and post-hearing Exhibit E establish that this debt has been resolved.

1.d. This overdue debt is cited in the SOR for a delinquent account in the amount of \$170. In his RSOR Applicant wrote that he was in the process of resolving this debt. At the hearing, Applicant testified that he has paid off this debt. (Tr at 32-33.) Exhibits 6, A, and post-hearing Exhibit F establish that this debt has been resolved.

1.e. This overdue debt is cited in the SOR for a delinquent judgment filed against him in 2011 in the amount of \$3,803. In his RSOR Applicant wrote that this debt was paid off and it was removed from his credit report. At the hearing, Applicant testified that this was a debt from the unemployment office that, unbeknownst to him, had been overpaying him for unemployment compensation. He stated that this debt was paid off several years ago, as it was taken out of his tax return. Applicant had no evidence at the hearing to establish that the debt was resolved. (Tr at 33-34.) Post-hearing Exhibit G has established that this debt has been resolved.

1.f. This overdue debt is cited in the SOR for a delinquent account in the amount of \$1,301. In his RSOR Applicant wrote that this debt was paid off and it was removed from his credit report. At the hearing, Applicant testified that he has paid off this debt, but he had no evidence at the hearing to establish that the debt was resolved. (Tr at 35.) Post-hearing Exhibit H has established that this debt has been resolved.

1.g. This overdue debt is cited in the SOR for a delinquent account in the amount of \$242. In his RSOR Applicant wrote that this debt was paid off and it was removed from his credit report. At the hearing, Applicant testified that he has paid off this debt, but he had no evidence at the hearing to establish that the debt was resolved. (Tr at 35.) Post-hearing Exhibit I has established that this debt has been resolved.

1.h. This overdue debt is cited in the SOR for a delinquent account in the amount of \$1,073. In his RSOR Applicant wrote that this debt was paid off and it was removed from his credit report. At the hearing, Applicant testified that he has paid off this debt, but he had no evidence at the hearing to establish that the debt was resolved. (Tr at 38.) Post-hearing Exhibit J consisted of a letter from Applicant to the creditor confirming that this debt had been paid. It also contained a letter from the creditor indicating that they did not have record of this debt.

Appellant wrote on his RSOR and testified at the hearing that he hired a law firm in January 2016, when he began his current employment, to help resolve the debts listed as delinquent on his credit report. He also stated that the law firm is continuing to work on his behalf to help him resolve his debts. (Tr at 27-28.) Applicant submitted a letter from the law firm confirming they have been hired to help Applicant's with his debts. They wrote that they are working for him to help verify that the debts listed on his credit reports were accurate, because there was some reason to doubt the accuracy of some of the debts listed. (RSOR Enclosure 1.)

He explained that after having a good paying job in the railroad industry from 2012 to January 2015, he fell behind on his debts after he was laid off in 2015, which resulted in him being unemployed for most of 2015. He contended that all of the SOR debts were incurred during this period of unemployment. During this time when he could not obtain full-time employment he did obtain a Bachelor's degree in Electrical Engineering and Communications Technology. In 2016, he was hired by his current employer at a good salary, and this has allowed him to work towards resolving his debts and fixing his credit. (Tr at 28-30.) Applicant further testified that he is now able to pay all of his current debts, and he has \$11,000 in a company 401k and \$6,000 in his credit union. (Tr at 39-41.)

In a post-hearing closing argument submitted by Applicant, he indicated that he has continued to work diligently to resolve any of his overdue debts. He also offered evidence that as of September 2017, he received an increase in salary of approximately \$11,000 a year to \$85,000. (Exhibits K and L.) Finally, Applicant submitted documents showing that he has been timely paying for his automobile, and it has now been paid in full. (Exhibits M and N.)

## **Mitigation**

Applicant submitted an extremely positive and laudatory character letter from his current direct supervisor. He was described as "always respectful of privacy (other persons and corporate), rules, restrictions, and regulations. (RSOR Enclosure 5.)

## **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:

- (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 has had a number delinquent debts for several years. The evidence is sufficient to raise disqualifying conditions (a) and (c) are in this case

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 his loss of income for a one year period. This is a circumstance beyond his control, and he has attempted to resolve his financial delinquencies by furthering his education and finding a better job. He has also engaged the services of a law firm to help him resolve all of his debts. Applicant has also provided documents establishing that the SOR delinquent debts are either resolved, are being resolved or are in legitimate dispute. I find that he has acted reasonably and responsibly with respect to his debts. Mitigation under AG ¶ 20(b) and (d) have been established. Applicant has also established that he is earning a significant salary, and he is now able to live within his means. Therefore, Guideline F is found for 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 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

### **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. National security eligibility for access to classified information is granted.

Martin H. Mogul  
Administrative Judge