



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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 ----- ) ISCR Case No. 14-03905  
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 Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro se*

June 23, 2015

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On October 7, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F 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 November 4, 2014, 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 3.) On January 21, 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 1-7.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on May 1, 2015. Applicant submitted an

document, which was included on the FORM as Item 8<sup>1</sup>. The case was assigned to this Administrative Judge on May 27, 2015. 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 54 years old. He served in the United States Army from 1978 to 2002, retiring as a sergeant first class. Applicant is employed as a system analyst for a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector. (Item 5.)

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

The SOR lists two allegations (1.a. and 1.b.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. The 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 Federal Government tax lien in the amount of \$68,878<sup>2</sup>. In his RSOR, Applicant admitted this SOR allegation. (Item 3.)

1.b. This overdue debt is cited in the SOR for a Federal Government tax lien in the amount of \$20,959. In his RSOR, Applicant admitted this SOR allegation. (Item 3.)

Applicant wrote in his RSOR regarding these two debts:

I am currently on an Installment Agreement to address the outstanding tax liability owed to the Internal Revenue Service. Payments are up to date as well as all required payments for the current tax year. The Internal Revenue Service is allowing me to service the tax debt through payments without any threats of enforced collection. In regard to the tax lien filed, I have requested that the Internal Revenue Service issue a withdrawal and it is still under consideration.

On March 16, 2015, Applicant submitted a copy of a letter to the Applicant concerning an Installment Agreement that was entered into between Applicant and the Internal Revenue Service (IRS) on March 13, 2015. (Item 8.) The Installment Agreement provides that Applicant will be making monthly payments of \$2,031 to the IRS, beginning

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<sup>1</sup>After the decision was drafted, but before it was issued, Department Counsel informed me that he had received several documents on June 11, 2015, from Applicant. Since any documents from Applicant were due by May 1, 2015, and they were received more than a month late, they will not be considered in this decision.

<sup>2</sup>The SOR incorrectly lists the debt as \$6,8878.00.

on April 28, 2015. No evidence was submitted to establish that Applicant has yet made any payments on this Installment Agreement. Additionally, this Installment Agreement, entered on March 13, 2015, contradicts Applicant's assertion in his RSOR, dated November 4, 2014, that he already had an Installment Agreement and he was "up to date" with his required payments. (Item 3.)

Finally, Applicant was provided with the opportunity to address his current financial status after he received the FORM. No evidence was introduced by Applicant as to his current financial situation, including his income and debts. Nor was evidence offered to show whether he will be able to resolve his past overdue debts or stay current with his present debts.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised 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 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 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 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 accumulated significant delinquent debt, which has not been satisfied.

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.” Applicant did not provide an explanation that would establish that the reason for the two delinquent debts was due to conditions beyond Applicant’s control. Therefore, I do not find that this mitigating condition is a factor for consideration in this case.

AG ¶ 20(d) is also not applicable, since Applicant has not “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Despite Applicant’s assertion in his RSOR that he was making payments to the IRS according to a payments plan, no evidence was introduced to establish that Applicant had resolved, reduced or made any payments toward either of his two overdue debts. Therefore, I do not find that this mitigating condition or any other mitigating condition applies to this case.

Finally, since Applicant did not submit any evidence about his current financial stability, I cannot conclude that Applicant will be able to pay off his past debts or keep up to date on his current debts and expenses. Therefore, I conclude that Applicant has not mitigated the Financial Consideration concerns, which are found against Applicant.

While Applicant did submit additional documents that were not considered, as reviewed above, the fact that they were submitted more than a month after they were due only establishes further that Applicant's does not meet his responsibilities in a timely manner.

### **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 and no mitigating conditions are applicable, 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. - 1b.:

**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