



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 ----- ) ISCR Case No. 14-05839  
 )  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esquire, Department Counsel  
For Applicant: *Pro se*

March 8, 2016

---

**Decision**

---

MOGUL, Martin H., Administrative Judge:

On January 23, 2015, 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 March 10, 2015, 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 1.) On June 26, 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 six documentary exhibits. (Items 1-6.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due by September 19, 2015. Applicant did not submit a response or any additional evidence. The case was assigned to this

Administrative Judge on October 13, 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 39 years old, and he is married. He served in the United States Air Force from 1996 to 2009, when he was Honorably Discharged for medical reasons. Applicant seeks a DoD security clearance in connection with his employment in the defense sector. (Items 2,3.)

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

The SOR lists four allegations (1.a. through 1.d.) regarding financial difficulties, specifically failure to file Federal income tax returns and delinquent debts, under Adjudicative Guideline F. The allegations will be discussed below in the same order as they were listed on the SOR:

1.a. It is alleged in the SOR that Applicant failed to file, as required by law, Federal income tax returns for tax years 2009 through 2012. In his RSOR, Applicant admitted this SOR allegation, and he wrote,

I have contacted H&R Block and am working to remedy the situation for all years. I didn't file as I was trying to amend my 2009 Tax return which was filed and received on [sic]. My severance check from the United States Military was taxed. The income has to be paid back by with my disability money. This money is untaxable income and would have returned roughly \$17,000 dollars [sic] to me and place me back down in the correct tax bracket so I didn't have to pay roughly \$1200 more dollars and would allowed [sic] me to clear out all debt. I had not filed the others as I was researching and scared it would mess up the amendment process but I am in the process of correcting it now. (Item 1.)

No evidence was introduced to establish that the Federal income tax returns for tax years 2009 through 2012 have been filed or that Applicant has contacted the Internal Revenue Service (IRS) to resolve his failure to file tax returns for the years in question.

1.b. This overdue debt is cited in the SOR for a charged-off account in the amount of \$3,266. In his RSOR, Applicant admitted this SOR allegation, and he wrote that when he was removed from the military, because of an injury he received while in the military, he only had his severance pay to support him, and his income was reduced from approximately \$4,000 a month to \$0 a month. This debt was for a loan for his vehicle, which he could not afford to pay. (Item 1.) No evidence was introduced to establish that this delinquent debt has been resolved or reduced.

1.c. This overdue debt is cited in the SOR for a collection account in the amount of \$757. In his RSOR, Applicant admitted this SOR allegation, and he wrote that this debt arose from college classes that he was unable to attend or complete. He acknowledged that he still has to pay off this debt. (Item 1.) No evidence was introduced to establish that this delinquent debt has been resolved or reduced.

1.d. This overdue debt is cited in the SOR for a charged-off account in the amount of \$391. In his RSOR, Applicant admitted this SOR allegation, and he wrote that this debt was for a motorcycle that he purchased, but he contended that he had a bill of sale showing this debt had been paid in full. (Item 1.) However, Applicant failed to introduce any evidence to establish that this delinquent debt has been resolved or reduced.

### **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 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.

The evidence has also shown that Applicant failed to timely file his Federal income tax returns as required for several years, and the returns still have not been filed. I find that AG ¶ 19(g), “failure to file annual Federal, state or local income tax returns as required or the fraudulent filing of same,” is also applicable to Applicant.

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.” As reviewed above, some of Applicant’s financial difficulties occurred as a result of his periods of unemployment. However, I cannot find that Applicant has acted responsibly since these debts have been overdue for many years, and Applicant has taken no steps to resolve them. Also as reviewed above, no evidence has been introduced to show Applicant has filed his past Federal tax returns, which were within his control. Accordingly, I find that this mitigating condition is not applicable in this case.

Also, ¶ 20(d) could not be argued to be applicable, since Applicant has not taken any action to “initiate a good-faith effort to repay his overdue creditors or otherwise resolve debts,” Finally, I do not find any of the other mitigating conditions applicable. Therefore, until Applicant can reduce or resolve a significant amount of his overdue debts, and until he files his past-due Federal tax returns, 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 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 why there are no applicable mitigating conditions, 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. - 1d.:

**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