



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



In the matter of:	)	
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	)	ISCR Case No. 15-00670
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrea M. Corrales, Esquire, Department Counsel  
For Applicant: *Pro se*

April 27, 2016

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On August 11, 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 August 25, 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 2.) On September 30, 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 on November 21, 2015. Applicant did submit additional evidence, which has been identified and entered into evidence without objection as Items A and B. The case was assigned to this Administrative Judge on

November 10, 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, the FORM, and the admitted documents, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 39 years old. He has been married since 2010. Applicant seeks a DoD security clearance in connection with his employment in the defense sector. (Item 3.)

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

The SOR lists three allegations (1.a. through 1.c.) 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 charged-off account in the amount of \$85,000. In his RSOR, Applicant admitted this SOR allegation, and he wrote that this debt, which had been from a second mortgage, was supposed to have been resolved with a short sale that was to have been conducted by his ex-wife. He wrote, "they said if we paid them \$2,000 during the process, that would cover it. So I came up with the money & sent it to them." (Item 2.) Item 3 is Applicant's completed Electronic Questionnaires for Investigation Processing (e-QIP), signed by him on July 9, 2014. In response to Section 17 - Marital Status, Applicant was asked, "Do you have a former spouse." Applicant answered, "No." Applicant wrote a letter on October 21, 2015, in response to the FORM. (Item A.) He wrote that he got divorced in 2008. It is not clear why Applicant misrepresented his previous marital status on his e-Qip. I do not find any independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.b. This overdue debt is cited in the SOR for a past due account in the amount of \$6,817, with a total balance of \$12,291. In his RSOR, Applicant admitted this SOR allegation, and he wrote that this debt was supposed to be resolved by his ex-wife, who filed for bankruptcy after their divorce. (Item 2.) Applicant submitted a Chapter 7 Discharge of Debtor form that was signed by a United States Bankruptcy Judge on June 29, 2009. (Item B.) It granted a discharge of debts to Applicant's ex-wife. However, the form that was submitted did not include which debts were discharged. Therefore, I do not find any independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.c. This overdue debt is cited in the SOR for a collection account in the amount of \$45,786. In his RSOR, Applicant admitted this SOR allegation, and he wrote that this debt was also supposed to be resolved by his ex-wife when she filed for bankruptcy after their divorce. (Item 2.) Since this debt was not listed on Item B, I do not find any

independent evidence has been introduced to establish that this debt has been resolved or reduced.

In his Post-FORM letter, written on October 21, 2015, Applicant explained that his current financial difficulties began when he decided to get divorced in 2008, but attempted to allow his former wife and his youngest child to remain in the house where they had lived before the divorce. He eventually realized that he could not afford to do this, and after he exhausted every other source of income including his credit card, he had to short sale his house, which also made him liable for his second mortgage. Since his divorce, his ex-wife has taken him back to court three times, which he claims has cost him a few thousand dollars each time. The last time occurred earlier in 2015, and Applicant claimed that at the time of the writing of the letter, he was still paying for his last court appearance. (Item A.)

Applicant also wrote that he has had a disease called Ankylosing Spondylitis for the last seven years and the different treatments every year have been very expensive. Finally, Applicant indicated that his current credit score is 719, and he has \$3,000 of credit available from a credit card, of which he has only used \$720, and he claims that he pays his credit card bills on time. Applicant also submitted a positive character letter from a former supervisor of his former employer. (Item A.)

No evidence was introduced by Applicant as to his current income and debts, and whether he will be able to 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 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, 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.” As reviewed

above, Applicant explained his financial difficulties occurred because of his divorce and an illness. However, since Applicant could furnish no independent information to establish that any of the three significant delinquent debts listed on the SOR have been either resolved or reduced, I do not find that this mitigating condition is a factor for consideration in this case.

For the same reason, I do not find that AG ¶ 20(d) is applicable, since Applicant had not established that he has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” I also do not find that any other mitigating condition applies to this case.

Finally, since Applicant has not submitted a Personal Financial Statement, nor was any other evidence offered about his current financial income and debts, I cannot conclude that Applicant will be able to keep up to date on his current debts and expenses, especially if any new or unexpected debts are incurred. Therefore, I conclude that Applicant has not mitigated the Financial Consideration concerns, which are found 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 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. - 1.c.:                      **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