



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



In the matter of:	)	
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	)	ISCR Case No. 14-04673
	)	
Applicant for Security Clearance	)	

**Appearances**

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

April 23, 2015

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On November 12, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E for Applicant. 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) (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On December 22, 2014, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing in this case. The case was initially assigned to another Administrative Judge on February 18, 2015, and the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 19, 2015. The case was reassigned to this Administrative Judge on March 5, 2015, and I convened the hearing as scheduled on that date. The Government offered Exhibits 1 through 4, which were admitted without objection. Applicant testified on his own behalf and submitted Exhibits A through I, which were also admitted without objection. DOHA received the transcript

of the hearing (Tr) on March 23, 2015. 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 discussed above, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 47 years old. He was born in Bangladesh, moved to the United States in 1994, and became a United States citizen in 2000. Applicant was first married from 2005 to 2007, and has been married to his current wife from 2008 to the present. He has two sons. Applicant earned two Master's of Science degrees, the first in 1994 in Electrical Engineering, and the second in 2003 in Computer Science. Applicant is employed as a Senior Software Engineer by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

#### **Paragraph 1 (Guideline F - Financial Considerations)**

The SOR lists one allegation, 1.a., regarding financial difficulties of Applicant.

1.a. The SOR alleges that Applicant has an overdue debt for a collection account in the amount of \$93,952. In his RSOR, Applicant denied this allegation. He wrote that this debt originated from an equity line of credit for his home. In 2010, he attempted to sell his home, but was unable to do so. He requested that the bank give him more time to sell the home, but they declined and ultimately foreclosed on his home.

Applicant testified that he purchased a home in 2005 for \$475,000. Seven months after purchasing his home, his pre-arranged first marriage was breaking up because of his wife's infidelity. He filed for divorce, which took two years to conclude. Applicant stated that the divorce cost him more than 60 percent of the savings that it had taken him ten years to accumulate. After the divorce Applicant remarried in 2008, and he purchased a new home to be closer to where his new wife was attending college. He initially rented out his first house. (Exhibit C.) After a few months his tenant for the house lost her job, and he was unable to find a new tenant. Applicant testified that this was when his financial difficulties began. (Tr at 33-37.)

He immediately worked with a realtor and the bank/mortgage holder to obtain approval for a short sale. The bank recommended to him that he stop making mortgage payments for three months so that he could receive approval for the short sale. He was unable to locate a buyer for the house and, despite Applicant's best efforts, the house remained on sale for 176 days. Ultimately when the bank would not give home approval to sell the house at a reduced amount, the house was foreclosed. (Exhibits D, E, F.) During this same period, Applicant, who had been using five credit cards to help pay his bills, made payment plans with all five of the credit card companies. He has now paid off four of the five credit cards, as confirmed in Exhibit G. (Tr at 37-38, 41-45.)

Applicant testified he makes net earnings of \$6,595 a month, and his wife has \$2,000 a month net, and that currently he is not late on any of his debts. (Tr at 48-49.)

## **Paragraph 2 (Guideline E - Personal Conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he engaged in conduct that exhibited questionable judgement, unreliability, unwillingness to comply with rules and regulations, and untrustworthiness.

2.a. It is alleged in the SOR that Applicant failed to provide truthful and candid answers to Questions asked under section 26 of an Electronic Questionnaires for Investigations Processing (e-Quip), executed by him on February 11, 2014. (Exhibit 1.) The questions asked whether in the last seven years, Applicant has had any bills turned over to a collection agency; Applicant has had any account or credit card suspended, charged off or canceled for failing to pay as agreed; or whether Applicant had been over 120 days delinquent on any debt. It also asked if Applicant is currently over 120 days delinquent on any debt. Applicant answered, "No," to all of these questions and listed no debts. It is alleged that Applicant deliberately failed to disclose that information concerning his finances and overdue debt as set forth in subparagraph 1.a., above.

In his RSOR, Applicant denied this allegation. During his testimony, Applicant stated that when he completed his security clearance application in 2014, he did not believe any of his debts were overdue or met any of the criteria in which he should have answered, "Yes," because he had been informed by the bank that he did not owe anything further for the house that had been repossessed. (Tr at 45-48.)

### **Mitigation**

Applicant submitted a number of documents in mitigation. There were seven extremely positive character letters submitted on Applicant's behalf, six from individuals who know Applicant in his professional capacity and one from an M.D., who is also a neighbor and friend. (Exhibit B.) All of the letters were written in very laudatory terms as they described Applicant. The first letter was from a manager for Applicant's current employer, who was Applicant's manager from 2005 to 2008. He described Applicant as "trustworthy and reliable and his performance at work consistently exceeds expectations."

Applicant also submitted a current Personal Financial Statement. (Exhibit H.) It shows that Applicant a net income of \$6,595, with an additional \$2,000 from his wife, and his monthly expenses are \$6,040.

### **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 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**

### **Paragraph 1 (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 had accumulated significant delinquent debt.

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's overdue finances occurred as a result of his divorce and the downturn in the economy. Applicant has acted responsibly by first attempting to sell his house, then contacting the mortgage holder to ascertain if he owed any money on his foreclosed home, and ultimately being informed that he did not. Additionally, while it was not alleged on the SOR, Applicant had five overdue credit card debts. He subsequently developed payment plans with all five of them, has now paid off four of the debts, and is in the process of paying off the last one. Therefore, I find that this mitigating condition is a factor for consideration in this case.

I also find that AG ¶ 20(d) is applicable because Applicant has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," by contacting the bank and learning that he does not owe any debt to it, and paying off four of the five credit card debts, while continuing to make payments toward paying off the fifth debt.

I conclude that at this time Applicant has reduced and resolved the majority of his overdue debt, and his current financial situation is stable. Therefore, Applicant has mitigated the financial concerns of the Government, and I resolve Guideline F for Applicant.

## **Paragraph 2 (Guideline E - Personal Conduct)**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgement, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The Government alleges in this paragraph that Applicant is ineligible for clearance because he engaged in conduct that exhibited questionable judgement, unreliability, and untrustworthiness. In reviewing the disqualifying conditions under Guideline E, I conclude that there was no “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire” by Applicant, because Applicant testified credibly that he had a good-faith belief that he did not have any overdue debts as he had been informed from a representative of the bank that he did not owe any additional amount to the bank. I do not find any disqualifying condition under ¶ 16 (a) applies against Applicant. I, therefore, resolve Guideline E 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 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 mitigation conditions apply under Guideline F, and none of the disqualifying conditions apply under Guideline E, I find that the record evidence leaves me with no significant questions or 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 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a.:	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