



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



In the matter of: )  
)  
) ISCR Case No. 15-02315  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: Ryan C. Nerney, Esquire

March 23, 2017

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On January 25, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F 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), as amended (Directive); and the adjudicative guidelines (AG), effective within the DoD for SORs issued after September 1, 2006.

On March 31, 2016, Applicant replied to the SOR (RSOR) in writing with RSOR Attachments A through H, and he requested a hearing before an Administrative Judge (AJ). The case was assigned to this AJ on July 19, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 8, 2016, and the hearing was held as scheduled on August 30, 2016. At the hearing, the Government offered Exhibits 1 through 5, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through N, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on September 8, 2016.

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 50 years old. He is married, and he has three children. Applicant attended high school. He served in the United States Marine Corps from 1985 to 1989, and he received an Honorable Discharge. He has been employed by a defense contractor since 1990, and he currently works there as a Low Observable Technician. Applicant is seeking a DoD security clearance in connection with his employment in the defense sector. (Tr at 24-27.)

### **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 SOR two allegations will be discussed below as they were listed on the SOR:

1.a. This overdue debt is cited in the SOR for a past-due account in the amount of \$15,219, with a total balance due of \$241,279.

1.b. This overdue debt is cited in the SOR for a past-due account in the amount of \$35,317, with a total balance due of \$94,796.

At the hearing, Applicant testified that these two debts were for a first and second mortgage he received for a home he purchased in approximately 2005. When he purchased the house the mortgage had a large balloon payment that was going to come due in five years. While Applicant indicated that he and his wife were not comfortable with the amount that was going to come due, their realtor told them that they would be able to refinance the loan for the home before the larger payment became due. (Tr at 30-32.)

As the five year balloon payment was coming due Applicant first approached the original lender to see if he could refinance their mortgage, but they were informed that since they had never been late on any payment, the bank would not work with them to refinance the loan. Applicant explained that before the balloon payment became due, they had been paying approximately \$800 or \$900 a month for the first mortgage, and \$200 or \$300 a month for the second mortgage. After the balloon became active, their monthly payment would be about \$1,700 or \$1,800 a month. While they initially would have been able to afford that increase in their monthly mortgage payments, before it became due, Applicant's wife lost a significant amount of hours from her employment, and within three months her company went out of business. With only Applicant's income of \$60,000, they could not afford this mortgage increase. When they realized

they were going to have a problem with the balloon payment, they attempted to renegotiate their loan, first with the bank that had given them the original loan and then with two other lenders. They were told that because they had not been behind on any of their payments they could not get a new loan. Also, because of the downturn in the economy, they could not sell their house as it was not worth the value of the mortgage. Ultimately, because they could not afford to make the payments, they agreed to a foreclosure of their house sometime in 2010. (Tr at 32-36.)

Applicant testified that he believed, based on information he received from his real estate agent, that since he lived in a non-recourse state, that he and his wife would not be responsible for the mortgages on the foreclosed home. When he learned shortly before the hearing that his credit report showed he owed an amount for both mortgages, his wife contacted a representative of the bank that had held both mortgages. The representative explained that the bank would remove both debts for the first and second mortgages from their records and from all credit reporting agencies. A day before the hearing, Applicant received a 1099A, which shows that Applicant was not “personally liable for repayment of the debt in the amount of \$241,279.18.” (Exhibit M.) (Tr at 37-40.)

## **Mitigation**

Applicant testified that in 2010 he purchased a new home, which he still owns, and he has not missed a payment on the mortgage for this new home. This home has a fixed-rate mortgage, and he only has a first mortgage. He also has three credit cards, and he has never been delinquent on a payment for the credit cards. Currently, with overtime and travel pay, Applicant earns approximately \$125,000 to \$130,000 a year, and his wife now earns from \$35,000 to \$50,000 a year, both amounts considerably more than they earned when his home was foreclosed. He also has approximately \$260,000 in his company 401K. Applicant also testified that he has held a security clearance during his four years in the Marines and his 27 years working for his current employer, and he has ever been cited for a security violation. (Tr at 41-46.)

Applicant submitted seven positive and laudatory character letters from people who know him in his professional capacity. (Exhibit A.) Applicant was described as, “an honest person, [who] loves his country and is proud of his military service in the USMC.” Applicant also offered into evidence his Performance Evaluations from his current employer, for which he was given a score of “Exceeds Expectations.” (Exhibit D.)

## **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**

### **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 potentially apply to Applicant in this case.

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, based on Applicant’s testimony, his financial difficulties occurred because of the downturn in the economy, which kept him from renegotiating a better payment rate for the mortgage of his foreclosed home or selling his house, and the loss of income from his wife. I find that Applicant has acted responsibly since he attempted to resolve these debts by contacting several lenders, and when he could not renegotiate his loans because he had never been late with a payment his home was foreclosed. These two debts appear to be resolved, and Applicant has been on time with payments of all of his other debts, including the mortgage for the house he purchased in 2010. Accordingly, I find that this mitigating condition is applicable in this case.

I also find ¶ 20(d) is applicable, since Applicant has “initiate[d] a good-faith effort to repay his overdue creditors or otherwise resolve debts,” Therefore, I find Guideline F 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 access to a classified position 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 mitigating conditions are applicable and controlling, 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a. and 1.b.: 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