



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-05707
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: John B. Glendon, Esq., Department Counsel  
For Applicant: *Pro se*

09/25/2015

**Decision**

LYNCH, Noreen A., Administrative Judge:

On August 8, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations), and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a review based on the written record in lieu of a hearing. The case was assigned to me on September 17, 2015. Department Counsel submitted a File of Relevant Material (FORM), dated May 20, 2015<sup>1</sup>. Applicant received the FORM on June 29, 2015. Applicant did not submit a

---

<sup>1</sup>The Government submitted seven items for the record.

response to the FORM. Based on a review of the case file, eligibility for access to classified information is denied.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the SOR allegations under both Guideline F and Guideline E, and provided explanations.

Applicant is 37 years old. He graduated from high school in 1997. Applicant is separated from his wife, but they are reconciling. He has three children. He served in the United States Marine Corps from 1997 until 2006, receiving an honorable discharge. He was in the Air Force Reserve from 2007 until 2009. He has been employed with his current employer since 2007. (Item 4) He held a security clearance from 1997 until 2009, when his security clearance was revoked for financial reasons. (Item 2)

### **Financial**

The SOR alleges 11 delinquent debts totaling approximately \$18,000, of which one is a past-due mortgage account, several are medical accounts, and some are charged-off accounts. (Item 1) In his answer to the SOR, Applicant stated that he resolved a non SOR debt for \$110 and provided documentation. He also showed that he made payment arrangements for the debt in 1.i for \$2,679. He provided documentation to support his assertions. (Item 2)

Applicant was candid in that he has not been able to pay the other debts alleged in the SOR. He cites to a December 2012 marital separation. His income was not sufficient to cover his bills. He was unemployed from November 2006 until January 2007. He is now in the process of trying to resolve his debts. He has considered filing for bankruptcy next year. He is attempting to improve his credit. (Item 3) Applicant states that his plan is to pay his current debts and pay off the others until all are paid. (Item 3) Applicant's response to recent DOHA interrogatories notes that he has not taken any action on SOR alleged debts except for 1.i, as noted above. It is to be noted that 1.g is a duplicate of 1.f.

During his subject interview in 2012, Applicant discussed his debts. He contacted credit services and received some financial counseling. At that time, Applicant had paid certain debts that appeared on an earlier SF-86 and caused a revocation in 2009 of his security clearance. Applicant's credit report, dated 2011 confirms that many accounts are paid as agreed.(Item 6)

Applicant completed a personal financial statement, which showed that his monthly net income is \$3,391. After monthly expenses and debt payments, Applicant has a net monthly remainder of approximately \$60.

### **Personal Conduct**

When Applicant completed his August 23, 2011 security clearance application, he responded “Yes” to “Section 26 - Financial Record” questions concerning any financial delinquencies at subset 26.g. He did not check “Yes” to any of the other subsections in Section 26. In his 2011 security clearance application he noted clearly that previously he had been denied a clearance due to poor outstanding credit. The questions referred to a period of seven years. He had already put the Government on notice of his earlier debts. He also put details about a credit system that he was using to dispute some debts. He denied deliberate falsification of any information concerning finances and stated in his 2012 interview addendum that he would proofread items better and that it was never his intention to hide or to deceive the government. He considers himself an honest man and takes pride in his work. I do not find that he falsified his security clearance application.

### **Policies**

When evaluating an applicant’s suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”<sup>2</sup> The burden of proof is something less than a preponderance of evidence.<sup>3</sup> The ultimate burden of persuasion is on the applicant.<sup>4</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship

---

<sup>2</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>3</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>4</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”<sup>5</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>6</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>7</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

## **Analysis**

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

---

<sup>5</sup> See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>6</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>7</sup> *Id.*

(d) credible adverse information in an adjudicative issue area that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

Applicant answered “Yes” on his 2011 security clearance application in response to “Section 26-Financial Record” (subsection 1.g). He provided details on his communication with a national collection service. He thereby, put the Government on notice of his financial issues. He had already noted in an earlier questionnaire the older delinquent debts. He did not intentionally falsify his 2011 security clearance application.

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

The security concern for financial considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant incurred delinquent debt in the amount of \$18,000. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The nature, frequency, and relative recency of Applicant’s financial difficulty make it difficult to conclude that it occurred “so long ago.” Applicant’s debts remain unpaid. He noted that he resolved two accounts, and provided documentation. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) partially applies. Applicant stated that his marital separation in 2012 made it difficult to pay his bills. He was unemployed for a short period. He has addressed some debts in the past, but still has incurred more debt. His security clearance was revoked in 2009

due to his past financial difficulties. He has resolved one debt on the current SOR through a payment plan, but he has no definite plan, other than he is considering bankruptcy next year for the other SOR allegations. He paid a non SOR debt recently. I cannot find that he acted responsibly.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. There is information in the record that he has addressed two delinquent debts on the current SOR and intends to pay the remaining delinquent debt. There is no information to show that he has obtained recent financial counseling. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved, or is under control) does not apply.

### **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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is a 37-year-old man married and has children. He served in the military and was honorably discharged.

Applicant has a history of financial difficulties. He was denied a clearance in 2009 due to financial issues. He has the intention to pay other delinquent debts. He has addressed two current debts on the SOR, but the others remain unaddressed. He does not have a plan in place to pay the other debts. He states that he is considering bankruptcy next year. He has not provided mitigation for the financial considerations security concerns. As to the personal conduct security concerns, Applicant disclosed information that he had, in fact, been denied a security clearance in 2009 due to financial problems, and he answered "Yes" to a question in Section 26 on his 2011

security clearance application. He did not intentionally falsify his security clearance application by answering "No" to the other subsection questions under Section 26. He put the Government on notice about his financial issues, and he did not intend to deceive.

### **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 :	AGAINST APPLICANT
Subparagraphs 1.a-h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-k:	Against 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 not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

---

NOREEN A. LYNCH.  
Administrative Judge