



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-08892
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: Barbara T. Hanna, Esq.

12/14/2015

**Decision**

LYNCH, Noreen A., Administrative Judge:

On January 20, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations). 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<sup>1</sup> and requested a review based on the written record in lieu of a hearing. The case was assigned to me on October 28, 2015. Department Counsel submitted a File of Relevant Material (FORM), dated August 20, 2015<sup>2</sup>. Applicant received the FORM on August 24, 2015. Applicant timely submitted a response to the FORM. Based on a review of the case file, eligibility for access to classified information is granted.

<sup>1</sup>Although the SOR refers to case 14-08892, the correct case number is 12-08892.

<sup>2</sup>The Government submitted seven items for the record.

## Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegations, with the exception of 1.b, under Guideline F. He also provided explanations. (Item 2)

Applicant is 48 years old. He is married, and has five children. He served in the U. S. Navy for almost 20 years and retired in 2005, with an honorable discharge. (AX A) He attended a university since 2011, but he has not yet obtained a degree. (Item 3) Since 2006, Applicant has been employed with his current employer. He completed an application for a security clearance on April 5, 2012. He has held a security clearance since 1985.

## Financial

The SOR alleges two collection accounts, one judgment, a 2009 Chapter 7 bankruptcy, which was discharged, and a 2014 Chapter 13 bankruptcy which is in payment status. (Items 4 and 5) In his answer to the SOR, Applicant stated that he has had personal tragedy both leading up to the first bankruptcy and resulting in the second. He had a difficult transition from the military to the civilian workplace in 2005. He did not begin a full time permanent position until 2006. In the interim, his wife had to suddenly stop working due to an illness with a diagnosis of bipolar. One son was diagnosed ADHD and ones younger son had asthma. The reduction in income and the many medical expenses, including his wife's seven week stay in a hospital left him unable to pay his expenses. He tried for about three years to pay his bills, but was advised to file for the Chapter 7 bankruptcy in 2009. (SOR 1.d)

When Applicant's first bankruptcy was discharged in 2009, he lost his home because he could not afford the payments. He rented an apartment for the family that he could afford. However, his landlord made many improvements and raised the rent by \$250 a month. He was still the sole provider for his family with a reduced income from his own position in 2011 by nearly \$11,000. At that time, his father died, leaving his failing mother needing his financial support. (AX A) His wife and children continued to incur multiple medical expenses. Applicant had managed to keep his car and make monthly payments but with the loss of overtime and his reduced income, he could not maintain his vehicle, which was repossessed.

Applicant sought the advice of an attorney who advised him to file a Chapter 13 bankruptcy petition. Applicant wanted to restructure his debts so that he could pay his creditors. He met the means test for the Chapter 13 bankruptcy. He and his attorney developed a plan, which took into account his income, expenses, disposable income and likelihood of success. (Item 4) The Chapter 13 bankruptcy petition was approved in May 2014. (1.e) Creditors were to be paid \$41,514 over a six year period. The monthly payments are deducted directly from his paycheck. (AX A) As of the date of the FORM, Applicant has paid 20 payments totaling \$11,762. (Attachment to Applicant's Answer) He obtained a certificate of financial counseling, dated February 18, 2014. (AX A)

The collection account for \$874 (SOR 1.a) has been included in the bankruptcy plan. The \$955 for the credit account (1.c) is also included in the plan. The \$61 collection account was paid in February 2015. (Response to FORM)

Applicant responded to the FORM by supplementing documentation and evidence to show that he in fact suffered from loss of income, death of his father, medical expenses for his wife and children, a personal financial statement, certificate of counseling and history of payments for the Chapter 13 bankruptcy to show that he is current. (Response to FORM, AX A)

## **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>3</sup> The burden of proof is something less than a preponderance of evidence. <sup>4</sup> The ultimate burden of persuasion is on the applicant. <sup>5</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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

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

<sup>4</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>5</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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>6</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>7</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>8</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 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 after retiring from the military. He filed for Chapter 7 bankruptcy in 2009. He filed for Chapter 13 bankruptcy in 2014. His admissions and credit reports confirm the delinquent debts. 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 second bankruptcy was filed in 2014. He is current in his payment plan. Consequently,

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<sup>6</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

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

<sup>8</sup> *Id.*

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) partially applies.

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) applies. Applicant had a difficult transition from the military to civilian work world. He encountered difficulties after finding employment when his wife became seriously ill and was forced to stop working. His sons also had medical issues, which resulted in medical expenses. Applicant's overtime was cut in 2011 and thus his income was further reduced. He tried to pay his debts until he was advised to file for bankruptcy. He filed a chapter 13 bankruptcy so that he could repay his creditors. He paid one SOR debt and the remaining two obligations are included in his bankruptcy. He did not shirk from the creditors. He has the payments directly taken from his pay check, and he has paid over a 20 month period about \$11,762. He is current with the plan. He acted responsibly under the circumstances.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. He had to resort to bankruptcy protection, which is a legitimate way to resolve debts. His chapter 13 plan allows him to repay his creditors. He will repay them more than \$41,000 through the wage earner's bankruptcy plan. He has received 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) partially applies because there are indications his financial problems are being resolved or under control.

### **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 48-year-old man who is married and has five children. He served honorably in the U.S. Navy for 20 years. He has held a security clearance for the majority of his career. He encountered many challenges that caused his financial difficulties. He has a history of ten years at his current employment. He has been the sole provider for his family since his wife became ill and could not work.

Applicant provided sufficient mitigation to mitigate the financial considerations security concerns. His bankruptcy is a legitimate means to repay his creditors and resolve his debts. He has established a track record of financial responsibility with his Chapter 13 bankruptcy. He has met his burden of proof in this case.

### **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

Subparagraphs 1.a-e: 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 a security clearance. Clearance is granted.

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NOREEN A. LYNCH.  
Administrative Judge