



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



In the matter of:	)	
	)	
	)	ISCR Case No. 13-00080
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

02/12/2014

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**Decision**

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LYNCH, Noreen A., Administrative Judge:

On July 25, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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; 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 an administrative determination in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated October 28, 2013.<sup>1</sup> Applicant received the FORM on November 6, 2013. He timely submitted additional information. I received the case assignment on January 29, 2014. Based on a review of the case file, I find Applicant has not mitigated the security concerns raised. Security clearance is denied.

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<sup>1</sup>The Government submitted 14 items in support of its case.

## Findings of Fact

In his answer to the SOR, Applicant admitted all allegations under Guideline F, ¶¶ 1.a through 1.o., with explanations. (Item 4)

Applicant is 28 years old. He is a technical writer employed by a defense contractor. Applicant graduated from high school and attended some college, but did not obtain a university degree. He served on active duty in the U.S. Navy from 2003 until 2007, receiving an honorable discharge. Applicant held a security clearance in 2003, but was denied a security clearance in 2012.<sup>2</sup> Applicant married his second wife in May 2012. He has no children. (Item 5) Applicant has been employed with his current employer since February 2010. On March 6, 2013, he completed a security clearance application. (Item 5)

The SOR lists 15 delinquent debts totaling about \$27,730.00. (Item 1) The Government concedes that the debt in allegation 1.g is paid and confirmed by documentation and credit report. (Item 12)

Applicant explained that he has taken responsibility for his credit and past debts. When the debts were outstanding, he made payments to some companies. However, when a company wanted an amount that he could not afford, it remained unpaid. He stated that he was also taking responsibility for the debts of his ex-wife. He stated that his medical bills are the result of a May 2010 accident that was not his fault. In addition, he was unemployed from July 2007 to January 2008, but he received unemployment benefits during that time. He intends to pay his debts when final amounts have been established. (Answer to FORM)

Applicant provided documentation with his response to the FORM which supports that the following debts are paid or settled: SOR 1.d (\$1,505); 1.e (\$881); 1.f (\$84); 1.h (\$790); 1.i (\$746); 1.l (\$776); and 1.m (\$156). The documentation did not provide details for each settlement amount, but these accounts have been resolved. (Answer to FORM)

With respect to SOR allegation 1.a, Applicant claims that this collection account in the amount of \$10,923 has been disputed since 2007. He claims that he purchased a vehicle but did not receive the car. He tried to pursue a claim for fraud but was not successful. He notes that the debt will no longer be an issue due to the statute of limitation in 2013. He did not submit any documentation concerning a resolution of the debt.

Applicant disputed the debt in SOR 1.b (\$2,301). He presented a 2013 Experian credit report that confirmed the debt for this account has been deleted.

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<sup>2</sup>In August 2010, Applicant reapplied for a security clearance but did not provide sufficient information for consideration. (Item 7)

The alleged debt in SOR 1.c (\$1,650) is the result of a 2010 automobile accident. Applicant stated that he settled the case in December 2013 and plans to make arrangements to pay the settlement amount. He did not provide any documentation to support this claim.

Applicant claimed that the debt in SOR 1.j (\$197) is another medical account from an accident. He stated that it has been paid by the insurance company, He submitted an invoice for the debt which shows that it has a balance of \$194.

The debt alleged in SOR 1.k (\$105) is another medical account from the accident. Applicant stated that the bill was paid, but did not submit any documentation to support the claim.

The debts alleged in SOR 1.n (\$825) and 1.o (\$1,480) are additional medical accounts resulting from this accident. He states that they have been paid by his insurance but did not submit any documentation.

Applicant believes that the medical accounts that were on SOR should not be held against him because they were beyond his control from an accident that was not his fault. He stated that he waited until the insurance company had settled the case. However, he did not provide any information or documentation concerning the accident or the insurance settlements.

Applicant states that he can live within his means. He has an annual household income of about \$88,000. He estimates that his total household expenses are about \$30,000 per year. He has veterans' benefits of \$7,200 to \$18,000 depending on the number of classes for which he is enrolled.

### **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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The United States 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 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:

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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).

<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.*

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's admissions and credit reports establish his delinquent debts. His credit reports confirm these 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 difficulties since 2003 make it difficult to conclude that it occurred "so long ago." Applicant still has a significant amount of delinquent debt despite payments on some accounts. The delinquent obligations remain. 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) does not apply. Applicant did not provide information to prove that the delinquencies were beyond his control and that he acted responsibly.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant has failed to provide documentation to show that he has a plan for the remaining delinquent debts. He also relies on the statute of limitations for the vehicle debt. While this may absolve him of a legal obligation, he did not show that he attempted to address the debt earlier. He did not present evidence that he received financial counseling. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem) does not apply. I find that there are not clear indications that his financial problems are being resolved and are under control. He has not met his burden of proof.

### **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 28 years old. He has worked for his current employer since 2011. He served in the military. Applicant held a security clearance in 2003, but was denied his clearance in 2012. He did not supply sufficient information on his application concerning his financial situation for the application to be processed.

He was unemployed and had medical accounts that were the result of an accident but he did not explain the nexus between the debts and his situation. Applicant has paid some of his debts. He has not shown significant progress or plans for the other debts. His pattern of financial irresponsibility and his failure to take immediate action to resolve his debts does not show good judgment or reliability. Applicant has not mitigated his case.

The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. A denial of his security clearance does not necessarily indicate anything adverse about an applicant's character or loyalty. It means that the individual has presented insufficient mitigation to meet the strict standards controlling access to classified information. Clearance is denied.

### **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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraphs 1.d-i:	For Applicant
Subparagraphs 1.j-k:	Against Applicant
Subparagraphs 1.l-m:	For Applicant

Subparagraphs 1.n-o:

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 a security clearance. Clearance is denied.

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NOREEN A. LYNCH.  
Administrative Judge