



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



In the matter of: )  
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Applicant for Security Clearance ) ISCR Case No. 13-00786

**Appearances**

For Government: John B. Glendon, Esq., Department Counsel  
For Applicant: Nicole A. Smith, Esq.

01/07/2014

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**Decision**

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LYNCH, Noreen, A., Administrative Judge:

On August 7, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging 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 a hearing before an administrative judge. The case was assigned to me on October 11, 2013. A notice of hearing was issued on October 23, scheduling the hearing for November 15, 2013. However, the hearing was postponed, and took place on November 22, 2013. Government Exhibits (GX) 1-7 were admitted into evidence, without objection. Applicant testified, and submitted Applicant Exhibits (AX) A-N, which were admitted without objection. I kept the record open for additional submissions, which the Applicant timely provided. The submission was entered into the record without objection as AX O. The transcript (Tr.) was received on December 4, 2013. The record closed on December 16,

2013. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the factual allegations under Guideline F (Financial Considerations), with the exception of ¶¶ 1.b and 1.c.

Applicant is a 61-year-old a defense contractor. After high school graduation, he received his undergraduate degree. Applicant received his Masters degree in 1996. Applicant served on active duty in the U.S. Navy from 1974 until June 1988 when he was honorably discharged. He first received a security clearance in 1970. (GX 1) Since 2007, Applicant has been president of an organization that provides service to military installations. Applicant and his wife married in 1974. They have two adult children.

After Applicant left active duty, he has been employed in the field of defense contracting. By reason of his military career and his later employment as a defense contractor, Applicant has held a security clearance for much of his adult life.

The SOR alleges six delinquent debts, including judgments, collection accounts and past-due mortgages totaling approximately \$231,000.

Applicant's wife had a personal business in real estate development. In 2003, she completed training in investments. She acquired various properties from year to year. She handled the couple's financial affairs, and Applicant felt confident that she was in no way remiss in her duties. In fact, during his military career she alone handled the finances while he was away from home. Applicant's work requires him to travel frequently and extensively both in the United States and abroad. He was not aware of the specifics of his wife's real estate investments. Applicant claims that he was not aware of any of the debts on the SOR until he was interviewed by the Office of Personnel Management (OPM) in February 2013. He acknowledged, however, that he did know of the financial issue (SOR 1.c) with his personal residence. (Tr. 24)

Applicant obtained the services of a credit restoration company in August 2013. (AX B) He also contacted a real estate attorney to help resolve issues with the various investment properties.

The 2011 judgment alleged in SOR 1.a for approximately \$12,413 is the result of a credit card account that was opened in the 1990s. There were no difficulties in paying the account until Applicant's wife used a credit card check to make two mortgage payments for one of her investment homes. The investment home, purchased in 2003, had renters occupying the house. However, when the renters vacated the house, Applicant's wife used the above-mentioned credit card check to cover mortgage payments. (Tr. 32) Applicant did not have any knowledge of this action until he was interviewed by OPM in 2013. He claimed that his wife never advised him of the situation. The judgment has been paid as of March 26, 2012. (AX A)

The past-due account in the amount of \$99,000 alleged in SOR 1.b is a second mortgage on an investment property. Applicant explained that he later learned that his wife would often use a second mortgage to cover the entire debt incurred to purchase some of their real estate investments. (Tr. 41) Applicant also stated that his wife used his name to guarantee the loans. He did not sign for any of the loans. His wife had a general power of attorney, and he trusted that she would not use it inappropriately. Applicant noted that his wife was just one member of an investment team that included her sister and her brothers. His wife and her team bought houses and held them to flip when the real estate market was doing well. (Tr. 43) When Applicant learned about this debt he started to investigate the source. He has learned that the house went to foreclosure in approximately 2009. (AX C) Applicant is currently working with the restoration company to ascertain the status of the debt. He was told that the second mortgage might have been resolved with the foreclosure of the house. He has not received any documentation to confirm his assertion. As of this date, it is unresolved and appears on his credit report. Applicant is disputing the debt with the three credit reporting companies. (AX D)

The past-due account alleged in SOR 1.c as having a past due amount of \$99,000 with a total loan balance of \$886,000 is based on Applicant's personal residence that was purchased in 2005. He acknowledged that in 2011, he was late with approximately six monthly payments on the loan due to his wife's real estate investments, but that the payments were made and nothing happened. (Tr. 131) The property was sold in 2012. Applicant provided a document labeled Certificate and Affidavit of Satisfaction. This document does not provide clarity as to satisfaction of the mortgage or release from any deficiency that might ensue. (AX E and G) Applicant, through his law firm, is still attempting to remove this debt from his credit report. (AX F) He admits that he did not receive a release from the bank. There is not sufficient clear evidence that this debt is resolved.

The past-due account alleged in SOR 1.d for \$15,000 is the result of interest on a 2009 foreclosed real estate investment. The total loan balance is \$70,000. Applicant believes this account was opened in 2006. (Tr. 61) He claims that he was first notified of this debt during his OPM interview. Applicant noted that his wife was successful with the property for about three years. He did not know about the financial issues until the investigation but stated that the loan balance of \$70,000 was a second mortgage for the property investment. He stated that his wife believed that when the property foreclosed in 2009 that the first and second mortgages were resolved. (Tr. 64) The property was sold in 2009. (AX H) However, since learning about the alleged debt, Applicant through the credit restoration company, tried to resolve the debt. A settlement offer of \$11,000 was made. Applicant sent a check in the amount of \$11,232.29. (AX I)

A charged-off account in the amount of \$872 (SOR 1.e) was paid recently. (AX J) Applicant acknowledged the store account, but stated that he had no knowledge of a balance until the OPM interview. He originally disputed the account, which was opened in 1996.

The debt alleged in SOR 1.f is a 2013 judgment in the amount of \$2,182. Applicant disputes this charge. He stated he had not been to court on this matter. He did not pay the amount when he learned about it during the investigation because he did not know who the creditor was. He learned that it was an eyeglass prescription company. He had no bills or invoices from the company. However, he paid the amount in full. (AX K, L)

Applicant's net monthly income is approximately \$12,347. He estimates that after expenses, he has approximately \$2,000 net monthly remainder. (GX 3) Applicant reports that he has investments that total \$1.3 million. (AX M) His wife has no other investment properties. Applicant has no new debt.

Applicant's dispute with two remaining debts is ongoing. He will pay the remaining balances if the disputes are not resolved in his favor. (Tr. 80) His focus remains on the debt alleged in SOR 1.b for approximately \$99,000.

Applicant stressed that he has been proactive since learning about the financial issues. He obtained a credit report and is working with his wife to unravel any unresolved issues. He took care of other accounts that were on an original debt list from the Government. He presented a current credit report that reflects that two accounts are still under dispute. (AX N)

Applicant submitted post-hearing submissions that candidly reflected that he could not obtain any additional documents concerning his financial position. He provided powers of attorney so that his credit restoration company could represent him with the two unresolved mortgages. He reports that he has not received any new information on either account. He is in the process of petitioning for a 1099 C to clarify his position with the account alleged in SOR 1.b. (AX O)

## **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 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>1</sup> The burden of proof is something less than a preponderance of evidence.<sup>2</sup> The ultimate burden of persuasion is on the applicant.<sup>3</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>4</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>5</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>6</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

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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<sup>1</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>2</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>3</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>4</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

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

<sup>6</sup> *Id.*

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations

Applicant acknowledges that he has delinquent debts. His credit reports confirm the debts. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate security concerns. The following are potentially relevant:

- (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;
- (b) 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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant has resolved the debts alleged in the SOR recently, with the exception of two. He notes that he was surprised when he learned that his wife's real estate business caused the debt that he accrued. He gave his wife power of attorney, and she used that to obtain loans and used the Applicant's power of attorney to guarantee repayment. He is liable for those debts. While some of the debts may be the result of actions beyond his control, he also had late payments on his personal residence in 2011 as a result of his wife's using money to keep her investment properties afloat rather than pay the home mortgage. Applicant admits that he knew about this financial issue in 2012. In 2013, Applicant claimed that he first learned about the debts alleged in the SOR during his OPM interview. After that interview, he did take positive steps to address the debts. He obtained a credit report and hired a credit restoration company. He is still working with them. He also disputed the debts since he believes that he has some documentation that he no longer owes a second mortgage. Applicant has sufficient money to address the remaining debts. He is trying to obtain documentation to confirm that one debt has in fact been satisfied. He has not been successful. When he learned about the late payments on his home mortgage due to his wife's failing real estate investments, Applicant did not act responsibly. He did not question or investigate the status of her other investments. He knew that she had the power of attorney and could use his name as a guarantor. In sum, Applicant has made some good-faith efforts to resolve and address the financial issues. However, his lack of vigilance after notice in 2011 that his home mortgage was not paid on time, causes me to doubt his good judgment in this case. He has earned partial credit under AG ¶¶ 20(b) and (d).

### **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 61-year-old professional with a long history of employment in the defense

arena. He honorably served in the military and has had a security clearance for most of his adult life without any incidents.

Applicant's wife started a real estate business using her husband as a guarantor for the loans secured by the investment properties. She also had other investors, but Applicant's credit was the mainstay. Through no fault of her own, her real estate business collapsed and she had difficulty paying the mortgages. However, Applicant was put on notice in late 2011 when his wife was six months late with their primary residence mortgage. At that point, he did not inquire about any other investments. In 2013, Applicant said that he first learned about the debts alleged in the SOR. He has been proactive since that point in time. He has paid several debts that are not alleged on the SOR. He also paid four SOR debts. He has not produced documentation that the other two large debts are satisfied. He is attempting to come to a resolution through a dispute that has been made by his credit restoration company. He still has substantial debt that has not been resolved. I have doubts about his judgment and reliability at this time. Applicant has not met his burden to mitigate the financial considerations security concerns.

Applicant was candid at the hearing. However, he did not act reasonably under the circumstances. I have doubts and reservations about Applicant's current reliability, trustworthiness, and ability to protect classified information.

### **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:

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|---------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.a:         | For Applicant     |
| Subparagraph 1.b:         | Against Applicant |
| Subparagraph 1.c:         | Against Applicant |
| Subparagraphs 1.d-f:      | 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.

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NOREEN A. LYNCH.  
Administrative Judge



