



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



In the matter of: )  
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)                    ISCR Case No. 13-00827  
Applicant for Security Clearance )

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

02/21/2014

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**Decision**

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LYNCH, Noreen, A., Administrative Judge:

On September 11, 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 January 10, 2014. A notice of hearing was issued on January 15, 2014, scheduling the hearing by video teleconference for February 6, 2014. Government Exhibits (GX) 1-4 were admitted into evidence, without objection. Applicant testified, and submitted Applicant Exhibits (AX) A-K, 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 L. The transcript (Tr.) was received on February 18, 2014. The record closed on February 14, 2014. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

## Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations under Guideline F (Financial Considerations), with explanations.

Applicant is a 39-year-old defense contractor. Applicant graduated from high school in 1992 and attended college courses but did not obtain a degree. He has been with his current employer since January 2013. (GX 1) This is his first request for a security clearance. Applicant was removed from his position in March 2013, due to the security clearance issue. (Tr. 30)

Applicant married in 2001. He and his wife have four children. His wife returned to work in December 2010, and she was the primary wage earner. Applicant remained at home with the children. Before that time, he had worked for ten years with a defense contractor. (GX 2) Applicant's wife earned considerably less than Applicant. The rate of income decreased from \$16 an hour to \$10 an hour. They could not maintain their daily expenses. Applicant and his wife attempted to obtain a home equity loan, but they were denied. (Tr. 29) Applicant consulted an attorney regarding bankruptcy, but Applicant did not agree with that solution. He wanted to consolidate his debts. In January 2012, Applicant obtained the services of a debt consolidation company, received financial counseling, and initiated monthly payments to resolve his debt. (Tr. 29, AX L) The plan's goal was that Applicant fulfill his financial obligations within a 42 month period. (GX 2) He sends \$963 each month to the consolidation company. (AX J)

The SOR alleges six delinquent debts, including collection accounts and a charged-off account, totaling approximately \$45,200. The Government stipulated that the debt alleged in 1.a is the same as the debt alleged in 1.f, and at the hearing withdrew 1.f. Applicant presented documentation for several other non-SOR debts that have been paid. (AX F, G, H, I )

The account alleged in SOR 1.a for \$3,409 has been settled for \$1,704. Applicant made 12 payments of \$142. He made his last payment on January 31, 2014. (AX E)

The account in the amount of \$31,368 alleged in SOR 1.b is included in the debt consolidation plan. Automatic debits are made from his checking account. (Tr. 50) Applicant presented documentation to confirm that this account is included in the debt consolidation schedule. (AX L) He is current with his monthly payments of \$963. This account is the result of a loan that was made in 2010. (Tr.54)

The past-due account alleged in SOR 1.c for approximately \$5,072 is paid. Applicant provided information that the account was settled for \$2,614. The final monthly payment of \$261 was made and there is a zero balance. (AX A) He has no other accounts with this bank.

The past-due account alleged in SOR 1.d for approximately \$2,873 has been settled for \$785. Applicant started making a monthly payment of \$100 in February 2012. (AX B)

A charged-off account alleged in SOR 1.e for approximately \$2,517 was settled for \$1,133. (AX C, D) In November 2013, Applicant started his monthly payments of \$50. The account will be settled in full by October 2014. (Tr. 16)

Applicant earned about \$17 an hour in his position before he had to stop in March 2013, due to the security clearance issues. His wife earns about \$12 an hour at her current job. Applicant and his wife use a budget. He estimates that after expenses and debt repayment, he has approximately \$259 net monthly remainder. He has no new debt. When he returns to his position, the income will increase greatly. Applicant has approximately \$125,000 in real estate assets. He saves money each month. Applicant submitted a post-hearing submission, which embodies his family budget. (AX L) He reduced monthly expenses by cancelling internet service and dropped his land line telephone service.

Applicant presented a letter of reference from a former employer. (AX K) He is described as a diligent and conscientious worker. His former employer noted that in ten years, Applicant never had a violation of any kind. He highly recommends Applicant.

Applicant is involved in the community with coaching. He volunteers for various charitable organizations. (Tr.55)

### **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:

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

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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.*

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 the disqualifying conditions in AG ¶¶ 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems began when his wife returned to work and he resigned from his employment in 2010. He remained home with the children during that time. However, his wife's income was not sufficient to maintain the expenses. He attempted to obtain a home equity loan and a loan from his bank. This was not successful. He was proactive in resolving his debts. He did not ignore his creditors. In January 2012, Applicant obtained the services of a debt consolidation group. He received financial counseling. He has consistently made a monthly payment of \$963 to the company. He has included the SOR debts in the plan. He expects that the plan will take 42 months to complete. When he returns to work, he will attempt to shorten the

time. Applicant has acted responsibly. He also paid several non-SOR debts. In sum, Applicant made good-faith efforts to resolve and address the financial issues. Applicant received financial counseling and uses a budget. He has earned credit under AG ¶¶ 20(a), (b), (c) 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 39-year-old professional with a long history of employment in the defense arena. He is recommended by his former employer.

Applicant has paid several debts that are not alleged on the SOR. He also paid three SOR debts. He produced documentation that proves his assertion. Applicant incurred the delinquent debt as a result of his wife returning to work in 2010 as the primary and sole wage earner for the family. When financial difficulties started, Applicant attempted to get a loan from his bank, or in the alternative a home equity loan. That was not successful. He paid the bills that he could. He found full employment in 2013 and by that time he had entered into a loan consolidation plan. He has been consistent with payment to the plan. Several debts have been paid. Applicant's gainful employment will allow him to shorten the payment time for the plan. He has met his burden to mitigate the financial considerations security concerns.

Applicant was candid at the hearing. He acted reasonably under the circumstances. I have no doubts or reservations about Applicant's current reliability, trustworthiness, and ability to protect classified information. Clearance is granted.

## 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	WITHDRAWN

## 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