



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 14-00017 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel  
For Applicant: *Pro se*

07/25/2014

**Decision**

LYNCH, Noreen A., Administrative Judge:

On February 28, 2014, 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 June 9, 2014.<sup>1</sup> Applicant received the FORM on June 17, 2014. He submitted additional information for the record, which was marked as AX A-B. I received the case assignment on July 15, 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 nine items in support of its case.

## Findings of Fact

In his answer to the SOR, Applicant admitted one allegation under Guideline F, ¶ 1.b and denied three allegations, with explanations. (Item 3)

Applicant is 37 years old. He is an operations analyst with a defense contractor. He obtained a bachelor's degree in March 2003. Applicant is single. (Item 4) Applicant has been employed with his current employer since November 2004. He has held a security clearance since approximately 2006. (Item 9) On April 26, 2013, he completed a security clearance application. (Item 4)

The SOR alleges four delinquent debts totaling approximately \$249,861. These include a 2012 judgment, charged-off mortgage loan, and a past-due account. (Item 1) A 2014 credit report confirms the debts. (Item 7)

Applicant explained in his Answer, that his financial issues began in approximately September 2011 due to the purchase of several investment properties. The record contains sparse information concerning the date of purchase of the various properties. He reported on his security clearance questionnaire that one house was rented but the renter "trashed" the home and stopped paying rent. He could not find a suitable renter so he tried to do a short sale. (Item 4) Due to various issues a default judgment was entered against Applicant in the amount of \$109,509. He blames the economic turndown and the bursting bubble of the housing market for the situation. (SOR 1.a)

Applicant provided no other information on the other properties that involve the past-due mortgage account in the amount of \$78,508 (SOR 1.b); the past-due mortgage account in the amount of \$29,419 on a mortgage of \$195,783 (SOR 1.c); or the second mortgage account charged off in 2011 in the amount of \$32,800. (SOR 1.d) He did note in his answer that the properties were foreclosed and he was giving them up. (Item 3) He believed that a short sale or a foreclosure would relieve him of the mortgage debt. (Item 3) He did not provide any documentation to support his assertion.

In May 2013, during an investigative interview, Applicant was confronted with other adverse information concerning the other three properties, as noted above, and he admitted the indebtedness. He acknowledged that they were investment properties. He noted that he would contact an attorney to resolve the situation.

Applicant contacted an attorney (undisclosed date) to file for Chapter 13 bankruptcy. In March 2014, he submitted a draft schedule which showed his residence and one rental house. (Item 5)

Applicant filed for Chapter 13 bankruptcy on February 13, 2014. (Item 8) The Government obtained a copy of the record which showed various other creditors in addition to the mortgage companies. In addition, the Bankruptcy Trustee filed a Motion to Dismiss the Case due to Applicant's positive monthly disposable income. The Motion

alleged Applicant took a deduction of \$631 as a qualified retirement deduction. However, since the deduction is voluntary, he is not entitled to take the deduction and needs to amend a section of his plan, which will increase his plan payment. A hearing was scheduled for May 28, 2014. There is no updated information regarding this issue.

The record reflects that Applicant traveled annually for tourism to various countries within the last seven years. These were extended vacations. Applicant stated that he had saved his money for these vacations. He notes he stayed with family to defray expenses. He stated that he did not have enough money to cover the various mortgages on the investment properties.

Applicant's monthly net income is approximately \$5,110. He owns stocks and after monthly expenses, he has a monthly net remainder of about \$1,240. Applicant listed creditors on his Chapter 13 bankruptcy schedules of said claims totaling \$433,000, and unsecured creditors totaling \$104,800.

Applicant submitted a letter in response to the FORM. He stated that he had no economic issues before the economic turndown. He also admitted that he overextended himself financially. He included a pay stub, dated June 12, 2014, which showed an after tax deduction of \$762 to a bankruptcy legal assistance office. Applicant also attached a June 2014 email from his attorney stating that the issue regarding the amended bankruptcy plan has not yet been completed. (AX B)

### **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 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 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 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. “An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”

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<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).

<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.*

Applicant's admissions and credit reports establish his delinquent debts in the amount of \$249,861. 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 make it difficult to conclude that it occurred "so long ago." An unpaid debt is a continuous course of conduct for the purposes of DOHA adjudications. *See, eg*, ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 17, 2012). Applicant recently filed for a Chapter 13 bankruptcy. He has not provided sufficient documentation that it has not been dismissed due to his income. It is not clear that he is making payments despite one pay stub that was submitted. 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.

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 did not provide information to prove that the delinquencies were beyond his control and that he acted responsibly until recently. He has been steadily employed for the past ten years. He did not show a nexus between the economic downturn and what actions he took to act responsibly with regard to the investment properties. In response to the FORM, Applicant presented new information concerning a tax deduction to provide convincing evidence that his bankruptcy would resolve his delinquent debts. It is not clear how many payments have been made or in fact if the bankruptcy has not been dismissed.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. Applicant did not present specific information concerning the steps that he took to address the financial issues with the investment properties. He did not show that there was a change in his circumstances that caused his financial issues except for the collapse of real estate prices. He gave a general and vague description of the impact of the economic turndown, but this is not sufficient. He admitted that he took extensive vacations. He obtained legal counsel and decided to file for bankruptcy. He did not present a confirmed payment plan. He did not present evidence that he received financial counseling. AG ¶ 20(c) (the person has received or is receiving counseling for the problem) does not apply. He has only recently made efforts to address his delinquent debts. I find that there are not clear indications that his financial problems are being resolved and are 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 relevant 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 37 years old. He has worked for his current employer since 2004. He made reference to an economic downturn with regard to his investment properties, and this is a circumstance beyond his control. However, he did not demonstrate that he has taken responsible steps toward the resolution of his debts until very recently. Approximately two years after Applicant was aware of his debts, he began to address them in earnest. He has now taken some initial steps to resolve his delinquent debts.

Applicant's steady employment since 2004 and his lack of documented diligence with the investment properties after the market downturn does not reflect well on his financial responsibility. Since his Answer to the SOR in March 2014, he filed for bankruptcy, but there is a question as to the status of the bankruptcy and the plan payments. This conclusion, however, does not preclude Applicant from demonstrating the requisite financial rehabilitation and reform in the future.

Because Applicant chose to have this matter handled administratively, I am unable to evaluate his demeanor, appearance or credibility. In relying on the written record, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and fully mitigate the financial security concerns.

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 Applicant's character or loyalty. It means that the individual has presented insufficient mitigation to meet the strict standards controlling access to 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 |
| Subparagraphs 1.a-1.d:    | 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