



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



In the matter of:	)	
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Applicant for Security Clearance	)	ISCR Case No. 14-00066

**Appearances**

For Government: Julie Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

07/03/2014

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**Decision**

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LYNCH, Noreen, A., Administrative Judge:

On April 17, 2014, 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 May 21, 2014. A notice of hearing was issued on May 29, 2014, scheduling the hearing for June 20, 2014. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified. He submitted Applicant Exhibits (AX) A-C, which were admitted into the record without objection. I kept the record open for additional submissions, and Applicant timely offered AX D, which was admitted without objection. The transcript (Tr.) was received on July 1, 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 allegations in the SOR under Guideline F (Financial Considerations), with explanations.

Applicant is a 39-year-old employee of a defense contractor. He graduated from high school and attended college, but he has not yet obtained a degree. Applicant served in the National Guard from 1994-2005, and from 2005 until November 2011. He was activated twice and served in Iraq. Applicant is married, and he has three children. (Tr. 17) Applicant has been with his employer since January 2013. (GX 1) He held a security clearance in the military. (Tr. 20)

The SOR alleges an indebtedness for a 2013 judgment in the amount of \$1,650; a 2012 state tax lien in the amount of \$2,855; a charged-off account in the amount of \$5,542; and a collection account in the amount of \$1,951. In addition, the SOR states that Applicant filed a Chapter 7 Bankruptcy in March 2000, with the debts discharged in June 2000.<sup>1</sup>

Applicant acknowledged the Chapter 7 Bankruptcy in 2000. He explained that he was involved in an accident and was sued. He was driving his sister's car, and there was no insurance on the car. He recalls that he did not appear in court and a judgment was entered against him. He earned about \$11 an hour and did not have the money to pay. He believes the amount of the debts discharged was about \$10,000. (Tr. 35) Applicant also testified that he believed the parties were attempting a scam. He insists that no one ever contacted him before the lawsuit.

Applicant was injured in Iraq and in 2009, he was faced with rehabilitation. He had no gainful employment between May 2009 and January 2013. He decided to pursue more studies to improve employment opportunities. At the time, his wife was supporting him. Applicant had some temporary part-time security positions in August 2013.

Applicant co-signed for an apartment with his wife in January 2012. They vacated the apartment after giving a 60-day notice. Applicant had paid his rent to date. He gave a forwarding address when he left the apartment. He did not receive any bill from the complex. After three months, Applicant was notified by the apartment complex that he owed rent for 19 days. The lease was officially ended in January 2013, but Applicant gave notice and left December 31, 2012. In March 2013, Applicant arranged a payment plan. He was paying approximately \$170 a month on an original amount of \$2,200. However, Applicant's wife became ill. She required surgery in 2012. Applicant's wife is disabled and can no longer work. Her annual income before her illness was approximately \$64,000. She is currently receiving SSI in the monthly amount of \$1,600. The apartment complex entered a judgment against Applicant when he could no longer

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<sup>1</sup>The allegation in SOR 1.e is a duplicate of the allegation in SOR 1.b.

afford the monthly payments. (GX 3) The August 2013 judgment amount of \$1,650 plus interest is being paid as a voluntary deduction of \$337 from Applicant's pay. (AX B) To date, Applicant has paid about \$1,400 toward the judgment.

Applicant filed and paid his state taxes for the year 2008. (AX A) He received a refund of \$1,148. He had no idea that he owed any other taxes until the current OPM investigation. He learned that a lien was entered against him in 2012 in the amount of \$2,855. (GX 2) He dutifully researched the issue and learned that when he took money from his 401(k) in 2003 to purchase a house, no taxes were withheld.<sup>2</sup> He learned that the taxing authority reported the income in 2011 and stated that it was a result of a distribution from his 401(k) in 2008. This was not the case. He had no knowledge of the tax issue. As soon as OPM presented this information to him, he called and tried to set up payment arrangements. He could not afford the payments. He was in the process of paying other bills and he told the investigator that due to the fact that he only had one income instead of two, he would have to prioritize the bills.

As to the collection account of \$5,542, Applicant used his military credit card during his unemployment after active duty. The account eventually became delinquent.

Applicant credibly testified that since his wife's illness and inability to work after 2012, he has had a smaller income with which to pay bills. He incurred debts but he prioritized them and paid the smaller ones first. He disclosed on his security clearance application the other debts that he had and the payment arrangements that were in place. He paid about \$1,100, which paid two accounts completely. His 2013 credit bureau report shows various accounts that are "paid as agreed." (GX 4)

Applicant filed for Chapter 7 bankruptcy in May 2014. Applicant took the online financial counseling course that is required for the process. (Tr. 40) He submitted a schedule F to document the delinquent bills that are included in the bankruptcy. The SOR allegations are included in the bankruptcy. His court date was June 12, 2014. The debts are expected to be discharged in the next few months or sooner.

.Applicant earns approximately \$3,400 net monthly. His wife has a disability income of approximately \$1,600, which began in November 2013. After expenses and debt payments, he has a net remainder of about \$700. (GX 2) Applicant is current with all household bills. He has some savings.

## **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

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<sup>2</sup>He did not purchase the house.

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>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

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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.*

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 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;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

(h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and

(i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant filed for Chapter 7 Bankruptcy in 2000, and the debts were discharged. He incurred delinquent debts and a state tax lien in approximately 2012. His admissions and credit report confirm his debts. In May 2014, Applicant petitioned for Chapter 7 bankruptcy. Consequently, the evidence is sufficient to raise disqualifying conditions in §§ 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 experienced an injury as a result of active duty in Iraq. He was unemployed during his rehabilitation. He attended college classes to obtain better employment opportunities. His wife had sufficient income to provide for their financial needs. He had no financial difficulties after 2000, until his wife, who was earning a significant income, became ill and could no longer work. That was in late 2012. Applicant did not ignore his creditors. When he learned about the money he owed to

the apartment complex, he initiated a plan to pay. He had no idea that there was a tax lien in place until his security interview. He has shown good faith by paying smaller bills. He has been gainfully employed since 2013 and is getting on his feet. He has not incurred any new bills. He decided to file for Chapter 7 bankruptcy in 2014. He received financial counseling as part of that process. He has acted responsibly given the circumstances that occurred that were beyond his control AG ¶¶ 20(b), (c) and (d)t apply.

### **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 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 39 years old. He served in the military and has worked in the defense contracting field for a number of years. Applicant was injured in Iraq and used his period of rehabilitation to attend classes to improve job opportunities.

Applicant and his wife had no financial difficulties until late 2012, when she was forced through illness to stop working. She is disabled and receives SSI. Her income had been significant. Applicant was unemployed for a period of time. He admits that he had delinquent bills. However, the tax lien and the apartment complex judgment do not appear to be as a result of any neglect on his part. Applicant held part-time jobs to help pay his bills. He made a plan and paid small bills. The circumstances were beyond his control, and he acted responsibly. His Chapter 7 bankruptcy leaves him with a clean slate. That is a viable means to resolve debt. He now has steady full-time employment. He uses a budget and lives within his means. I have no doubts about his judgment, reliability, and commitment to be financially responsible. Applicant has met his burden

of proof. He has mitigated the security concerns under the financial considerations guideline.

### **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-1.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's security clearance. Clearance is granted.

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NOREEN A. LYNCH.  
Administrative Judge