



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



In the matter of:	)	
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Applicant for Security Clearance	)	ISCR Case No. 14-00111

**Appearances**

For Government: Philip J. Katauskas, Esq., Department Counsel  
For Applicant: *Pro se*

05/27/2014

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**Decision**

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LYNCH, Noreen, A., Administrative Judge:

On February 28, 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 April 10, 2014. A notice of hearing was issued on April 17, 2014, scheduling the hearing for May 15, 2014. Hearing EX I, Informational Letter and Enclosure (DOD Directive 5220.6), was entered into the record. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant Exhibits (AX) A-H, which were admitted into the record without objection. The transcript (Tr.) was received on May 23, 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 indebtedness for his judgment and delinquent accounts, but denied the factual allegations for past-due mortgage accounts, with explanation.

Applicant is a 40-year-old contract systems engineer/manager, who is an employee of a defense contractor. He graduated from high school in 1992. Applicant is married, and has three children. Applicant has been with his employer since May 1998. (GX 1) He has held a security clearance since 1998.

The SOR alleges a indebtedness on judgments, collection accounts, and past-due mortgages. The Government acknowledged that the debt in SOR 1.i has been paid.

Applicant and his wife had been steadily employed for many years. They had a combined income of approximately \$140,000. They had no financial difficulties. Each had owned a property, and during the course of their marriage, they decided to sell those and buy a larger home. (Tr. 15)

In approximately 2007, Applicant's wife became gravely ill. A diagnosis of a brain disease was made. She had surgery to remove the malformation, which aggravated earlier injuries from a car accident. She then received a cervical disk fusion. She could no longer work. (Tr.15)

Applicant incurred huge medical bills at the time he became the primary income earner. He managed to maintain his family, but had to obtain a home equity loan. He attempted to sell their home. He also contacted the mortgage company seeking financial assistance, but was denied any assistance. (Tr. 17) At this time, the real estate market took a downward turn. Applicant was offered some short sales, but the bank refused to accept them. Applicant and his family had no choice but to leave their home. He could not obtain another loan for the property. The home went to foreclosure and the bank bought the house at the sale. A deficiency judgment against Applicant for \$125,000 remained. (SOR 1.a) Applicant pays the judgment from his paycheck each month in the amount of \$900. (AX A) A duplicate account is listed in SOR 1.f.

The home equity loan (judgment of \$54,000) is in repayment status. (SOR 1.b) Applicant submitted documentation that he has been making payments since 2013. (AX B) The home equity loan is duplicated in SOR allegation 1.h.

The SOR allegation 1.c for a cable provider in the amount of \$481 is in a repayment plan. (AX C) Applicant has one more payment to resolve the account in full. (Tr. 28)

Applicant is paying his collection credit card account that totaled \$803. SOR 1.d A monthly payment of \$50 is directly deducted from his pay. (AX D)

Applicant explained that an unknown medical account in the amount of \$58 is not resolved. SOR 1.e He has attempted to find the account owner, but he has not been successful. The credit report does not note a full account number. (GX 3)

Applicant produced documentation for allegation SOR 1.g (\$71) a medical account that has been paid. (AX E)

Applicant provided documentation that he paid the account in SOR 1.i before the hearing.

Applicant earns approximately \$93,000 annually. After expenses and debt payments, he has a net remainder of about \$1,300. He has been working with a credit company to correct his credit reports that do not reflect correct information. He has received financial counseling.

Applicant was candid and forthright. He testified that he has not ignored his creditors. He has been working to resolve the financial situation since 2008. His wife was never able to resume outside work. He has been working and maintaining his family throughout the years. He has worked hard at his employment and received many promotions. He cares for his children. He sought all viable means when the unfortunate circumstances occurred in 2007. His bank would not work with him or accept short sales. Applicant has addressed all his debts and presents as a very organized, efficient person, who does not shirk from responsibility.

Applicant's supervisor testified that he has known Applicant for about 16 years. Applicant is reliable and a team player. Applicant is conscientious in his work and has shown he is a trustworthy, knowledgeable individual in dealing with sensitive matters. (Tr. 50) Applicant is an excellent manager and has a strong character that has helped him through his family crisis. He is a family man who has accepted the various challenges that he has faced in the past few years. (Tr. 51)

Applicant submitted a letter of reference from a colleague who has known him for two years. His colleague has a high opinion of Applicant, stating Applicant displays great integrity, reliability, work ethic and character. (AX H) Applicant performs his duties to the highest expectations.

## **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.

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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.*

## 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 incurred delinquent debts and judgments. His admissions confirm his debts. 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's wife's illness and extensive surgeries have combined to cause financial difficulties over the years since 2007. She could no longer maintain her outside employment. These were events beyond his control. Applicant became the sole provider for his family. Before 2007, he had no financial difficulties. He acted responsibly in dealing with his home mortgage account and his home equity loan. He did not receive any help from his bank. He incurred many medical expenses that were beyond his insurance coverage. He maintained his employment and cared for his wife and children. He has consistently paid his bills and obligations. He has made good-faith efforts to repay overdue bills. He provided documentation to substantiate that all accounts are resolved or in repayment status. He received financial counseling. With steady employment, Applicant has his financial issues under control. He has acted

quite responsibly given all the circumstances beyond his control. AG ¶¶ 20(b), (d) and (c) 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 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 40 years old who has worked in the defense contracting field since 1998. He has held a security clearance without incident. He has excellent recommendations from his peers and employer.

Applicant cared for his wife and family during the past years. He did not shirk from responsibility. He maintained his employment, even receiving promotions, and dealt with his financial crisis. I have no doubts about his ability and commitment to address his financial issues. He is highly organized and steadfast. Applicant has met his burden of proof to mitigate the financial considerations security concerns.

### **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
Subparagraphs 1.a-1.i:	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 continue Applicant's security clearance. Clearance is granted.

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NOREEN A. LYNCH.  
Administrative Judge