



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-00280
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

12/12/2014

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**Decision**

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LYNCH, Noreen A., Administrative Judge:

On April 17, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing security concerns arising under Guideline F (Financial Considerations). The action was taken under DOD Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation); 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 decision based on the written record in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated September 23, 2014.<sup>1</sup> Applicant received the FORM on October 1, 2014. He did not submit additional information in response to the FORM. I received the case assignment on December 5, 2014. Based on a review of the case file, I find Applicant has not mitigated the security concerns raised. Eligibility for a clearance is denied.

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<sup>1</sup>The Government submitted eight items in support of its case.

## Findings of Fact

In his answer to the SOR, Applicant admitted all allegations under Guideline F, ¶¶ 1.a-1.h with explanation. (Item 3)

Applicant is 37 years old. He is employed with a defense contractor. He graduated from high school in 1995, attended college part time, and obtained an associate's degree. Applicant is married and has one child. He served in the military from October 1997 until November 2000, receiving an Honorable Discharge. While in the military, he held a security clearance. He has been employed with his current employer since August 2013. On August 12, 2013, he completed a security clearance application. (Item 5)

The SOR alleges eight delinquent debts totaling approximately \$31,500, including judgments, a home mortgage loan, credit cards, and other accounts. Credit reports submitted by the Government confirm the debts. (Items 7 and 8)

Applicant explained in his Answer that his financial issues began when he was unemployed from November 2009 until February 2010. (Item 5) The unemployment in conjunction with low paying jobs contributed to his financial issues. Applicant has a number of debts that he hopes to have paid by the end of 2014. He noted that he is making payment arrangements for several debts. However, he did not provide the documentation for the payment plans.

In November 2013, during an investigative interview, Applicant explained that his financial problems are attributable to periods of unemployment and a subsequent reduction in household income. He was not aware of several creditors and he originally disputed some accounts. He did not provide any documentation to support the claims.

When Applicant answered the SOR, he admitted the SOR debts, and stated that the debt in 1.a is paid, and he provided proof of payment. Applicant noted that the debt in 1.b was paid, but he did not provide any documentation. As for the debt in 1.c, Applicant stated that the debt is paid, but he provided no proof of payment. The delinquent debt in 1.d is charged-off, and Applicant did not note any plan to make payment arrangements. Applicant stated that the debt in 1.e is paid, but he did not provide any documentation. Applicant stated that the last two debts alleged in SOR 1.f and 1.g are in settlement or payment plans, but he did not provide any documentation. As to the final debt alleged in 1.g, Applicant provided a form 1099-C to show cancellation of debt. (Item 1)

There is nothing in the record to show Applicant's income or expenses. There is no record of financial counseling. Since Applicant relied on a written record rather than a hearing, there is no other information to supplement the record. Any doubts must be resolved in favor of the Government. Applicant has not provided sufficient documentation to carry his burden of proof.

## 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

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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.

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 classified 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 security 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.”

Applicant’s admissions and credit reports establish the collection accounts, delinquent debts, and judgments . 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 continuing course of conduct for the purposes of DOHA adjudications.” ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 17, 2012). Applicant still has unresolved delinquent debt. He has not provided sufficient documentation that he has addressed the majority of the debts. 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’s financial

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<sup>6</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>7</sup> *Id.*

difficulties occurred due to a period of unemployment but he did not provide any information to show the nexus between that unemployment and the delinquent debts. Applicant provided proof of payment for one debt and cancellation of another debt. He did not provide any documentation for the other debts that he claimed he has paid. He receives partial credit under this mitigating condition.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. Applicant made some effort to pay some debts. However, as to the other collection accounts or charged-off accounts, there is no documentation of any payment plan. He has presented insufficient information to show mitigation. 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. Given the ultimate burden, 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 August 2013. He served in the U.S. military and received an honorable discharge. He held a security clearance when in the military. Applicant attended college and obtained an Associate's degree. Applicant provided documentation for two debts. He does not have a track record of making payments on the remaining debts. An applicant does not have to have paid all his delinquent debts to mitigate the security concern under financial considerations guideline, but he or she must show payment progress with payments or payment plans.

Applicant relied on the written record and did not have a hearing. However, when he responded to the FORM, he did not provide documentation of his efforts to satisfy his debts. He submitted insufficient information and did not supplement the record with relevant and material facts and proof of payments. Applicant has not 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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b:-1f:	Against Applicant
Subparagraph 1.g-1.h:	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 eligibility for a security clearance. Clearance is denied.

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NOREEN A. LYNCH.  
Administrative Judge