



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-00369
	)	
	)	
Applicant for Security Clearance	)	
	)	

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

11/07/2014

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**Decision**

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LYNCH, Noreen, A., Administrative Judge:

On April 18, 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 September 10, 2014. A notice of hearing was issued on September 23, 2014, scheduling the hearing for October 21, 2014. Government Exhibits (GX) 1-7 were admitted into evidence without objection. Applicant testified. He submitted Applicant Exhibits (AX) A-E, which were admitted into the record without objection. I kept the record open until October 31, 2014, for additional submissions, and Applicant timely offered AX F-H, which were admitted without objection. The transcript (Tr.) was received on October 29, 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 denied three allegations in the SOR under Guideline F (Financial Considerations), with explanations.

Applicant is a 52-year-old employee of a defense contractor. He graduated from college in 2002, and he obtained a master's degree in 2004. Applicant served in the military from 1985 until 1989. He married for the third time in 2012. Applicant has one daughter. Applicant has been with his employer full-time since August 2014. (GX 1) He was unemployed for periods of time from May 2012 until January 2013, and in November 2013 until starting his current employment. (Tr. 29) The contract work that Applicant had until the present time was paid on an hourly basis. He averaged about 20 hours a week. (Tr. 30) He has held a security clearance since 2002. (Tr. 31)

The SOR alleges eleven delinquent debts totaling approximately \$20,000, including a 2013 judgment, collection accounts, and a charged-off account for a vehicle. Applicant's credit report confirms the delinquent debts. (GX 2 and 3)

Applicant explained that his financial difficulties are the result of two previous divorces, legal fees (approximately \$15,000), and unemployment. One of his ex-wives mismanaged the household finances, and he was unemployed twice in a two year period (October 2009 and May 2012). (Tr. 24) He also incurred additional costs when he relocated for another job and his cost of living increased. Applicant stated that he contacted his creditors when he became fully employed in August 2014. (Tr. 25)

As to the 2013 judgment alleged in SOR 1.a, Applicant paid \$3,194.83 in June 2014. He provided documentation that the account is paid in full and satisfied. (AX D) This debt is the result of legal services for a divorce in 2009. (Tr. 38).

As to the delinquent debt in SOR 1.b for \$11,914, Applicant maintains that he has an agreement and payment plan. This was for a car that he purchased in 2006. It became delinquent when he was not working in 2007. Applicant tried to make payments when he was employed in 2009. In addition, the car was involved in an accident and there was a back and forth with the insurance company and the collection agency. (Tr. 42) He presented a settlement agreement offer, dated July 15, 2014. The plan calls for 14 monthly payments of about \$246.43. The final payment would be September 18, 2015. (AX C) Applicant submitted a check in the amount of \$600 payable to the holder of the account, which represents three months payment. The check was dated August 15, 2014. (AX H)

The debt alleged in SOR 1.c for \$2,157 relates to a wireless company. At first, he disputed the account as it was his step-son's telephone. He also believed he made a request that the phone be turned off in 2009. Applicant entered into an agreement and he submitted AX E to show a payment of \$200 on July 16, 2014. He submitted

information to show that he made a payment in August, September, and October 2014 totaling \$959. (AX F)

Applicant presented documentation that he made arrangements to settle the collection account alleged in SOR 1.d on July 15, 2014 for \$516. His first payment of \$194.82 was due by July 15, 2014. He did not provide documentation that he made any payments. (AX B) He maintains that he paid the debt by credit card. He attempted to get a letter of satisfaction from the company to present as a post-hearing submission. However, he maintains that the company would not fax or email him any information. He was told a letter of satisfaction is expected in the mail in two weeks.

Applicant denies the debt in SOR 1.e. According to Applicant the bill was the responsibility of his ex-wife. She used the credit card, but did not pay the bills. However, at the hearing, he stated the debt was paid in full. Applicant contacted the company and was told the account is closed. It has not shown on his credit report since April 2014.

Applicant admits the debt in SOR 1.f was a past-due account for a cable company. He stated that it is now paid. He states that he is current with this cable company. He paid \$325. (Tr. 66)

Applicant provided documentation that the delinquent accounts in SOR 1.g, 1.h, 1.i, and 1.k (parking tickets) for a total of \$505 are paid. He believes they were from 2010 and 2011. He also provided documentation that the medical collection account alleged in SOR 1.j is paid in full. (AX A)

Applicant admitted that he filed for Chapter 7 bankruptcy in 1997. (GX 5, 7) He stated that his first wife was unemployed. He believes the amount discharged was about \$50,000. He also acknowledged that in 2002, he was still having some financial difficulties due to a prior marriage. (Tr. 35) He provided child support for his daughter each month in the amount of \$520. When he was unemployed, he could not pay the full amount and he is now paying an additional \$200 a month for arrears. (Tr. 34)

In 2004, Applicant received a favorable determination concerning a security clearance. However, the eligibility was accompanied with a warning that "subsequent misconduct, delinquent debts, or other unfavorable information may result in the suspension of SCI access." (GX 4) Applicant was candid in stating that he did not think about the warning because he had no problems with his clearance from 2004 until 2014. (Tr. 71)

Applicant earns approximately \$110,00 a year. His current contract with his employer is for a five-year period. (Tr. 67) His wife works and her annual income is approximately \$75,000. (Tr. 61) His car is paid in full. After expenses and debt payments, he has a monthly net remainder of about \$1,176. (GX 2) Applicant is current with all household bills. He uses a budget. (AX G) Applicant and his wife are attending financial counseling through their church. (Tr. 59 ) As part of the counseling, Applicant and his wife are required to submit their bills and show your current financial status. The church does help pay for some bills.

## 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

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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.

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 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;

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<sup>5</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>6</sup> *Id.*

(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 Chapter 7 bankruptcy in 1997. However, he accrued more delinquent debts and in 2004 received a warning against future debts. He has delinquent debts, and his credit report confirms 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 has experienced unemployment and adverse financial consequences from several divorces. It is true that he filed Chapter 7 bankruptcy in 1997. He had continuing financial difficulties due to legal fees and child support. When he was unemployed, he had to stop payments. He also had child support to pay. Applicant has incurred delinquent debts for a period of time. He certainly has had circumstances beyond his control, and he has acted responsibly. He continued to pay child support when he could; he contacted creditors; he tried to have his ex-wives assume their responsibility, but he was ultimately left with the delinquent debt. He has not paid all the debts at this point, but he has plans to do so. He is receiving financial counseling. His current wife is fully employed. Applicant's contract is for a period of five years with options. He has sufficient funds to pay his expenses. He is following a budget.

### **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 52 years old. He served in the military. He has provided for his daughter. He has worked in the defense contracting field for many years. He has held a security clearance since 2002.

Granted, Applicant filed for bankruptcy in 1997 and received a warning in 2004, but the unemployment and legal fees did not permit him to maintain all accounts. He has shown that he takes his financial responsibility seriously. He has a track record of making payments. He has not resolved all his debts, but he is on his way. He and his current wife are receiving financial counseling from their church. The church is monitoring the bills. He is not living in an extravagant manner. He is now in a position with his job and his wife's income to deal with his financial responsibilities.

Applicant has presented sufficient information to meet his burden of proof in this case. I do not have doubts about his judgment, trustworthiness, or responsibility. 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.k:                      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