



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-01281
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

06/03/2015

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**Decision**

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LYNCH, Noreen A., Administrative Judge:

On July 11, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline E (Personal Conduct), and Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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 review based on the written record in lieu of a hearing. The case was assigned to me on May 21, 2015. Department Counsel submitted a File of Relevant Material (FORM), dated February 18, 2015<sup>1</sup>. Applicant received the FORM on March 25, 2015. Applicant did not submit a response to the FORM. Based on a review of the case file, eligibility for access to classified information is denied.

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<sup>1</sup>The Government submitted nine items for the record.

## Findings of Fact

In his answer to the SOR, Applicant denied the SOR allegation under Guideline F and provided explanations. He admitted the allegations under Guideline E, with the exception of SOR 2.d.

Applicant is 40 years old. He received an associate's degree in 2006. Applicant never married and has no children. He has been employed with his current employer since March 2013. (Item 5) He filed a security clearance application on March 25, 2013.

### Personal Conduct

During the course of Applicant's employment history, he has been terminated from his job on three occasions. Applicant admitted the three terminations, but he denied the underlying issue for his 2000 termination. In 2000, he was terminated because \$200 was missing from the night shift cash drawer. He stated that someone else had "punched in two charitable contributions" of \$100 each. He told his supervisor, but he was terminated. (Item 4)

Applicant does not deny that he was terminated in September 2012 after violating company policy. The incident involved a time card issue. He also was terminated in March 2005, after a series of derogatory incidents. He was charged with insubordination. (Item 8)

When Applicant completed his 2013 security clearance application, he failed to disclose any financial delinquencies in his application. He answered "no" to the questions in Section 26-Financial Record, which referred to the past seven years. He denies that he falsified his application because the account had been delinquent for more than seven years.

### Financial

The SOR alleges one delinquent debt in the amount of \$33,030. (Item 7) In his answer to the SOR, Applicant denied the debt because it does not "show up" on his credit report from August 2014. (Item 4) However, in his explanation, he admits that he owed a debt to the company for a credit card account. He stopped paying the account in 1999 or 2000, when he owed about \$9,000 or \$10,000.<sup>2</sup> After beginning the process for a background check, Applicant tried to settle the account, but he did not have the required lump sum of about \$6,000. Applicant has made no payments since 2000. He counted on the account dropping off his credit report. (Item 4)

Although Applicant reported various periods of unemployment through the years, he did not provide a nexus as to his delinquent debt. He was employed from 1996 until 2000. He was unemployed from September 2012 until his current employment in 2013.

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<sup>2</sup>Applicant cut his credit card and stopped making payments because he could not afford it.

He also was unemployed from March 2005 until June 2005. However, these were well after the period that Applicant stopped paying on his alleged delinquent debt in the SOR. The file also contains an interview from 2009 in which he speaks about the same delinquent account as listed in the SOR. In the 2009 interview, Applicant stated that he contacted the creditor and intended to set up a payment plan. (Item 9)

## **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 U.S. 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.

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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).

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 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 E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(d) credible adverse information in an adjudicative issue area that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

Applicant has been terminated from his employment on three occasions, 2000, 2005, and 2012. He does not deny the terminations. He denied the underlying issue for

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<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.*

the 2000 incident. Applicant answered “No” on his 2013 security clearance application in response to Section 26-Financial Record. The questions specifically Asked about “the past (7) years. He did not list the delinquent debt from 2000.

In this case, as to the 2000 termination, it is 15 years old, but it is a part of pattern. However, since he has had two more terminations, the most recent in 2012, he shows a pattern of rule violations with respect to the other two terminations. Applicant did not list the original delinquent debt due to the structure of the questions. I do not find that he deliberately falsified the security clearance application with respect to the omission of the debt. Although he did disclose the terminations, I do not find that he has mitigated the personal conduct concerns. I have doubts about his reliability and judgment.

### **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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant has a collection account in the amount of \$33,030 that has been unresolved since about 2000. 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 difficulty make it difficult to conclude that it occurred “so long ago.” Applicant still has unresolved debt. He stated that he cut up his credit card in 1999 and could not afford payments. In an interview in 2009, Applicant stated that he intended to arrange a payment plan. He made an attempt in 2013 to settle the account. This was during the security clearance investigative process. 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.

Financial Considerations Mitigating Condition (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) does not apply. Applicant had periods of unemployment but he provided no nexus with the failure to pay the delinquent account. He did not act responsibly. He has known

about the debt for a long time. I cannot find that he acted responsibly under the circumstances.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has no application. Promises to pay in the future or waiting for an account to disappear from a credit report are not good-faith efforts. FC MC AG ¶ 20(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) does not 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 a 40 year old employee of a defense contractor. He never married and has no children. He has been terminated from employment on three occasions: 2000, 2005, and 2012. He also has a delinquent debt that is unresolved and he has no plan in place to pay the debt.

Applicant did not provide any evidence to persuade me that he refuted or mitigated the Government's case concerning the financial considerations security concerns and the personal conduct security concerns. Any doubts must be resolved in the Government's favor.

### **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:                            Against Applicant

Paragraph 2, Guideline E :                   AGAINST APPLICANT  
Subparagraph 2.a:                            For Applicant  
Subparagraphs 2.b-2.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