



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-01601
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel  
For Applicant: *Pro se*

03/16/2015

**Decision**

LYNCH, Noreen A., Administrative Judge:

On June 4, 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 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 January 9, 2015.<sup>1</sup> Applicant received the FORM on September 11, 2014. He did not submit additional information for the record. (Appellate EX 1) I received the case assignment on March 10, 2015. 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 ten items in support of its case.

## Findings of Fact

In his answers to the SOR, Applicant admitted the majority of the allegations under Guideline F, ¶¶ 1.a-1.v with explanations. (Item 4) Applicant did not recall some of the debts.

Applicant is 48 years old. He graduated from high school in 1984, and attended college for about two years. He obtained a degree from a technical college. (Item 7) He is an engineer for a defense contractor. Applicant has been divorced twice. He has two adult children. Applicant is single, but has a girlfriend. He has been employed with his current employer since 1986. Applicant has held a security clearance since 1986, but he noted that he has never seen or read anything that requires a clearance. On January 19, 2012, he completed a security clearance application. (Item 5)

The SOR alleges 21 delinquent debts totaling approximately \$33,290, including a Chapter 7 bankruptcy discharge in 1997. (Item 1) Credit reports confirm the debts. (Items 6 through 8) As to SOR allegations, Applicant asserts that he paid \$2,400 to a law firm for the debt alleged in 1.h. (Item 4)

Applicant explained in his Answer that his financial issues began when he attempted to help his girlfriend with the purchase of a new business. He loaned her money and co-signed a loan. Applicant's girlfriend did not repay Applicant, and she filed for bankruptcy. Applicant also co-signed for a number of credit cards for his girlfriend. (Item 5)

In March 2012, during an investigative interview, Applicant explained that he reviewed his 2012 credit report and stated that in three months he would pay off the debts. At that time he had five charged-off accounts and seven collection accounts. His 401(k) loan payments would end, and Applicant noted that in April 2012, his child support of \$800 a month would end. He would be in a financial position to pay his delinquent debts and get his finances in order. (Item 5)

When Applicant answered the 2014 DOHA interrogatories, he again referred to the \$2,400 payment he made to a law firm. He did not specify which debt was addressed by this payment, and he did not provide any documentation showing he paid \$2,400 to the law firm. Applicant did not provide any documentation for any payments on any of the alleged delinquent debts.

Applicant listed his total monthly net income as \$4,726, and his net remainder as \$124. As part of his assets he listed real estate, savings, stocks, and a car/boat that totaled \$262,427. There is nothing in the record that shows financial counseling.

## 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 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

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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.

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

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 delinquent SOR debts in the amount of approximately \$33,920. In 1997, his debts were discharged under Chapter 7 of the Bankruptcy Code. 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. The delinquent obligations remain despite the fact that Applicant promised to pay them after his child support ended in 2012. 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) does not apply. Applicant's financial difficulties occurred when he co-signed loans for his girlfriend and used credit cards to give her cash. He has been employed for 28 years, but he chose to fund his friend's

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

business venture. He did not act responsibly under the circumstances. Applicant has been aware of the debts since his 2012 investigative interview and stated that he intended to act to resolve his delinquent debts. He noted that he would have money when his child support obligation was paid. He did not act responsibly in this matter because he did not provide any evidence that he has paid any debts or that he has a plan to do so. He does not receive mitigation under AG ¶ 20(b).

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant presented no information concerning any attempts that he made to address or resolve the SOR allegations. He has not met his burden. 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 doubts about his judgment and responsibility in this case.

### **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 has worked as an engineer for his current company for 28 years. There is no record of unemployment. He has held a security clearance since his first employment. There is no evidence in the record of any security incidents. Applicant tried to help his friend by co-signing loans and giving her cash. However, it is his responsibility to repay the loans. He did not submit information to mitigate the financial considerations security concern.

Applicant relied on the written record and did not have a hearing. He did not respond to the FORM with any other information. Based on the facts in the record, he

