



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 14-01610

**Appearances**

For Government: Ray T. Blank, Jr., Esq., Department Counsel  
For Applicant: *Pro se*

03/27/2015

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On June 13, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) noting security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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).

In a June 27, 2014, response, Applicant admitted 11 of 13 allegations under Guideline F, the sole allegation raised under Guideline E, and requested an administrative determination. On January 15, 2014, Department Counsel submitted a File of Relevant Material (FORM), which included nine attached items. Applicant timely responded with a letter and two one-page attachments. The case was assigned to me on March 10, 2014. Based on a review of the case file, I find Applicant failed to meet

his burden regarding the security concerns raised under Guideline F and Guideline E. Security clearance is denied.

### **Findings of Fact**

Applicant is a 45-year-old employee of a defense contractor who has worked for the same employer since November 2012. He left his prior employer in November 2012 when the contract for his work was not renewed. Applicant earned a high school diploma. He served in the United States military for 20 years before receiving an honorable discharge. During his military service, he maintained a security clearance. He is married and has one child.

In May 2013, Applicant completed a security clearance application (SCA). He answered “no” to question 26, which inquired as to whether he had any delinquent debts. He did not list the accounts at issue because he did not know they were held by collection agencies, and because he misunderstood the question. (FORM, Item 2 at 4 and Item 10 at 6, respectively) Applicant now asserts that his debts are the result of costly family moves caused by his pursuit of stable employment, but he did not provide documentation reflecting the cost of relocation, the origin of his other debts, or linking his debts’ delinquencies to his moves.

In responding to the SOR, Applicant admitted all but two of the financial allegations at issue. He also stressed that he now lives within his means. His admissions amount to approximately \$368,790 in delinquent debt; Applicant denied the debts found at ¶¶ 1.l-1.m, which amount to the comparably meager sum of \$349, but offered no documentary evidence substantiating his claim. Applicant claimed he is working with a debt consolidator. His evidence, however, is of limited value. That plan apparently is limited to eight creditors for a combined enrollment debt of \$26,596. Moreover, while it indicates that Applicant has been in the program for three months, the evidence presented does not represent a significant track record of timely payments on the debt at issue. Furthermore, Applicant asserted that he had secured a loan modification with another company, but his evidence only shows that a request for a modification had been approved in December 2014. It clearly reflects that the agreement does not go into effect until the lender receives Applicant’s notarized signature on the formal agreement and a first payment of \$2,353; there is no evidence the agreement was ever effectuated or the initial payment made. Moreover, there is no documentary evidence indicating Applicant has received financial counseling.

### **Policies**

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the AG. The AG lists 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 over-arching 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 United States Government (Government) must present evidence to establish controverted facts alleged in the SOR. It is an applicant’s responsibility to present “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. The ultimate burden of persuasion is on the applicant.<sup>2</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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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>3</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>4</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>5</sup> A security clearance denial 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> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>3</sup> See also EO 12968, § 3.1(b) and EO 10865 § 7.

<sup>4</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>5</sup> *Id.*

## Analysis

### Guideline F – Financial Considerations

Under Guideline F, “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.”<sup>6</sup> Here, Applicant admitted the vast majority of the delinquent debts at issue. Such facts give rise to Financial Considerations Disqualifying Conditions AG ¶ 19:

- (a) inability or unwillingness to satisfy debts, and
- (c) a history of not meeting financial obligations.

For the most part, Applicant attributes the debt at issue to multiple moves related to his employment. However, he failed to provide a link between those moves and the debts at issue, or show that his handling of his finances during his relocations was dictated by good judgment. As for the debt itself, there is no evidence that any progress has been made on any of the 13 debts at issue. Given these circumstances, I find that none of the Financial Considerations Mitigating Conditions apply.

### Guideline E – Personal Conduct

Under AG ¶ 15, security concerns arise from matters of personal conduct because 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. In addition, any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process is of special interest.

AG ¶ 16 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following is potentially applicable:

- (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....

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<sup>6</sup> AG ¶ 18.

For AG ¶ 16(a) to apply, Applicant's omission must be deliberate. When an allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.

The Government established that Applicant omitted material facts regarding the existence of Applicant's delinquent debts from his SCA. From there, it deduces Applicant committed an intentional falsity. Applicant argues that he did not know the debts at issue were held by collection agencies, interpreted to mean he did not know he had any delinquent debts. He also said he misunderstood the question. Either explanation is possible and neither undermines the applicability of the other. There is no other evidence in the record indicating Applicant is not truthful. Absent actual evidence of falsity, none of the personal conduct disqualifying conditions 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). 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 provided scant facts of record. It is noted that he is a mature man with a high school education and significant military experience. He helped raise a child. He enjoys his work. Applicant admitted all but two of the financial allegations at issue, amounting to about \$368,790 in delinquent debt; he denied two debts that represent about \$349 of debt. He failed, however, to prove that these two debts were satisfied. Applicant's claim that he is working with a debt consolidator on an implemented repayment plan is not fully substantiated because of the piecemeal nature of his documentation. Moreover, there is no documentary evidence of multiple timely and meaningful payments on such a plan.

Furthermore, Applicant asserted that he had secured a loan modification with another company, but his evidence only shows that a request for a modification had been approved in December 2014. In these cases, there is no requirement that an individual prove he has paid all his debts. It is, however,

assumed there will be evidence that a reasonable plan has been developed and implemented, and that enough payments have been made on that plan to establish a meaningful track record of timely payments. There is no evidence showing that plan has been fully executed and implemented.

Applicant stresses that he now lives within his means. However, the evidence introduced does not show that he has made discernable progress in addressing his debts. There is no evidence that he has received much needed financial counseling, contemplated filing for bankruptcy, entered into a debt consolidation program, or devised a reasonable strategy for addressing his debts. After due consideration, I conclude that Applicant failed to meet his burden and that financial considerations security concerns remain unmitigated. Clearance is denied.

### **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
Subparagraphs 1.a-1.k:	Against Applicant
Subparagraphs 1.l-1.m:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a:	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 access to classified information. Clearance denied.

ARTHUR E. MARSHALL, JR.  
Administrative Judge