



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 09-02552
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

July 1, 2010  
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**Decision**  
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LYNCH, Noreen, A. Administrative Judge:

On November 4, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG), effective for SORs issued after September 1, 2006.

In an undated notarized response, Applicant requested an administrative determination. Department Counsel submitted a File of Relevant Material (FORM), dated March 24, 2010.<sup>1</sup> Applicant received the FORM on April 5, 2010. On May 25, 2010, the Director, DOHA, forwarded the case for assignment to an administrative judge. The case was assigned to me on June 4, 2010. Based on a review of the case

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

file, submissions, and exhibits, I find Applicant failed to meet his burden regarding the security concerns raised. Security clearance is denied.

### **Findings of Fact**

Applicant is a 61-year-old employee of a defense contractor. He is currently unmarried, but has two children from a previous marriage. His first divorce occurred in 2001, and his second divorce occurred in 2005. He has worked for his current employer since July 2004. (Item 5)

Applicant acknowledged that he has experienced financial difficulties for seven to ten years. He admitted that he “never forgot about his financial problems.” He states that he has been through two divorces and has made many bad decisions. He states that he does not have any credit, and has to buy everything with cash. He wants to pay everything back, but it will take some time. He attempted to settle one account, but did not have sufficient income to make the six-month payments. (Item 7)

The Statement of Reasons (SOR) alleged eight debts totaling \$50,755. Applicant admitted the allegations in SOR ¶ 1.a, c, e, and f. He has not paid any of these delinquent accounts. He stated that he plans to pay them after he pays the smaller debts. Applicant denied the remaining allegations, stating he was making some payments on them or he had no idea what the debt was.

Applicant denied allegation 1.b for an account in the amount of \$1,102 because he asserts that he is paying \$50 monthly on the account. In his answer to the SOR, he submitted a slip that showed the account balance as of May 25, 2010 is \$852. He also claimed that he is paying on the allegation in 1.g for \$639. Applicant claimed the balance is \$119. However, he did not submit any documentation to support his claim.<sup>2</sup> When he responded to the FORM, he stated the account was paid, but he has not submitted any documentation to prove his claim.

Applicant denied allegation 1.d and 1.h because he has did not recognize the debt. He did not submit any documentation to show that he has disputed the accounts. He did not supply any information that he has contacted the creditors or tried to research these accounts. The credit reports support the delinquent debts for these accounts. (Items 6, 7 and 8)

Applicant admitted the allegations in SOR ¶ 2.a and b. On his security clearance application, he answered “No” to Section 27(a) and (b) concerning any delinquent accounts over 180 or 90 days. During his OPM interview, Applicant acknowledged that he “willfully and deliberately decided not to disclose his financial problems on his security clearance application in 2008.” He stated that “he never forgot about his financial problems and when he completed his security clearance he should have listed his financial problems on his paperwork.” (Item 6)

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<sup>2</sup>Applicant submitted one check in the amount of \$40 (for allegation 1.g) with his answer to the SOR. The check was dated June 2009.

Applicant changed his response to the above allegations in his 2009 answer to the SOR. He stated that he misunderstood the questions and that he discussed the financial difficulties with the OPM investigator. In his response to the FORM, Applicant stated that he did not intentionally falsify any statements or questions. He claims he misinterpreted some of the questions and did not fully understand what they meant.

Applicant stated that he is not a bad person, "just one of the millions who made bad judgments and am paying for them every day. He loves his country and would never do anything to hurt it." He explained that he does not gamble and has no credit at all. He noted that he does not live a lavish life. (Item 7)

His annual income in 2009 was approximately \$28,000. After expenses and deductions, Applicant has a monthly net remainder in the amount of \$90. (Item 6.) He did not indicate any payments to creditors on his personal financial statement.

Applicant admitted his delinquent debts amount to approximately \$50,000. They are composed of debts referred for collection or charged off, and a vehicle repossession. Applicant did not disclose information as to what kind of expenses gave rise to these obligations. No indication is given as to whether he ever obtained 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The United States Government (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 or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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>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 F, Financial Considerations

The security concern relating to the guideline 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

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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).

<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.*

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.

Here, Applicant admitted that he has significant delinquent debts. To date, those debts remain largely unaddressed. Consequently, Financial Considerations Disqualifying Condition (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.

Applicant’s divorces might have complicated Applicant’s ability to meet his obligations, but he provided no information about his efforts to otherwise meet those obligations during that period. He stated that he has had financial difficulties for seven to ten years, and that he has made many bad decisions. He still has current unpaid accounts. Consequently Financial Considerations Mitigating Condition (FCMC) 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. As noted, Applicant’s divorces may have impacted his finances. However, he did not act reasonably under the circumstances. He allowed the delinquent debts to remain unpaid for many years. There is no record of any attempts to eliminate his debt until after he received the SOR.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant has not provided evidence of any consistent payment plans. He asserts that he has paid one account, but has not provided documentation to support this claim. He submitted two checks dated in June 2009 and nothing more. He claims that he is trying to pay everything back, but due to limited income it will be some time. Applicant’s failure to disclose whether he ever received financial counseling obviates the applicability of FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control).

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

On October 16, 2008, Applicant completed his security clearance application. He indicated that he did not have any debts currently delinquent over 90 days, debts delinquent over 180 days in the last seven years, or property repossessed by creditors. This information was false. Applicant knew he had creditors who had not received payments in over 90 days. He expressly told the OPM investigator that he “never forgot about his financial problems and when he completed his security paperwork he should have listed them but did not.” He also stated that “he made a wilful and deliberate decision not to disclose his financial problems on the paperwork.” AG ¶ 16(a) applies.

In his response to the FORM, Applicant stated that he did not intentionally falsify any statements or questions. He replied in his answer to the SOR that he misinterpreted the questions and did not fully understand what the questions were asking. He noted that he told the investigator later in the interview that he was not sure if the debts were six or seven years old. Applicant’s inconsistent answers regarding this falsification of his security clearance application do little to support his claim that he misinterpreted the questions.

After considering the mitigating conditions outlined in AG ¶ 17, I conclude that none of them apply. Applicant did not make prompt or good-faith efforts to correct his falsification or concealment. He provided no information that indicates he was ill-advised in completing his SF 86. He has not provided information in this record to show that he has met his burden of proof for his personal conduct.

### **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 mature, single man who has maintained his current employment for the past several years. He apparently suffered difficulty when faced with two divorces. He has stated that he intends to pay his delinquent debts, but it will take some time. Applicant has not demonstrated that his financial problems are resolved, or under control.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and carry his burden in this process. He failed to offer evidence of financial counseling. He failed to provide documentation regarding either his past efforts toward addressing his delinquent debts or his future plans for satisfying those obligations. By failing to provide such information, and in relying on only a scant paragraph of explanation, financial considerations security concerns remain.

Applicant completed a security clearance application in October 2008. He falsified his answers to Section 27 concerning his financial delinquencies. He admitted this to the OPM investigator during an interview. He specifically stated that he intentionally did not disclose the information. He then responded in his answer to the SOR and FORM that he did not understand the questions. He also stated that he was not sure how old the debts were. I do not find his later explanations credible in light of the inconsistencies. He has not mitigated the personal conduct security concerns. 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 through 1.h:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 2.b:	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