



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 09-06531
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gina L. Marine, Esquire, Department Counsel  
For Applicant: John C. Heath, Esquire

September 14, 2010

**Decision**

LYNCH, Noreen, A. Administrative Judge:

On, March 24, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating 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; 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.

On May 13, 2010, in a notarized response, Applicant requested an administrative determination, and in his answer to the SOR, admitted to each of the allegations under the Financial Guideline, in SOR ¶ 1 except for three debts (¶¶ 1.c, 1.e and 1.j). Department Counsel submitted a File of Relevant Material (FORM), dated August 7, 2010.<sup>1</sup> Applicant received the FORM on August 16, 2010. He submitted additional information on August 17, 2010. On August 30, 2010, the Director, DOHA, forwarded

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

the case for assignment to an administrative judge. The case was assigned to me on August 31, 2010. Based on a review of the case file, submissions, and exhibits, I find Applicant failed to meet his burden to mitigate the security concern raised. Security clearance is denied.

### **Findings of Fact**

Applicant is a 30-year-old employee of a defense contractor. Applicant served in the United States Army from November 2000 until September 2004 and from June 2005 until May 2008. (Item 1) While serving in the military, Applicant held a security clearance. Applicant noted approximately one month of unemployment in 2008. He has worked for his current employer since July 2008. (Item 4)

Applicant married in September 2005. He and his spouse separated in November 2007. At that time, Applicant learned that his "wife" was still legally married to someone else. He consulted an attorney in 2009 and intends to obtain an annulment. (Response to FORM )

The SOR alleged ten delinquent debts for unpaid accounts totaling \$21,455 and also alleged Applicant failed to file his 2007 and 2008 tax returns. (Item 8) Applicant disclosed his delinquent accounts on his April 2009 security clearance application. In his answer to the SOR, he admitted \$19,097 in delinquent debt, and that he did not file the 2007 and 2008 tax returns.

The status of the delinquent debts alleged in the SOR is as follows:

The debt alleged in SOR ¶ 1.a for a cell phone account in the amount of \$1,259 is unpaid.<sup>2</sup> Applicant listed this debt on his personal financial statement, noting that he has not paid it. (Item 5)

The debt alleged in SOR ¶ 1.b for another phone account in the amount of \$1,405 is unpaid. Applicant listed this debt on his personal financial statement, noting that he has not paid it. (Item 5)

The debt alleged in SOR ¶ 1.c for a credit card account in the amount of \$801 was settled for \$250. Applicant submitted documentation that the account was paid. (Item 3)

The debt alleged in SOR ¶ 1.d for an automobile repossession in the amount of \$14,356 is unpaid. Applicant purchased the auto in 2004 and in 2005, when he was deployed to Korea, he did a voluntary repossession. (Item 6) Applicant admitted he defaulted on the loan. He initially admitted the debt in his answer to SOR, but he now claims that he is disputing the amount. (Item 7)

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<sup>2</sup>Applicant stated in his August 2010 response to the FORM that this is "no longer owed" and not on his credit report. He reiterates this claim of resolution of his debts for the other alleged debts that are unpaid. (SOR 1.b, 1.g, 1.h and 1.i)

The debt alleged in SOR ¶ 1.e is for a medical account in the amount of \$204 and is disputed. The dispute is confirmed on a recent credit report.

The debt alleged in SOR ¶ 1.f for a charged-off account in the amount of \$330 is unpaid. Although Applicant initially admitted owing the debt, when he responded to the FORM, he stated he is disputing the debt.

The debt alleged in SOR ¶ 1.g for a utility bill in collection in the amount of \$113. This debt is unpaid.

The debt alleged in SOR ¶ 1.h is for a mobile cell phone in the amount of \$1,212. This debt is unpaid.

The debt alleged in SOR ¶ 1.i is for a collection account in the amount of \$422. This debt is unpaid.

The debt alleged in SOR ¶ 1.j is for a collection account in the amount of \$1,353. This debt is paid. Applicant submitted a receipt for payment in full. (Answer to FORM).

SOR ¶ 1.k alleged Applicant “failed to file taxes for 2007 and 2008.” Applicant explained that he separated from his wife in November 2007 and did not file “because he thought they would be reconciled.” (Item 6) In 2008, he learned that he was not legally married to his wife because she was still married to someone else. He did not file because he wanted to get legal advice. In August 2010, Applicant filed his state tax returns for 2008 and 2009. He also provided a copy of postal money orders for state tax payments of \$267 and \$88. The record is not clear as to the status of the state 2007 tax filing.

Applicant’s federal tax returns for 2007, 2008, and 2009 were filed in August 2010, but it is not clear from the record if the full tax amounts were paid. Applicant noted that he “needed to set up a payment plan for a federal 2007 tax period.” (Item 3) He attached a copy of a \$25 money order payable to the IRS. The total amount of tax owed appears to be \$1,070.

When Applicant responded to the FORM, he submitted an IRS notice (reminder) dated July 19, 2010 that he owes \$1,317.51 from 2009 tax year. He also submitted a copy of a postal money order payable to the United States Treasury for \$650 for federal taxes. The money order is dated August 12, 2010. He noted that he now owes only \$667 in back taxes to the IRS.

Applicant consulted an attorney in July 2010 to investigate his delinquent accounts because he believed that some accounts on his credit report were inaccurate, invalid, or unverifiable. (Response to FORM) He explained that some accounts are no longer listed on a credit report from Equifax. (July 2010)

Applicant noted in his response to the FORM that he continues to pay off his delinquent debt and “back taxes.” He believes his debt is reduced from approximately

\$21,000 to \$2,000. He noted that he is working very hard to achieve a zero balance so that he may obtain a clearance. He believes his efforts should be taken into consideration and that his case remain open. These statements appear inconsistent with his disputes and claims that he “no longer owes” any accounts that do not appear on his credit report.

Applicant submitted receipts for some debts that were not alleged on the SOR. His credit reports do reflect some accounts that are “closed as a paid account.” The fact that Applicant’s responses to the allegations changed several times creates some confusion as to his intention to either pay his delinquent debt or to not pay the debt if it is no longer on a credit report.

Applicant’s monthly net income is \$2,352. His monthly expenses are \$1,528. He has a net remainder of \$724. Applicant’s personal financial statement listed two debts that are in an unpaid status, with no scheduled monthly payment. (Item 5) The two delinquent accounts listed correspond with SOR ¶ 1.a, and 1.b. He listed no assets. Applicant did not report any 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

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<sup>3</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

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 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.

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<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.*

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), a “history of not meeting financial obligations” may raise security concerns. Finally, AG ¶ 19(g), “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same” is disqualifying. Applicant admitted that he has approximately \$19,000 in delinquent debt. In addition, he has unresolved tax issues that stem from a 2007 tax period. 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.

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) applies in part. As noted, Applicant’s 2007 marital separation impacted his decision to file his taxes. However, he did not act responsibly in the situation. He waited until 2010 to file and pay his state taxes for 2008 and 2009. He is making payments on his federal tax for the 2007 tax year. Applicant noted unemployment for approximately one month in 2008. He has been employed since July 2008 and did not explain why he did not make greater progress on his SOR debts, especially in light of his net remainder of \$724 as shown on his PFS. He began to pay the majority of his debts 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) applies in part. Applicant has been steadily employed since 2008. He paid two delinquent debts. He did not file or pay taxes for several years, and did not do so until 2010. There is no indication the financial problems will not recur. 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) does not apply.

FC MC AG ¶ 20(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) partially applies. Applicant provided documentation that the debts alleged in 1.e and 1.h are disputed.

### **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 served in the military for a period of time. He and his wife separated in 2007 and later he learned that she was still married to another person. He did not file federal or state income tax for tax years 2007 and 2008. He believed he needed time to obtain legal advice based on his marital situation. However, he did not attempt to resolve the issue until late 2009 or 2010. He admitted that he had approximately \$20,000 in delinquent debt but now claims that he is disputing the majority of the debt. He points to the fact that several accounts are no longer on a recent credit report. He has just filed his federal and state taxes for the years in question. Despite his steady employment since July 2008, Applicant did not address his delinquent debts until 2010. It is too soon to show a demonstrated track record of debt repayment or that his financial problems are resolved or under control.

### **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
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	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