



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-08558
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

March 29, 2011

**Decision**

LYNCH, Noreen A., Administrative Judge:

On October 7, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) alleging 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), implemented in September 2006.

Applicant timely answered the SOR, admitted four of six delinquent debts, and requested a hearing. DOHA assigned the case to me on December 23, 2010. DOHA issued a notice of hearing on January 26, 2011, and I convened the hearing as scheduled on February 18, 2011. Department Counsel submitted five exhibits (GE 1-5) which were admitted into the record without objection. Applicant testified and submitted 13 exhibits (AE A-M). At Applicant's request, I kept the record open until February 28, 2011, for additional submissions. Applicant timely submitted AE N, which was admitted into the record. DOHA received the transcript on February 28, 2011. Based on a review

of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

### **Findings of Fact**

Applicant is a 32-year-old employee of a defense contractor. He graduated from high school in 1997. He later obtained a certification from an apprenticeship program for fire alarm systems. (AE A) Applicant is married and has two children, ages 13 and 5. (Tr. 17) He has worked for his current employer since January 2008. He submitted his first application for a security clearance on August 10, 2009. (GE 1)

Applicant was a stay-at-home father from 2006 until 2008. At that time, his wife worked. For the past three years, he has been the sole provider. His wife just recently started employment after the company downsized.

Applicant has one older brother. His brother has on numerous occasions throughout the years illegally “used” Applicant’s identity by taking his social security number. Applicant’s brother has been in and out of jail for various offenses. He is currently in prison for murdering his girlfriend. (AE K, L, and M)

### **Financial**

The SOR lists delinquent accounts, including a hospital bill, child support, and several accounts totaling \$10,000. Applicant admitted four of the delinquent debts and the credit reports confirm them. (GE 2,3)

When Applicant received the SOR, he had no idea that his credit report noted the alleged debts. He pays his bills and has not received any notices from creditors. He submitted receipts for various bills that he has recently paid that were not on the SOR. (AE C and H) He contacted a debt consolidation company to research and dispute some debts as soon as he received the SOR. (GE 5) He also made a formal dispute concerning several accounts. (AE I) After an investigation, he learned that it was more efficient and less costly for him to continue on his own. He also learned that he was the victim of identity theft. (AE L)

Applicant denies owing any hospital bills. He has medical insurance and has not been in the hospital for the past three years. (SOR ¶ 1.a) He also denies owing any child support (SOR ¶ 1.d) He presented documentation that supported his denial. The hospital bill and the child support account do not belong to him. They are the result of his brother using his social security information. (AE B and D)

Applicant presented documentation that he has paid the debts in SOR ¶ 1.b and ¶ 1.c for \$50. (AE N) The bills were the result of ambulance rides for his wife. Applicant and his wife moved in late 2008, and did not receive any notices. (Tr. 56)

The alleged debt in SOR ¶ 1.d for \$160 is the result of x-rays that were taken home by Applicant and his wife. Due to a misunderstanding, they were billed for the x-

rays. In fact, they have the x-rays but did not understand they need to return them and then sign them out. They have contacted the company and are in the process of returning them. Applicant did not receive any notice due to a change of address. (Tr. 23) There will be no charge for the x-rays and the debt will be resolved. (Tr. 21; AE E)

The debt alleged in SOR ¶ 1.f for \$523 is a utility account. Applicant's high heating bills created a problem in late 2010 when his wife was not working. The account is in a repayment plan. Applicant is paying \$210 each month for six months. (AE N)

Applicant explained that he made payments on some accounts that were not his before he finally learned about the identity theft. He noted that he was grateful that the DoD investigation revealed the extent of the accounts that were on his credit report that were not his. He was very sincere and candid that he was shocked to learn the extent of the problem.

Applicant's 2011 monthly net income is approximately \$3,500, which includes his wife's income. After monthly expenses, there is a net remainder of \$50 in disposable income. They do not own a car. They use public transportation. They live a frugal life. They have no credit card debts. They are trying to save now that they are both working.

Applicant submitted several letters of recommendation. Each attests to his responsibility as a father, husband and employee. (AE A) Applicant is active in his community. He mentors young fatherless boys.

Applicant also explained that his older daughter is from a previous marriage. The child's mother had custody of the child until the day she left the child at Applicant's home and never returned. Applicant had provided for his daughter by giving money to his former wife. However, he has had custody of her and has provided for her since she was about five years old.

## **Personal Conduct**

Applicant completed his security clearance application in August 2009. He answered "No" to section 26 concerning his financial indebtedness in the last seven years. He states that he did not intentionally mislead the government about any delinquent debts that were 90 or 180 days delinquent. He had no idea that he had any listed on a credit report. At the hearing, it became clear that Applicant was credible about the identity theft and his lack of knowledge of any delinquent debts.

Department Counsel, in fact, acknowledged the identity theft and found that Applicant was credible concerning his answers on the security clearance application. At the hearing, Department Counsel withdrew the allegation under the personal conduct guideline.

## 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>1</sup> The burden of proof is something less than a preponderance of evidence. <sup>2</sup> The ultimate burden of persuasion is on the applicant. <sup>3</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

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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> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>3</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

applicant concerned.”<sup>4</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>5</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>6</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 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 acknowledged that he learned during the investigation that he had some small accounts that were delinquent. He also learned that he was the victim of identity theft and did not owe \$9,500 of the debt alleged in the SOR. 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 in part. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant has one utility account that is in repayment status. His other accounts are paid. He provided documentation concerning the identity theft. He has no other debts. 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) applies.

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,

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<sup>4</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>5</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>6</sup> *Id.*

divorce or separation) and the individual acted responsibly under the circumstances) applies. Applicant had no idea that his credit report noted a \$7,000 hospital bill and a child support account for \$2,000. After investigation, he learned that his older brother had used his social security number. The accounts do not belong to Applicant. He was the victim of identity theft. This mitigating condition applies.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. When Applicant learned about the alleged debts, he contacted a consolidation company to investigate and help him. He disputed formally. He took action immediately. Applicant provided evidence of payments for several bills. He is in a repayment plan for the one utility account that is delinquent. 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) applies.

### **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 32 years old. He is a good father and husband. He is providing for his family. He was the victim of identity theft. He cooperated with the security clearance process. He was candid and forthright at the hearing. He has been responsible since learning about the financial issues. The Government withdrew the allegation under personal conduct. I have no doubts about Applicant's eligibility for access to classified information.

### **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:	FOR APPLICANT
Subparagraphs 1.a-1.f:	For Applicant
Paragraph 2, Guideline E:	WITHDRAWN
Subparagraph 2.a:	Withdrawn

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

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NOREEN A. LYNCH  
Administrative Judge