



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-01640
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

July 13, 2011

**Decision**

LYNCH, Noreen A., Administrative Judge:

On December 14, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) listing 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 (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 an administrative determination. Department Counsel submitted a File of Relevant Material (FORM), dated April 5, 2011.<sup>1</sup> Applicant received the FORM on May 6, 2011, but did not submit any response. On April 26, 2011, the Director, DOHA, forwarded the case for assignment to an administrative judge. I received the case assignment on July 7, 2011.

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

Based on a review of the 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**

In his answer to the SOR, Applicant admitted all factual allegations (SOR ¶¶ 1.a-1.n. and 1.p under Guideline F (Financial Considerations). He denied one debt in SOR ¶ 1.o.

Applicant is a 26-year-old employee of a defense contractor seeking to obtain a security clearance. He graduated from high school in June 2002. Applicant served in the military from August 2002 until October 2008. Applicant is divorced and in the process of another one. He has three children. He has worked for his current employer since October 2008. (Item 5)

The SOR lists 16 delinquent accounts totaling \$75,000. The delinquencies include several vehicle repossessions and collection accounts. Applicant admitted delinquent accounts totaling \$50,000 but disputes the largest debt for \$24,000. However, the credit reports confirm them. (Items 8 and 9) He also acknowledged on his security clearance application that he has collection accounts and defaulted loans. He claimed that the \$24,000 for a 2004 vehicle repossession was paid. He provided no documentary evidence showing that he has paid any accounts.

Applicant admitted his financial difficulties began when his former spouse overspent and became pregnant with another man's child while Applicant was deployed to Iraq. (Item 6) He attributed his debts to "his second divorce at the age of 26." (Item 2) Applicant provided no information that linked his divorce to his inability to pay the debts at issue. He also noted that he plans to pay his debts when his contracts with his employer "pick up." He hopes that by 2013, he could pay his debts. (Item 7) He stated that he is current on his daily expenses. He acknowledged that he has approximately \$574 net monthly remainder. He responded to 2010 DOHA interrogatories by stating that he has contacted some creditors to arrange a settlement. There is no evidence that he has pursued financial counseling, or described his overall financial situation.

### **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 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 sensitive information must be 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 clearance.

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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).

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

## 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 admitted delinquent debts amounting to \$50,000. Although he denied one debt in his answer to the SOR, he acknowledged others in his interview and his security clearance application. 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.

There are multiple debts at issue, amounting to \$75,000. As noted above, there is no tangible evidence that any of these debts have been resolved. Applicant's debts are recent and ongoing. Applicant did not present any documentary evidence to show how divorce impacted his ability to pay his bills. Applicant's assertion that his wife overspent is not sufficient. He claims that his current contracts are slow but again, he did not present any evidence to mitigate. He has been in the military and listed his employment since 2002. 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 states that his financial problems arose from his divorce and his wife's overspending. He failed to document a clear nexus between the event and his delinquent debts. There is no way to discern he acted responsibly during those periods. There is little evidence that he acted reasonably under the circumstances. He allowed the delinquent debts to remain unpaid. He did not report any unemployment. This mitigating condition does not apply.

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 payments or a plan for repayment of the debts. He did not present

evidence that he received financial counseling which 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).

### **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 26 years old. He served in the military from 2002 until 2008. He has worked for his current employer since June 2010. He is divorced. He has delinquent debts that he has not paid. He presented no evidence in mitigation.

In the absence of documentary evidence submitted in response to this FORM showing that Applicant started to resolve his financial difficulties through payment, or has obtained counseling with clear indication that the debts are being resolved or are under control, these concerns must be decided against him in evaluating his suitability to have access to classified information. The clearly-consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. Applicant failed to submit sufficient information or evidence to mitigate the security concerns raised in his case. 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.p:

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