



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-10912
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Rashid Williams, Esq., Department Counsel  
For Applicant: *Pro se*

September 29, 2011

**Decision**

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LYNCH, Noreen A, Administrative Judge:

On May 11, 2011, 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 a hearing. DOHA assigned the case to me on July 5, 2011. A notice of hearing was issued on July 19, 2011, and the case was heard on August 23, 2011 and September 9, 2011. Department Counsel offered five exhibits (GE) 1-5, which were admitted without objection. Applicant testified and submitted seven exhibits (AE) A-G at the hearing, which were admitted without objection. DOHA received the hearing transcripts on August 23, 2011, and September 18, 2011. Based on a review of the pleadings, submissions, and exhibits, I find Applicant met his burden to mitigate regarding the security concerns raised. Security clearance is granted.

## Findings of Fact

In his answer to the SOR, Applicant denied the four debts alleged, with explanation of settlement agreements and payments for the accounts.

Applicant is 31 years old. He is not married and has no children. He graduated from high school in 1998 and received an associate's degree in 2000. He has continued with college courses but has not yet obtained his undergraduate degree. (Tr. 21) Applicant has been employed with his current employer since June 2010. This is his first request for a security clearance. (GE 1)

Applicant's two brothers owned a home improvement business which bought homes and rehabilitated them for resale. Applicant began working for them in 2003. He invested his own money in the company in 2005. In order to invest in the company, Applicant obtained several loans. (GE 5) His brothers promised to repay the loans from profits earned from the business. However, the business expansion did not occur due to the decline in the real estate market, which caused a loss of company profits. In 2008, the business filed for bankruptcy. Applicant not only did not receive the money to repay his loans, but he lost his job as well. Applicant was unemployed from June 2008 until December 2008. (Tr. 12)

The SOR lists four delinquent accounts totaling approximately \$145,000. The credit reports in the record confirm the debts. (GE 2) Applicant acknowledged that he had delinquent debts, but he asserts that they have been paid or are settled.

At the hearing, Applicant provided proof that the four alleged debts have been satisfied. (AE C) The debts originated when Applicant could no longer make payments on the two lines of credit that he opened in 2005. Applicant's home was foreclosed in 2010. He tried to work with the creditors and the bank, but to no avail. (Tr. 13) The bank sold his home. He did not shirk his financial responsibility and remained motivated to repay his debts. In 2010, he contacted a law firm and was advised to file a Chapter 13 bankruptcy. (GE4) Applicant paid \$1,600 to his bankruptcy lawyer. However, the process was taking too long and Applicant determined that it was not the solution. (Tr. 22)

Applicant presented a Certificate of Satisfaction showing his past-due mortgage equity line of credit in the amount of \$6,000 was paid in full (SOR 1.a). (AE C, D) He also submitted bank statements showing settlements of \$32,500 for his loans (SOR 1.b, 1.d). (AE B, F, G) Finally, he submitted a bank statement that verified that he settled an account for \$3,845 (SOR 1.c). (AE B) Applicant's most recent credit report confirms that he settled the four delinquent debts. (AE A) The credit report also shows that Applicant has other accounts that he pays as agreed.

Applicant obtained financial counseling. His monthly net income is \$3,200. He occasionally works overtime, which increases his income. He follows a budget. He has

a net monthly remainder of approximately \$500 to \$1,000. (Tr. 21) He is current on all living expenses.

### **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 U. S. 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 has acknowledged his delinquent debts. His credit report confirms them. 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 had financial difficulties in the past due to the demise of his family business and his investments in the company which became bankrupt in 2008. He also lost employment when the company failed. He now has employment that is secure and affords him the ability to pay all his bills. He has satisfied his delinquent 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) 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. As noted, Applicant was unemployed after his brothers' business failed in 2008. He suffered almost six months unemployment after the failure of the company. He paid on his bills for as long as he could. He acted responsibly by paying the debts that he could and by obtaining financial counseling. Thus, he acted reasonably under the circumstances. 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. Applicant provided evidence of his good-faith efforts to repay his debts with payment receipts, and certificates of satisfaction. He has consistently addressed his delinquent accounts. He sought financial counseling and his finances are under control. 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 31 years old. He began employment with his brothers' business after he obtained his associate's degree. He worked hard and invested in the company business. He obtained loans because the business was expanding and his brothers assured him he would be able to pay the loans with profits from the company. However, due to the unforeseen real estate decline, the business suffered and eventually failed. Applicant was unemployed as a result of the demise of the business. Prior to that time, he had no financial difficulties.

Applicant addressed the issue of his financial problems. He made good-faith efforts at all times to repay his loans. He has satisfied the four delinquent debts. He now has secure employment that provides him the means to save money, pay his debts, and maintain his daily expenses. He accepted the financial advice that he received and addressed his delinquent debts. He never shirked his responsibility.

Applicant submitted information to mitigate the security concerns raised in his case. He offered evidence of financial counseling and provided documentation regarding the settlement of his debts. Applicant has mitigated the security concerns under the financial considerations guideline. Clearance is granted.

### **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.d:	For Applicant

### **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