



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



In the matter of:	)	
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	)	
	)	
	)	ISCR Case No. 11-01326
Applicant for Security Clearance	)	

**Appearances**

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

06/17/2013

**Decision**

LYNCH, Noreen, A., Administrative Judge:

The Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) alleging security concerns arising under Guideline F (Financial Considerations). The SOR was dated April 25, 2012. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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 before an administrative judge. The case was assigned to me on January 31, 2013<sup>1</sup>. A notice of hearing was issued on April 8, 2013, scheduling the hearing for May 23, 2013. Government Exhibits (GX) 1-5 were admitted into evidence, without objection. Applicant

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<sup>1</sup>In February 2013, scheduling of new cases was stopped due to budget constraints. This resulted in a notable delay in scheduling. When scheduling resumed in late March, Applicant and Counsel chose the earliest scheduled date in May 2013.

testified, and submitted Applicant Exhibits (AX) A-B, which were admitted without objection. The transcript (Tr.) was received on June 3, 2013. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the factual allegations under Guideline F (Financial Considerations), with explanations.

Applicant is a 37-year-old security analyst employed by a defense contractor. He graduated from high school and attended technical college for two years. He is married and has two children. Applicant has held a security clearance since 2002. (Tr. 31) He has been with his current employer since October 2012 . (Tr. 25 )

The SOR alleges three debts for 2008, 2009, and 2010 federal taxes (\$28,000) and a fourth debt for a real estate mortgage collection account (\$94,990). (GX 5)

In 2007, Applicant purchased a \$530,000 home. (Tr. 42) He bought this home before selling his current residence. Applicant had a first and second mortgage loan on the home which totaled approximately \$350,000. When the home finally sold via a short sale in 2009 for about \$220,000, the first mortgage loan was absolved. Applicant still had a second mortgage loan in the amount of \$94,900 on his first home. In 2009, Applicant began a payment plan of \$500 a month. In 2011, however, he skipped payments and resumed some reduced payments in 2012. He provided documentation of his payments. (AX B) He began making regular monthly payments again in March 2013. Due to interest charges, his balance is approximately \$95,000. (GX 4)

Applicant claimed that he did not realize until 2010, that he had any tax issues. (GX 4) He was assessed additional taxes for unreported income. He failed to withhold sufficient tax resulting in about \$27,000 for the years 2008, 2009, and 2010. He began an installment agreement with the IRS in April 2010, but discontinued the plan in September 2010. He could provide no valid reason for discontinuing the \$1,000 monthly payment.

Applicant paid the overdue 2008 taxes in 2012. (GX 3) He used his wife's credit card to make the \$3,178 payment. (Tr. 38) Applicant paid the 2009 taxes for \$1,077 in August 2012, by using the same credit card. (Tr. 40) Applicant has not resolved the 2010 tax issue for approximately \$23,000. Although he started another installment plan in June 2011, he stopped paying in October 2012. Applicant recently began another installment plan for the 2010 taxes. He promises to pay \$1,000 month. He provided documentation that he has made paid \$6,000 to date. (Tr. 46) He has approximately \$10,000 in credit card debt as a result of paying the overdue taxes.

When Applicant's security clearance was revoked, Applicant was unemployed for about three months in 2012. He was paid during those months as a result of his personal hours he had accrued. However, his salary in 2008 was \$188,000, in 2009

about \$164,000, in 2010, approximately \$233,000, and in 2012 approximately \$221,000. He currently earns approximately \$190,000. He admits that he did not pay attention to his finances. He did not accept employment in 2011 that could have enabled him to pay his taxes and other debts. He could not account for the money that he earned and has spent.

Applicant accepted full responsibility for the status of his financial issues. He repeatedly stated that he had no excuse. The revocation of his security clearance was a “wake-up call.” (Tr. 13) He explained that he was working two jobs and did not attend to his financial issues. He admitted that he used poor judgment and let bills lapse. From 2008 until 2012, his financial status was precarious. Despite significant earnings, he did not follow through with his tax payments. He states that his 2011 taxes are on schedule to be paid every month. He begins his quarterly tax payments for 2012 in June 2013. (Tr. 14)

Applicant’s net monthly income is approximately \$14,600. After expenses, he believes he has about \$2,000 net monthly remainder. His wife does not work. She is currently responsible for paying the bills. He has not received 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 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.

## **Analysis**

### **Guideline F, Financial Considerations**

AG ¶ 18 expresses the security concern pertaining to financial considerations:

Failure or 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. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes

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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.*

including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be relevant:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;
- (h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and
- (i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant admits that he owed the federal government for tax years 2008, 2009, and 2010. He also has a mortgage collection account for about \$95,000. Consequently, the evidence is sufficient to raise disqualifying condition ¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate security concerns. The following are potentially relevant:

(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;

(b) the conditions that resulted in the financial problem 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;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant acknowledges that he used poor judgment and did not keep track of paying taxes or bills despite a significant income. He made no excuses for his financial situation. He also accepted responsibility for buying a new home before selling his previous home. He has started installment plans with both the IRS and the mortgage collection account holder, but he did not make consistent or continuous payments on either. He recently paid his 2008 and 2009 taxes, but used a credit card to do so. As a result, he and his wife have acquired \$10,000 in credit card debt. He has started again to pay \$1,000 monthly on his 2010 taxes. He has made about three or four consecutive monthly payments on the second mortgage collection account. He has not had any financial counseling. He has no sound or consistent track record of payment history. AG ¶ 20 (d) partially applies. He has not mitigated the security concerns under the financial considerations guideline.

### **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 37-year-old employee of defense contractor who has held a security clearance since 2000. He is married and has two children. Applicant was briefly unemployed in 2012, but received pay due to his earned personal leave. He was candid at the hearing that he has no excuses for his poor financial situation. He did not have any valid reason for not paying his federal taxes. He earned a significant salary for the six past years, but could not maintain the installment plans that he started in 2009. He recently paid his tax bill for 2008 and 2009 by using a credit card. Applicant has not maintained consistent payment plans with the IRS or the mortgage account holder since 2009. Applicant has not met his burden of proof in this case. Security concerns remain unmitigated. 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.b:	For Applicant
Subparagraphs 1.c-1.d:	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 continue Applicant's security clearance. Clearance is denied.

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NOREEN A. LYNCH.  
Administrative Judge

