



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



In the matter of: )

)  
) ISCR Case No. 11-01406  
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Applicant for Security Clearance

**Appearances**

For Government: Ray T. Blank, Jr. Esq., Department Counsel

For Applicant: *Pro se*

04/04/2012

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**Decision**

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LYNCH, Noreen, A., Administrative Judge:

On November 3, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) alleging 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) implemented in September 2006.

Applicant timely answered the SOR and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the Government's written case on January 17, 2012. The FORM consisted of ten documents. Applicant received a complete file of relevant material (FORM) on January 26, 2012, and was provided an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's case. Applicant did not submit a response. The case was assigned to

me on March 30, 2012. Based on a review of the case file, eligibility for access to classified information is denied.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted eight delinquent accounts under the factual allegations under Guideline F (Financial Considerations). He denied or disputed the remaining accounts, but noted he would send the creditors a settlement offer. (Item 2)

Applicant is a 43-year-old employee of a defense contractor. After he graduated from high school in 1986, he joined the military. Applicant served in the U.S. Navy from June 1986 until September 1990. He is married and has two children. Applicant has worked for his current employer since May 1997. (Item 4) He held a security clearance during his military career and his current employment. (Item 5)

Applicant's 22 delinquent debts alleged in the SOR total approximately \$32,212.00 (Item 4) The collection accounts include a charged-off auto loan account. Some of the accounts have been delinquent since 2002. He has not provided any information concerning payments on any of the delinquent debts.

During his subject interview in November 2010, Applicant stated he was unaware of any of the debts identified on his credit report. (Item 6) He claimed that he would obtain a copy of his credit report and contact creditors to resolve any debts owed. When he responded to DOHA interrogatories on April 27, 2011, he claimed the debts would be disputed. (Item 6) Applicant submitted a series of letters to creditors, all dated April 29, 2011, claiming he had never opened accounts. He provided copies of letters dated December 1, 2011, where he offered to "amicably settle" a portion of the debt through a payment plan that would last from 5 to 36 months. (Item 2) However, he has not provided any documentation concerning the resolution of any accounts, any creditor acceptance of his proposed payment plan, or proof of any payments made. His credit reports indicate that he has failed to make any payments on many of his delinquent accounts for many years.

Applicant has been steadily employed in his current position since May 1997. He did not present any information that he was unemployed. (Item 4). Applicant did not provide a personal financial statement. The record does not reflect 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>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 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

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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).

<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.*

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 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 disqualifying:

- (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's admissions and his credit reports confirm that he has had a significant number of delinquent debts in the amount of approximately \$32,000. The debts are confirmed in his credit reports. They span from 2002 until the present time. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate security concerns:

(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 has not provided any information to show that he has paid the delinquent debts or has a plan to repay the debts. Although he wrote many letters of dispute and settlement, he has no documentation from any creditors accepting a payment plan. He has not reported financial counseling. He has been gainfully

employed since 1997, and has not raised any circumstances beyond his control that would contribute to his financial problems. None of the mitigating conditions apply.

### **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 and has held a security clearance for many years. He has been employed with his current employer since 1997. He has delinquent accounts that have not been paid in many years. He has not demonstrated a personal commitment to make any payments over a long period of time. He has not shown that any of his listed debts are not his responsibility or have been resolved. Applicant has provided no insight into circumstance which caused such extensive debts to accumulate or efforts to reduce expenses. He has claimed ignorance of the debts.

Applicant has not provided any information to show that he is a changed person or that he has taken action to resolve his delinquent SOR debts. At this point, I have doubts about his judgment and reliability. Any doubts must be resolved in favor of the Government. Applicant has not met his burden in this case. He has not mitigated the security concerns under financial consideration guideline. 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.v:	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