



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-08091
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace Le'i Garcia Esq., Department Counsel  
For Applicant: *Pro se*

02/26/2013

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**Decision**

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LYNCH, Noreen A., Administrative Judge:

On August 7, 2012, the Department of Defense (DOD) 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; 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 in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated December 12, 2012.<sup>1</sup> Applicant received the FORM on December 20, 2012. He did not submit additional information. On February 19, 2013, the Director, DOHA, forwarded the case for assignment to an administrative judge. I received the case assignment on February 20, 2013. Based on a review of the case

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

file, I find Applicant did not mitigate the security concerns raised. Security clearance is denied.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted all allegations under Guideline F, ¶ 1.a through ¶ 1s. (Item 3)

Applicant is 51 years old. He graduated from high school in 1980. He is married and has four children. (Item 5) Applicant has been employed with his current employer since November 1997. (Item 4) He completed security clearance applications on April 6, 2011 and February 21, 2001. (Items 4, 5)

The SOR lists 19 delinquent debts that total approximately \$45,000. The credit reports confirm them. (Items 8, 9 and 10) Applicant listed the delinquent accounts on his security clearance application and in his answers to DOHA interrogatories. Applicant noted that the accounts listed on the SOR were credit accounts that were opened many years ago. They became delinquent about six years ago when his ankle was broken, and he needed surgery. As a result, he was out of work for approximately four months. Applicant did not provide any documentation that any of the debts have been paid or resolved. He presented letters, dated May 15, 2012, to various creditors with copies of checks made in minimal amounts of \$10. (Item 6)

Applicant accepted full responsibility for his delinquent debts, attributing them to health problems that he and his wife have had over the years, some of which have required surgery, resulting in missed work and reduced income, as well as his recent mother-in-law's passing in which Applicant and his wife assisted in paying for her funeral expenses. He stated that he tried hard to keep up with the bills but the everyday cost of living; including: house, car, insurance, utilities, gas and food, were difficult to pay and still support his wife and four children. In 2009-2010, he attempted to work with a credit agency but he could not maintain the monthly payments. Applicant states that he does not use credit cards, with the exception of one bank card. He notes that his car loan is paid in full and that he made payment agreements with several creditors. He has every intention of paying his delinquent debts. He also intends to avoid new debt. However, during his May 2011 interview, he noted that he did not have the financial means to pay the delinquent accounts. He stated that he is a person of integrity and would not in any way fail to protect a national trust. He has held a security clearance since 1999.

Applicant has a monthly net income, including his wife's income, of approximately \$4,148. After listing total monthly expenses of \$2,960, he has a net monthly remainder of approximately \$1,430. He listed bank savings of \$80. (Item 6) Applicant listed a monthly payment of \$757 for his mortgage account, which totals \$84,733. (Item 6)

## 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

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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).

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**

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 delinquent debts amounting to \$45,000. His admissions and credit reports confirm these debts. Consequently, Financial Considerations Disqualifying Conditions (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’s debts are recent and ongoing. He intends to pay his bills but he has not presented documentation concerning a consistent payment plan or course of action that confirms that his debts are being paid or resolved. In 2010, he could not maintain monthly payments with a credit agency. He did not establish a monthly track record of payments to his SOR creditors. 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.

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<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.*

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. Applicant listed a short period of unemployment, but he has not provided sufficient nexus to the delinquent debts. He did not present specific information to prove that the delinquencies were beyond his control. 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 did not produce any evidence that he is addressing the SOR debts through negotiation, or consistent and regular payments, despite Applicant's sizeable monthly net remainder. 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). I do not find that there are clear indications that his financial 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 51 years old. He has worked for his current employer since 1997. He has delinquent debts that are still unresolved. He did not produce sufficient documentation or evidence that he has resolved multiple SOR debts, or is in the process of resolving them. He has not completed financial counseling. Although he tried to work with a credit agency, he could not maintain the monthly payments.

Applicant stated that he takes full responsibility for his delinquent debts. He intends to pay his bills. He notes that his health issues and helping with his mother-in-law's funeral have hindered his efforts. He states that he is honest and has never had any reprimands at work. Finally, he stated that he is a person of integrity and would not in any way fail to protect a national trust.

Applicant submitted insufficient 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.s:	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