



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-08959
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel  
For Applicant: *Pro se*

05/31/2013

**Decision**

LYNCH, Noreen A., Administrative Judge:

On October 15, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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 February 28, 2013.<sup>1</sup> Applicant received the FORM on March 18, 2013. He did not submit additional information. I received the case assignment on May 24, 2013. Based on a review of the case file, I find Applicant has not mitigated the security concerns raised. Security clearance is denied.

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

## Findings of Fact

In his answer to the SOR, Applicant admitted all allegations under Guideline F, ¶ 1.a through ¶ 1.h. (Item 4) He denied the overall implication of the financial considerations guideline.

Applicant is 47 years old. He is an employee of a defense contractor. He graduated from high school in 1984, and attended college for about a year. He served in the United States Marine Corps from February 1991 until February 2006. He married his second wife in 2008. He has five children, including two step-children. (Item 5) Applicant has been employed with his current employer since July 2009. He completed a security clearance application on July 27, 2009. (Item 5) Applicant has held a security clearance since 2009.

The SOR lists eight delinquent debts including a 2010 federal tax lien, a judgment, and collection accounts. The total amount is approximately \$41,994. The credit reports at Items 7-9 confirm them. Applicant listed the delinquent accounts on his security clearance application and in his answers to 2012 DOHA interrogatories. Applicant did not note any current payment plan for the eight accounts listed on the SOR. He provided no documentation that he is paying on them. In his answer to the SOR, he also did not provide any information about his federal tax issue. (Item 6)

Although not listed as an SOR allegation, in his 2009 security clearance application, Applicant listed a child support arrearage and delinquent debts. He paid several accounts. Applicant began a payment plan for a tax owed to the IRS. It is not clear from the record if he utilized a payment plan to address the \$3,430 that he owed for federal taxes.

In 2011, Applicant self-reported that he had received a federal tax lien for overdue back taxes. He noted that he was setting up a payment plan to resolve the tax lien. The tax lien was about \$20,000. Applicant explained that the tax lien was the result of his 2002 divorce. During his OPM interview, he stated that he was divorced in 2003 and that he was required to pay for all marital debt, continue mortgage payments, and pay child support in the amount of \$748 every two weeks. Applicant stated that his wife was awarded the car and that she was to receive any proceeds from his tax returns. During the course of the interview, Applicant stated that he learned in 2010 that his wife never filed his tax returns and he owed \$17,000 to the IRS. Later in the interview, Applicant noted that he was made aware of the tax debt in 2005. According to Applicant, he started a repayment plan with the IRS of \$75 per week, but was forced to stop payments when he lost his job in August 2008. (Item 6) From August 2008 until January 2011, Applicant made no payments to the IRS. In May 2010, the federal tax Lien was filed against Applicant for approximately \$17,000. Applicant entered into another repayment plan with the IRS paying \$25 a week beginning in January 2011. He states that it is his intention to repay this debt. (Item 10)

During the 2011 OPM interview, Applicant acknowledged the other accounts that were listed on the SOR. He stated that he intended to make contact with the creditors

to resolve the unpaid debts. He also explained that his work was reduced and he decided to accept a company buyout of approximately \$22,000 in August 2008. He was unemployed from August 2008 until May 2009.

Applicant has a monthly net income of approximately \$2,825.45. He listed his spouse's income as \$1,400. After deducting total monthly expenses of \$2,690, he has a net monthly remainder of approximately \$725.

### **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

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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).

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**

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, including a federal tax lien, totaling approximately \$41,000. 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.

The nature, frequency, and relative recency of Applicant’s financial difficulties since 2008 make it difficult to conclude that it occurred “so long ago.” Consequently, Financial Considerations Mitigating Condition (FC MC) 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 in part.

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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 was unemployed from late 2008 until 2009. He accepted a \$22,000 buyout from the company. He did not show a nexus between this unemployment and his inability to pay any of his debts. He also blamed his 2003 divorce for the problems, but he did not present sufficient information to prove that the delinquencies were beyond his control and that he acted responsibly. He has a \$20,000 federal tax lien. 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 produced no evidence that he has addressed the eight SOR debts and the federal tax lien. 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/or there are clear indications that the problem is being resolved or is under control." I find that there are no clear indications that his financial problems are being resolved and are 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 47 years old. He has worked for his current employer since 2009. He served in the military from 1991 until 2006. He has held a security clearance since 2009. He denied that he would be affected or influenced to betray the United States based on his financial issues.

However, Applicant has a history of delinquent debts and tax issues. He acknowledged the financial issues but produced no documentation or evidence that he has resolved multiple SOR debts, including a tax lien. He has not completed financial counseling. He has not mitigated the financial considerations security concern. 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.h:	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