



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



In the matter of:

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ISCR Case No. 11-09334

Applicant for Security Clearance

**Appearances**

For Government: Julie Mendez, Esq., Department Counsel

For Applicant: *Pro se*

12/13/2012

**Decision**

LYNCH, Noreen, A., Administrative Judge:

The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging security concerns arising under Guideline F (Financial Considerations). The SOR was undated. 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 requested a hearing before an administrative judge. The case was assigned to me on October 31, 2012. DOHA issued a notice of hearing on November 9, 2012, scheduling the hearing for December 4, 2012. Government Exhibits (GX) 1-13 were admitted into evidence, without objection. Applicant testified, and submitted Applicant Exhibit (AX) A, which was admitted without objection. DOHA received the transcript (Tr.) on December 11, 2012. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

## Findings of Fact

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

Applicant is a 55-year-old employee of a defense contractor. (Tr. 21) After completing the ninth grade, he began working. He has been with his current employer since February 2011. This is his first application for a security clearance. (GX 1)

Applicant was married for 30 years and has two adult children. He and his wife had marital difficulties, and they separated in 2006. His wife remained in the home, and Applicant left all the marital possessions to his wife. His divorce was final in November 2007.

Applicant owned his own concrete business for approximately 20 years (from March 1988 until April 2008). He had no financial issues until the economy faltered in 2006. Subcontractors owed him money, and he could not collect from them. (Tr. 25) He lost his equipment, but he was able to maintain his business until 2008. Applicant's ex-wife maintained the business records and handled the financial affairs for the business as well as for the marriage. Applicant did not know the amount of debt that accumulated during the marriage. After his marriage ended and he understood his financial situation, he now believes that his wife overspent on items. He admitted that they perhaps lived beyond their means.

When Applicant could no longer maintain his business, he immediately looked for work. From April 2008, he worked for a home-improvement company for about eight months. He was laid off in January 2009, and remained unemployed until January 2010. (Tr. 17). He found seasonal work with a landscape company for approximately three months but was again laid off in January 2011. He was unable to receive full unemployment compensation as he had not sufficient time with the employer. He found day jobs until his current employment.

Applicant's wife remained in their home until it went into foreclosure. He had no ability to pay any debts for several years because he was not working in a steady job with sufficient income. He went to an attorney and was advised to file for bankruptcy. He paid the fee of \$2,400. Applicant filed for Chapter 7 bankruptcy in August 2012. The debts were discharged in November 2012. (AX A) He completed the debt-education counseling that is part of the process. (Tr. 35)

The SOR listed delinquent debts that amounted to approximately \$230,000, which included a home foreclosure, credit card debts, and judgments related to his business. <sup>1</sup>(GX 3-12) The majority of the debt was from the business. The delinquent accounts accrued from 2006 until 2008. The debts alleged in the SOR have been discharged in the Chapter 7 bankruptcy case.

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<sup>1</sup>At the hearing, the Government withdrew SOR allegations 1.g and 1.i in their entirety. SOR allegation 1.c was amended to state for "an account in collection."

Applicant was candid that his wife took care of the “book work” in the company. He took care of the rest of the labor in the business. He thinks that perhaps \$30,000 to \$40,000 was owed to him by other builders. When he and his wife had a company meeting, he learned the extent of the financial problems. (Tr. 26) Due to the acrimony with the separation and divorce, Applicant did not receive any financial help from his wife, nor did she provide him with documentation concerning the debts.

Applicant lives with his girlfriend who works as a dispatcher. She and her mother bought a home recently. Applicant’s name is not on the mortgage or on any other household bills. He knows that they live within their means. They do not go out to eat very often. The household bills are not in his name. He uses his salary to pay for half the household expenses.

Applicant currently earns approximately \$20 an hour. He has no other delinquent debts. He has no credit cards or account in his name. He gives his paycheck to his girlfriend, and she pays the bills. He keeps \$60 a week for gas money. He does not have a savings account, but intends to start a retirement account with his employer. He has a small net remainder each month.

### **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 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 admits to the debts in the amount of \$230,000. His business was forced to close in 2008. He did not have the ability to pay any of the debts. He filed for Chapter 7 bankruptcy in 2012. 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 owned a business for approximately 20 years. He and his wife were co-owners. His wife handled the bookkeeping, and Applicant worked the business. In 2006, financial difficulties started due to the nature of the economy. Applicant was owed money from other builders, but he was not able to collect the money. He kept the business running until 2008. During that time, he and his wife separated. When the business ceased, Applicant began looking for steady work, but was not successful. He was unemployed for one year, he had seasonal work, and at one point he did not receive unemployment. He was divorced in 2007 and had legal bills related to the divorce. Applicant took the advice of an attorney and filed for bankruptcy as soon as he could afford the fee. He filed for Chapter 7 in August 2012. The majority of the debt was related to the failed business. His debts were discharged in November 2012. He received debt counseling. Applicant has no new debt. Applicant was candid that he worried about the labor side of business. He realized too late that his wife was overspending. He is now working full time. He is living with his girlfriend. His name is not on the mortgage. He pays his share of the household expenses. Although Applicant could have been more active in the financial side of the business or the marriage, there is no law that Applicant must handle financial matters. He has not accrued any new debt. His name is not on any of his girlfriend's accounts or the mortgage. He understands the importance of living within his means. I find that Applicant's financial considerations concerns are mitigated.

## 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 55-year-old employee of a defense contractor. He owned a concrete business that he successfully operated for almost 20 years. After 30 years of marriage, he and his wife separated, and their divorce was final in 2007. He raised two children. Applicant could not maintain his business due to the downturn in the economy in 2006. His business closed in 2008. He worked in various jobs, but did not find steady full-time employment until February 2011. He filed bankruptcy on the advice of his lawyer. His debts, most of which were related to the business, have been discharged. He has no new debt. He has received debt-education counseling. He understands the importance of living within his means. He has mitigated the security concerns under the financial considerations guideline.

### 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.f:	For Applicant
Subparagraph 1.g:	Withdrawn
Subparagraph h:	For Applicant

Subparagraph 1.i:

Withdrawn

Subparagraphs 1.j:-1.r:

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