



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-12580
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

04/15/2013

**Decision**

LYNCH, Noreen A., Administrative Judge:

On August 31, 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 1, 2013.<sup>1</sup> Applicant received the FORM on February 11, 2013. He submitted additional information that I marked as AX A and entered into the record. I received the case assignment on April 8, 2013. Based on a review of the

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

case file, I find Applicant mitigated the security concerns raised. Security clearance is granted.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted all allegations under Guideline F, ¶ 1.a through ¶ 1d. (Item 4)

Applicant is 36 years old. He is an independent contractor working as a driver for a large company. He graduated from high school and received an undergraduate degree in 2004. He is married and has no children. (Item 5) Applicant has been employed with his current employer since March 2007. He had hourly positions and some unemployment prior to 2007. He completed a security clearance application on March 18, 2011. (Item 5)

The SOR lists 4 delinquent debts that total approximately \$57,787. The credit report at Item 7 confirms them. 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 to pay expenses to “keep a roof over their heads.” They became delinquent about 2008 when he did not have much work due to the economic downturn. Applicant chose which bills to pay. He paid his mortgage, but did not pay the credit card accounts. He explains that his plan was to pay the delinquent credit card debt one credit card at a time. His intent was to pay his truck loan and then to address the delinquent debts. He noted that he would have an additional \$3,000 per month to pay toward the debts. Applicant initially did not provide any documentation that any of the debts have been paid or resolved when he answered the SOR in August 2012. He noted that he has two additional non SOR delinquent debts for 2010 income tax for \$2,600, and 2011 property tax for \$1,047.

Applicant accepted full responsibility for his delinquent debts, attributing them to the economic downturn in his employment. 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. He explained that he was instructed not to pay his credit card accounts in order to qualify for the affordable home plan. (Item 4) He has every intention of paying his delinquent debts by 2013. He also intends to avoid new debt. He understands that he needs a better credit history to obtain a security clearance. He states that he has already provided proof that he paid a debt to one company (Midland) in June 2012, and has now started on the SOR debts. He notes that there is nothing in his background to show that he is a risk to national security.

Applicant timely responded to the FORM and provided documentation that he reached a settlement agreement with the Internal Revenue Service (IRS) as of March 6, 2013, and is paying \$200 a month on his 2010 tax debt. The balance is \$1,686. The property tax amount for 2011 (\$1,449.36) has been paid in full. Applicant also paid his 2012 property taxes for \$939.17, and he provided a receipt. (Answer to FORM, dated March 5, 2013)

Also, Applicant reached a settlement for some of the debts on the SOR. He settled the Cavalry collection account that totaled \$14,955 for \$7,500. Applicant paid the settlement amount in six installments of \$1,250. The account was satisfied in December 2012. (SOR 1.a) Applicant settled the AAC account that was \$12,134 for \$4,400. He made a lump sum payment on February 28, 2013. He does not yet have the documentation, but is waiting for a letter. (SOR 1.c) The Chase collection account for \$8,731 was purchased by Midland was settled for \$6,200 on June 19, 2012. (SOR 1.d) During the last 18 months Applicant has paid approximately \$23,000 to resolve delinquent debt. He is completing his promise to pay his debts to past creditors. (AX A) He has no new debt. His credit reports confirm various accounts that he "pays as agreed."

Applicant has a monthly gross income of approximately \$8,000-\$10,000. After listing total monthly expenses of \$7,840, he has a net monthly remainder of approximately \$1,430. He noted that he and his wife are saving money now that he is gainfully employed. Applicant is current on all daily household expenses and his \$1,300 monthly mortgage.

### **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 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.

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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.*

Applicant has delinquent debts totaling approximately \$60,000. His admissions and credit reports confirm these debts. Beginning in 2008, Applicant had insufficient work and funds to make all of his monthly account payments. As a result, some accounts started to become delinquent, and were placed for collection. 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." However, he promised to pay his bills as best he could. He was advised to pay his mortgage and not to pay the credit cards. He prioritized and made a plan to settle the delinquent accounts as he could. He has resolved some of his debts and he is gainfully employed, so it is unlikely that his financial difficulties will continue. He established a monthly track record of payments to his some of his SOR creditors and to the IRS. 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) applies in part.

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) applies. Applicant was an hourly wage earner and had some unemployment before his present position. Applicant's current work was affected by the economic downturn in 2008. He could not maintain a mortgage and pay the credit card accounts. He began a process of settlement with creditors. He presented sufficient information to prove that the delinquencies were beyond his control. This mitigating condition applies.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant produced evidence that he has addressed three of the four SOR debts through negotiation, or consistent and regular payments. 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). However, "and/or there are clear indications that the problem is being resolved or is under control" applies. find that there are clear indications that his financial problem 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 36 years old. He has worked for his current employer since 2007. He had no financial difficulties prior to the economic downturn. He had hourly wage jobs and some unemployment in the years before his current work. He was advised to pay his mortgage when he started to have difficulties paying his bills. He was told by the home modification loan officer to not pay the credit accounts. He followed that advice. He is current with his mortgage and has paid his truck in full. He settled his tax issues. He settled three of his four SOR debts. He was candid in reporting the tax and property debts in his answer to the interrogatories. He knew he would pay his debts and had a plan. He began by paying the truck so that he could maintain his employment. He paid his taxes. He is in the process of settling the final SOR debt. He has a meaningful track record of paying his debts. Within the last 18 months has paid approximately \$23,083.53 to resolve his delinquent debts. He has one delinquent debt that is still unresolved. He produced sufficient documentation or evidence that he has resolved multiple SOR debts. He has not completed financial counseling.

Applicant stated that he takes full responsibility for his delinquent debts. He understands that there is no right or entitlement to a security clearance. He is serious about his credit history and knows the importance of it. He has shown that he can pay his bills and maintain his current household expenses. He has no new debts. His credit reports confirm many accounts over the years that he has paid as agreed. Finally, he stated that he is a person of integrity and would not in any way fail to protect a national trust.

Applicant submitted sufficient information and evidence to mitigate the security concerns raised in his case. Clearance is granted.

### **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.d:                      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