



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



In the matter of:	)	
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Applicant for Security Clearance	)	ISCR Case No. 12-00539

**Appearances**

For Government: Allison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

11/29/2013

**Decision**

LYNCH, Noreen, A., Administrative Judge:

On June 19, 2013, the Department of Defense (DOD) issued Applicant 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; 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 a hearing before an administrative judge. The case was assigned to me on August 27, 2013.<sup>1</sup> A third notice of hearing was issued on November 1, 2013, scheduling the hearing for November 5,

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<sup>1</sup>The hearing was originally scheduled for October 10, 2013. The case was postponed due to the government closure. A hearing was rescheduled for October 29, 2013, but was postponed because Applicant informed the Government that he had obtained legal representation. The attorney had not entered an appearance and was not present on October 29, 2013, as he had been in an automobile accident. Applicant decided to proceed without any representation for the next scheduled hearing.

2013. Government Exhibits (GX) 1-5 were admitted into evidence, without objection. Applicant testified, and submitted Applicant Exhibits (AX) A-D. At Applicant's request, I held the record open until November 22, 2013. Applicant timely submitted documentation which was admitted into the record without objection. The exhibits were marked as (AX) E and F. The transcript (Tr.) was received on November 8, 2013. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the factual allegations under Guideline F (Financial Considerations), with explanation, with the exception of SOR 1.g and 1.j.

Applicant is a 30-year-old logistics manager employed by a defense contractor. He graduated from high school and attended college earning 46 credits. He is single and has five children. Applicant has held a security clearance since 2001. (Tr. 25) He has been with his current employer since August 2011. (GX 1) However, he has worked for defense contractors since September 2001.

The SOR alleges Applicant is indebted to the Internal Revenue Service (IRS) for federal taxes and penalties in the amount of \$13,000; past-due state taxes in the amount of \$6,000; ten collection accounts; and 21 unpaid traffic tickets totaling \$4,000. The alleged amount of delinquent indebtedness is approximately \$31,000.

Applicant explained that the nature of his job as a contractor involved periods of unemployment. (Tr.11) He was unemployed for a year and a half beginning in November 2010. This led to an inability to remain current with his bills. However, he has been gainfully employed since 2011. He took part-time temporary positions to support himself. Applicant elaborated on his situation and explained that he has a child support obligation for two children. The amount is automatically deducted each month from his pay. Applicant disclosed that none of his children live with him. He also provides for his other three children, but he does not have a written child support obligation. (Tr. 41) This issue has been ongoing since 2003. He is paying his arrears. However, child support is not an SOR allegation. Applicant submitted documentation that he has reduced his arrears. (AX F)

As to the federal tax issue in SOR 1.a, Applicant did not have sufficient money withheld from his pay and thus, he owed money to the IRS. He stated his tax problems started in 2005. He recently spoke to the IRS and wishes to arrange a payment plan. He disclosed that he has a tax lien in the amount of \$800 that was filed in 2005. (Tr.38) Applicant believes he became delinquent on his state taxes (SOR 1.b) in 2008. In 2012, he started a payment plan but defaulted due to other expenses. He made one \$400 payment. He has not made any payments since March or April 2012.

The debt alleged in SOR 1.c is the result of an apartment lease that Applicant signed for a friend. The person moved out without paying the bill and Applicant is

responsible for it. He does not deny that he owes the money. He is including it in the debt consolidation plan. He also stated the debt in SOR 1.h ( \$898) is included in his debt consolidation plan.

Applicant paid the debt in SOR 1.g and 1.j for (\$794) and (\$207) (AX A and D). He disputed the telecommunications bill (\$1,198) in SOR 1.d. He has current service with the company. It is not listed on his credit report. He also disputed the medical bills in 1.f. (\$98). At the hearing, he provided no documentation for the dispute. Applicant believes the debt in SOR 1.e for \$721 for cable is now \$148 for equipment that was not returned. He noted that it was included in his debt consolidation plan. (Tr.55) After the hearing, he submitted an undated credit report that shows a balance of \$229. (AX F) Applicant paid the debt in SOR 1.i for telecommunications and submitted documentation after the hearing that it was settled. (AX E)

The debts listed in SOR 1.k to 1.ee are parking tickets that are not paid. Applicant explained that his girlfriend used his car and she received the parking tickets and did not pay them. He did not know that the unpaid parking tickets were on his credit report until the recent investigation for his security clearance. The unpaid tickets are from 2005 until 2008. (Tr. 61) He began receiving notices about the tickets in 2010. Applicant's friend has not yet taken care of the tickets. Applicant plans to pay the tickets, but he has not yet paid any of them. (Tr. 64)

As to SOR allegations 1.ff (\$154) and 1.gg (\$187), Applicant stated that he paid these bills. He was not sure that he had a receipt. He believe he paid them in September 2012. Applicant submitted documentation after the hearing, but it was not clear that it was related the debt in 1.ff. The debt in 1.gg could be a duplicate account for phone service that was listed in 1.i which is paid.

In June 2013, Applicant obtained the services of a credit counseling company to consolidate his debts (AX C) The collection accounts listed in the SOR are included in the plan. Applicant pays \$257 a month. He has made four payments to date. The company negotiates on his behalf to settle the delinquent debts. One bill has been paid. The expected time frame for the plan is approximately two years.

Applicant's annual income is approximately \$50,000. His net monthly remainder after expenses is about \$220. Applicant earns about \$200 a month for his participation in playing church music. He is current on his monthly expenses. His car note is paid. He has received financial counseling. He has no new debts. (AX B)

Applicant was candid and forthright. He admits to his delinquent bills, but stated that the nature of the contract business involves unemployment. His work fluctuates and he is always desirous to find something permanent that will provide for his needs. Recently, he has taken action with respect to consolidating his bills. He also acknowledges that he has student loans in deferment. (Tr.67)

## 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

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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.

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 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;

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<sup>6</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>7</sup> *Id.*

(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 the delinquent debts and unpaid federal and state taxes. Consequently, the evidence is sufficient to raise disqualifying conditions in ¶ 19(a), 19(c), and 19(g).

AG ¶ 20 provides conditions that could mitigate security concerns. The following are potentially relevant:

(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; and

(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.

Applicant's delinquent federal tax debt has been ongoing since 2005. He has a state tax debt from 2008 and a tax lien. He did not timely file his taxes in that period of

time, and failed to have sufficient funds withheld from his salary to pay the taxes owed. He stopped his payment plan on both federal and state taxes due to lack of income. He has no current plan in place. In 2013, he obtained the services of a company to help negotiate with the creditors, and have his debts settled.

Applicant did not produce documentation to show that he has actually paid any additional taxes to the IRS or the state. Applicant plans to pay the tax debts but he does not yet have a plan in place. He recently started a debt consolidation plan, but it is too soon, given the amount of debt, to know whether Applicant can resolve his debts. Applicant has not met his burden in this case to fully mitigate the financial considerations security concern.

### **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 30-year-old employee of defense contractor who has held a security clearance since 2001. He has five children. He pays child support for two children and provides financial help to the other three. He is attending college classes to improve his skills. He has experienced some unemployment, but has tax issues occurring before the unemployment.

Applicant was candid and forthright at the hearing. He realizes that his debts have been ongoing for a period of time. He realizes that his first tax issue began in 2005. He has tried to arrange payment plans, but he has not been consistent. He has federal and state tax debt in the approximate amount of \$19,000. He has a tax lien of \$800. Applicant has not been able to pay the many outstanding parking tickets. He has

recently started a debt consolidation plan for the collection accounts. The majority of debts are unresolved.

He recently obtained the services of a company to consolidate his debts. He has paid approximately \$1,500 total for the nearly \$31,000 delinquent debts and overdue taxes. It is not clear that his debts will be resolved in the near future. Any doubts that arise must be resolved in favor of the government. Applicant has not met his burden of proof in this case.

### **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

Subparagraph 1.a-1gg:                      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 continue Applicant's security clearance. Clearance is denied.

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NOREEN A. LYNCH.  
Administrative Judge