



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-02050
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

11/24/2014

**Decision**

LYNCH, Noreen A., Administrative Judge:

On July 30, 2014, 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 DOD Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation); 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 decision based on the written record in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated September 25, 2014.<sup>1</sup> Applicant received the FORM on October 3, 2014. He timely submitted additional information for the record. I received the case assignment on November 18, 2014. Based on a review of the case file, I find Applicant has mitigated the security concerns raised. Eligibility for a clearance is granted.

---

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

## Findings of Fact

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

Applicant is 28 years old. He is employed with a defense contractor. He graduated from high school in May 2003 and attended college full time from 2003 until 2007, but has not obtained a degree. Applicant is single. He has been employed with his current employer since April 2010. On October 25, 2011, he completed a security clearance application. (Item 4)

The SOR alleges four delinquent debts totaling approximately \$23,600, including student loans, a charged-off account, and unpaid federal taxes for tax year 2011 (Item 1) Credit reports confirm the debts. (Items 6 and 7)

Applicant explained in his Answer that his financial issues began when he was unemployed from May 2008 to October 2008. He also was unemployed for a time in 2009. The unemployment in conjunction with low paying jobs contributed to his financial issues. Applicant has a number of student loans, which he could not pay. He has paid other non-SOR debts. He maintained that he has made payment on his student loans or entered into agreements to do so.

In December 2011, during an investigative interview, Applicant explained that he made contact with creditors and paid some of his other debts, and he had every intention of paying all of them. Regarding his student loans, Applicant stated that the state student loan (SOR 1.a) had a balance of \$10,000. He obtained a three-month financial hardship forbearance. The forbearance ended on January 31, 2012. (Item 6) He expects to make monthly payments of \$100 until the account is paid in full.

When Applicant answered DOHA interrogatories, he admitted the SOR debts, and stated that he is making payments to the charged-off account (SOR 1.b) but did not submit proof of payments. He stated that he had not taken any action with respect to the \$395 debt. (SOR 1.c)

When Applicant responded to the FORM, he explained that he originally obtained three private student loans, in addition to a number of federal student loans. He explained that he was unable to consolidate the private student loans, as they were based on credit scores. He consolidated other federal student loans. He stated that one private student loan is in good standing. He acknowledges that this is not listed on the SOR.

In response to the form, Applicant submitted documentation concerning the student loans. The private student loan (SOR 1.a) defaulted. However, in 2014, Applicant reestablished a payment plan with this creditor. Applicant has an agreement for 62 months of payment, of \$200 per month, with an expected pay-off date of May 17,

2019. He submitted his last payment of \$200 on October 27, 2014. (Response to FORM)

Applicant provided documentation that the second private student loan (SOR 1.b) was originally \$13,906. However, it is now \$10,881. Applicant maintains that he has made consistent payments on the loan since 2013. He provided documentation that payments of varying amounts began in March 2011 and continued through October 2014. (Response to FORM)

Applicant has not resolved the debt of \$395 (SOR 1.c). He states that he attempted to pay the debt in 2013, but has now avoided pursuing the account. He admits that he wants to pay when he visits the college in the future. He also stated that he has no evidence of his efforts to satisfy the debt. (Response to FORM)

As to SOR 1.d, Applicant provided notification from the IRS with a listed amount of \$135.55. He provided the copy of a check to the United States Treasury for 2011 overdue taxes. This account is resolved. (Response to FORM)

Applicant included receipts from automobile bills for repairs. These costs hindered paying more on his student loans.

Applicant's net monthly income is \$2,723. He has monthly expenses of \$1,800. He listed a net remainder of \$223. He noted that he was paying three separate student loans on a monthly basis. (Item 5) There is no information in the record indicating that Applicant obtained financial counseling. He noted in his 2014 personal financial statement that he had a savings account and some stocks. He listed total assets as \$8,284.

### **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.

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 classified 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 security 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

---

<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.*

questions about an individual's reliability, trustworthiness and ability to protect classified information. "An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds."

Applicant's admissions and credit reports establish the collection accounts delinquent debts, student loans, and unpaid federal taxes. 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 make it difficult to conclude that it occurred "so long ago." "An unpaid debt is a continuing course of conduct for the purposes of DOHA adjudications." ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 17, 2012). Applicant still has unresolved delinquent debt. He has provided sufficient documentation that he has addressed three of the four SOR debts. The status of the student loans has changed due to other expenses that Applicant incurred. He has begun to make payments again in 2014.. The delinquent obligations remain. 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) partially applies.

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) partially applies. Applicant's financial difficulties occurred due to a lower income and unemployment. His original payment plans were interrupted but Applicant has again started a repayment plan for the student loans. He resolved his tax issue. He receives partial credit under this mitigating condition.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. Applicant paid the 2011 federal tax. He has begun a payment plan for student loans. He paid other non SOR creditors. He has not resolved one debt of \$395, but he intends to resolve the debt. He has presented sufficient information to show mitigation. He did not present evidence that he received financial counseling. AG ¶ 20(c) (the person has received or is receiving counseling for the problem) does not apply. Given the ultimate burden, I find that there are 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 relevant 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 28 years old. He has worked for his current employer since April 2010. It is not clear from the record whether he previously held a security clearance. Applicant attended college and obtained student loans so that he could attend the classes. He is trying to educate himself and develop skills to aid in employment. He had payment plans which he disclosed on his security clearance application. He has paid non SOR debts. He has a track record of making payments on the student loans. An applicant does not have to have paid all his delinquent debts to mitigate the security concern under financial considerations guideline.

Applicant relied on the written record and did not have a hearing. However, when he responded to the FORM, he submitted a detailed explanation and provided documentation of his efforts to satisfy his student loans. He resolved his federal tax debt. He submitted sufficient information and supplemented the record with relevant and material facts and proof of payments. Applicant 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.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 eligibility for a security clearance. Clearance is granted.

---

NOREEN A. LYNCH.  
Administrative Judge