



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



In the matter of:

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) ISCR Case No. 14-05305  
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Applicant for Security Clearance

**Appearances**

For Government: Charles Hale, Esq., Department Counsel

For Applicant: Gregory F. Greiner, Esq.

04/04/2017

**Decision**

LYNCH, Noreen A., Administrative Judge:

On July 9, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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 October 20, 2016. A notice of hearing, dated October 20, 2016 was issued, scheduling the case for February 23, 2017. Government Exhibits (GX) 1-6 were admitted into evidence without objection. Applicant testified and submitted Applicant Exhibits (AX) A-E, which were admitted without objection. I kept the record open until March 2017 for additional submissions, and Applicant submitted two documents, which were marked as AX F and AX G, and admitted into the record without objection. The transcript was received on March 2,

2017. 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 SOR allegations under Guideline F, with explanation for each item.

Applicant is 48 years old. In 2010, after a two year separation, he divorced his first wife. He remarried in 2012. (AX E) He has adult children from his first marriage, and two stepchildren living with him and his current spouse. He works as a field service engineer supervisor for a government contractor. (Tr. 16) He has been employed with the same employer since 1997. Applicant has held a security clearance for 15 years. (GX 1) He completed a security clearance application in 2013.

Applicant served in the U.S. Air Force on active duty from 1989 to 1994, receiving an honorable discharge. From 2006 to the present, he attended an aeronautical university, but has not yet obtained his undergraduate degree. (GX 1) Applicant traveled overseas for his employment on several occasions, and in 2013, he was out of the country working for almost a year. (Tr. 17)

The SOR alleges six delinquent debts, including a charged-off home equity loan, medical accounts, and a collection account for automobile insurance. Applicant explained that the cause of the financial difficulties is a combination of his first wife not handling the finances appropriately and not paying bills. This was one reason for separation and divorce. (Tr. 22) This left Applicant with one income. He submitted the divorce decree, which noted debts that his wife was responsible for paying. (Tr. 25, AX E) The other debt involved the poor housing market and the fact that Applicant had to move for his employment to another state. (Tr. 20) In addition, Applicant learned about his ex-wife's infidelity during the marriage.

As to the SOR allegations in 1.a, 1.c, 1.d, and 1.f., Applicant provided documentation that the accounts were paid. (AX A, B and D). These were medical co-pays which totaled about \$113. Applicant did not know that his ex-wife did not pay the medical co-pays for his two children. (TR. 28) As a post-hearing submission, Applicant provided documentation regarding the account in 1.e. (AX G)

Applicant and his first wife bought a home in 2007. They also owned a rental property. When Applicant and his ex-wife separated, Applicant remained in the marital home. He moved out of the home after two months, as he could no longer afford the payments. He told the bank, and the house was sold almost immediately. (Tr. 20) At that time, Applicant moved into the rental home. In about 2012, Applicant was required to move to another state for his employment and he completed a short sale for the rental home.

At issue in SOR debt 1.b for \$115,929 is a loan charged off for a second mortgage on the marital residence. This loan was for the marital home, and repairs that

needed to be made when he moved in. (Tr. 22) Applicant testified that the bank never contacted him or sent notices regarding the creditor in SOR 1.b equity loan, but rather charged it off almost immediately. (Tr. 23). Applicant acknowledged at the hearing that he did not understand why the bank immediately charged-off the second mortgage and did not pursue him. He was candid when he explained it seemed strange to him, but he believed that since they immediately took that action and did not send him any notices, that he was relieved of his duty to pay the amount. (Tr. 29) He followed up by saying that you have to pay what you owe, and that was what he always did in the past. He had stopped making payments in 2008. (Tr. 39) However, he also thought that since the house sold immediately.<sup>1</sup> He does not recall receiving a Form 1099.

Applicant testified that before the separation from his first wife, he had normal expenses in providing for his family and he was responsible with his finances and covering his expenses and bills. (Tr. 22) He acknowledged that at times things were tight. He paid other debts that were noted earlier during his investigative interview. (GX 2)

Applicant had tried to contact the bank concerning the debt in 1.b and obtain some documentation regarding the charged-off equity loan. He did not receive anything from them or any collection agency. (Tr. 23) He finally pursued the matter through his attorney. As a post-hearing submission, he provided a detailed letter from the bank that the account was charged-off April 2009, and there is no attempt to collect funds for this account. This letter affirms Applicant's explanation regarding the equity loan. (AX G) He provided sufficient information to confirm his testimony that he did not have an account to pay. (AX F) About two years ago, he obtained a home mortgage in another state for his present residence. (Tr. 30)

Applicant's employment position is stable with good health benefits. He currently has a medical condition for brain lesions. He hopes to work another 15 years. He has an opportunity for growth and promotion. Applicant's annual salary is \$100,000. He has earned promotions and his salary has grown from an initial \$90,000-\$94,000. Applicant is current with all his expenses. He also receives a military medical retirement of about \$500. He believes he has about \$100,000 in a retirement account. His credit report (GX 6) shows a "0" balance due on all accounts. There is a credit report that shows a lateness on one of his ex-wife's accounts.

## **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

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<sup>1</sup>GX 2, the interview conducted in 2013 explained that when Applicant's home was foreclosed in 2009, he told his Air Force security officer and an investigation was held to determine if the issue affected his security clearance. After the investigation, the Air Force reinstated his clearance eligibility.

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 U.S. 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

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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.*

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 admitted he owed some delinquent debts and incurred the charged-off account for his second mortgage. 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.

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. This happened in 2008 and was the result of separation and divorce.

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) partially applies. As noted above, Applicant's financial difficulties are a combination of several things. The separation, divorce, loss of his first wife's income and the poor housing market were responsible for the financial crisis. He did not simply walk away from his financial obligations. Instead, he responsibly resolved several SOR debts and attempted to determine his financial responsibility for the second mortgager on his former marital residence that was foreclosed in 2008. This eight-year-old debt is essentially in an uncollectible status.<sup>8</sup> He learned that he was not being pursued by the bank or any collection company for the debt in the second mortgage. He understood that he had no responsibility for the debt. I found him credible.

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<sup>8</sup>Compare with ISCR Case No. 15-02903 (App. Bd. Mar. 9, 2017) where Board remanded an unfavorable decision and favorably noted that similar matters beyond applicant's control that impacted finances and the resolution of \$125,000 in delinquent debt through the debts unenforceability.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has application. Applicant took steps to pay the medical accounts and collection account when he learned about them in his interview. He also paid other non-SOR debts years ago. His current credit report confirms this status. 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) applies.

### **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 48 years old. He served in the Air Force and is a disabled veteran. He is divorced from his first wife due to her incompetence and negligence in paying household bills and infidelity. Applicant has held a security clearance for 15 years. He has worked for the same employer for 20 years. He was financially sound before the separation and divorce. His income alone without any support from his ex-wife did not allow him to pay his mortgage. He moved, and the house was sold. He has paid other non-SOR bills. His credible testimony and documentation provided convince me that in this case, he acted in a trustworthy and responsible manner.

Applicant has shown sound judgment and reliability throughout the years. He is currently in good financial status. He persuaded me that he mitigated the Government's case concerning security concerns under the financial considerations guideline. He met his burden of proof.

### **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

### **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