



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No.15-00934

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*

01/26/2017

**Decision**

LYNCH, Noreen, A., Administrative Judge:

The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline F (Financial Considerations). The SOR was dated October 30, 2015. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 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 March 14, 2016.<sup>1</sup> Applicant received the FORM on March 25, 2016. Applicant responded to the FORM. The case was assigned to me on January 3,

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<sup>1</sup>The Government submitted seven items for the record.

2017. Based on a review of the case file, eligibility for access to classified information is granted.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted five SOR allegations, and denied the remaining allegations. He provided explanations for the allegations under Guideline F (Financial Considerations).

Applicant is a 50-year-old employee of a defense contractor. He served on active duty in the military (U.S. Air Force) from 1984 to 2004, when he retired, receiving an honorable discharge. He is married with three children. He obtained his Associate's degree in 2011. Applicant has worked for his current employer since May 2007. (Item 3) He completed a security clearance application in April 2014. He has held a security clearance for more than 30 years.

### **Financial Considerations**

The SOR alleges 17 delinquent debts including eight medical accounts, three education accounts, and collection accounts. (Items 5 and 6) The delinquent debts totaled about \$16,286. (Item 1) He admitted to owing about \$12,832 to five SOR creditors. (Item 3)

In his answer to the SOR Applicant stated that he made payments on some debts; disputed others; paid some; and that others were invalid and have been removed from his credit report. He specifically noted that the medical accounts (SOR 1.e through 1.o, with the exception of 1.f) were paid by Applicant's supplemental insurance and were deemed invalid and removed from his credit report dated April 21, 2016. (Response to FORM, EX 3)

Applicant stated that he was unemployed in 2005. The unemployment lasted for about one year, and he used his life's savings to provide for his wife and three children. When he found employment in 2006, he earned 60% less pay than his previous income. In 2007, he was hired by another company with a slight increase in pay, but still less than his earnings in 2005. In the following years, he received promotions and pay raises. He continued to pay delinquent debts and his other bills are being paid on a monthly basis. He believes in honoring all his debts. He will continue to make payments until all debts are settled. (Answer to SOR, Item 3)

In addition, his wife had severe health issues which necessitated resigning from her full time position. Applicant realized that he relied heavily on credit cards from 2007 through 2008, in order to fill the income gap. He consulted an attorney in 2009, and was advised to file for bankruptcy. Applicant did not want to pursue that route. He wanted to pay his creditors. He stated that he made several payment plans. He acknowledged that he did not have sufficient income to pay his tax debts for 2008, 2009, and 2010 in full. He made monthly payments and his refunds were intercepted. Applicant claimed

that he has paid about \$80,000 in debt from 2008 until 2013. In 2012, his wife was diagnosed with another illness.

Specifically, as to the medical debts, which are the result of his wife's breast cancer, he challenged those accounts on his credit report because all the medical accounts should have been paid by his insurance. He stated that they are no longer on his credit report.

In Applicant's response to FORM, he provided the following supplemental information for each account:

As to SOR 1.a, a collection account in the amount of \$3,357, Applicant received a 1099-C in 2012, after the creditor stopped withdrawing the monthly amount in 2011. He noted that it stated the debt was forgiven. He disclosed the amount owed on his income tax return and believed the matter was settled. When he learned in 2014, that it was on his credit report, he investigated the matter. He had automatic monthly payments of \$100 deducted from his checking account in 2009. He settled the debt in 2016. (EX 1a)

As to SOR 1.b, a collection account in the amount of \$3,258, Applicant received a 1099-C in 2012 stating that the debt had been forgiven. He again assumed the debt was settled and he disclosed the income on his tax return. This is the same creditor as noted in SOR 1.a. The same scenario occurred and in 2016, Applicant settled the account. (EX2-2a)

As to SOR 1.c, for a 2010 cellular bill in the amount of \$504, Applicant disputed the bill with the credit agencies, as noted on an older credit bureau report, and it has been successfully resolved. (EX 4)

As to SOR 1.d, for an education collection account in the amount of \$487, this was the result of a college course that Applicant dropped before the deadline for payment. He believed this was not a valid debt, but documentation could not be found. He paid the bill in full in 2016. (EX 4)

As to SOR 1.f, for an education account in collection in the amount of \$267, this debt was the result of book fees and supplies in college. He believed that the \$100 monthly payments he made to the school included this amount. However, the VA transferred the account to the Treasury department. Applicant paid the debt in full in 2016. (EX 5)

As to SOR 1.i, in the amount of \$811, for another education account, this was the result of an overpayment from the VA. Applicant learned about the account and made monthly payments to settle the debt. In December 2014, it was paid in full. (EX 3)

As to SOR 1.m, for a cable account in the amount of \$403, the account was the result of equipment related to his cable account. Applicant maintains that he returned

the equipment. He could not find a receipt but he disputed the account. The dispute was successful, and it was removed from his credit report. (Ex 3)

As to SOR 1.p, for past-due tax (2009) in the amount of \$1,869 to the IRS, Applicant presented his payment plan. He was unable to pay his taxes in full for the 2009 filing. The current balance is \$31.72. Applicant presented an IRS transcript to corroborate his claim. He had a \$125 credit for the tax year 2010, which was applied to the balance. (EX 6)

As to SOR 1.q, for past-due tax (2010) in the amount of \$4,081.05 to the IRS, Applicant has been on a tax payment program for several years. He presented an IRS transcript. At this time, the balance is zero. In fact, there is a credit of \$125.07 which was applied to his 2009 federal tax debt. (EX 7)

Applicant states that he regrets disputing the debts that he did not believe he owed. He noted that he was stubborn about not paying them if he did not agree with the debt. He understands that was stupid. He emphasized that of the \$16,186 for the 17 delinquent debts, he has either paid, settled, or successfully disputed the accounts. The reasons for the accumulation of debt are due to unemployment, his wife's illness, her loss of income, a lower pay rate for him when he became employed, and using credit cards to pay for living expenses. He prioritized and supported his family. His latest credit bureau report reflects that he "pays as agreed" on accounts. His earlier reports reflect that he disputed certain accounts. The medical accounts have been resolved. He admits that he was not as timely as he should have been, but always made the tax payments. He estimates that between 2008 and 2013, he successfully paid about \$80,000 in debt. He was advised to file bankruptcy, but chose not to take that option. He wanted to pay what he owed.

He elaborated that the financial hardship that occurred over the past years were his first issues. He has held a security clearance for 30 years. He is retired from the U.S. Air Force. He is keenly aware of the importance of background investigations. He regrets some poor decisions but has learned lessons. He has no criminal, alcohol, or security issues.

## **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.

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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.*

## **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;
- (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.

The Government produced credible evidence to establish delinquent debts and past-due federal taxes. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate the 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 experienced unemployment for one year. His wife became ill several times, and he lost her income. He does not make excuses, but explains that his financial situation was beyond his control. When he became employed, it was at a lower rate of pay. He has subsequently had promotions and raises, and he has addressed his debts. He had numerous medical debts from his wife's illness, and he challenged them successfully. He addressed his federal tax issues immediately and agreed to payment plans. He has paid his tax debt for 2010 and only owes \$32 for tax year 2009. He is steadily employed and has shown his resolve to address and pay his financial obligations. AG ¶ 20 (a), (b), (d), and (e) apply.

## **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. I have noted Applicant's encounter with financial difficulties after losing his employment for a year, coupled with his wife's illness, medical bills, her loss of income and becoming employed at a lower rate of pay.

Applicant is 50 years old. He served in the U.S. Air Force and retired in 2004, receiving an honorable discharge. He has worked for his current employer since 2007. He is married and has three children. He admitted his delinquent debts and recognizes his mistakes. He chose not to file for bankruptcy, although advised to do so. He has a track record of honoring his financial obligations. 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.q:	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