



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



In the matter of:

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ISCR Case No. 15-01134

Applicant for Security Clearance

**Appearances**

For Government: Benjamin Dorsey, Esq. Department Counsel  
For Applicant: Leon J. Schachter, Esq.

12/09/2016

**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 November 4, 2015 and amended on May 9, 2016<sup>1</sup>. 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.

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<sup>1</sup>Department Counsel made a motion to amend the original SOR, to include allegation 1.m concerning filing of a Chapter 13 bankruptcy petition on December 21, 2015. Private counsel objected to the amendment concerning the bankruptcy and the term of the plan as an allegation. I accepted the amendment.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on June 6, 2016. A notice of hearing, dated July 15, 2016, was issued scheduling the hearing for October 27, 2016. Government Exhibits (GX 1-8) were admitted into the record. Applicant submitted Applicant Exhibits (AX A-S). He testified, but did not present witnesses. The transcript was received on November 4, 2016. 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 denied the factual allegations under Guideline F (Financial Considerations) and provided detailed explanations for each allegation.

Applicant is a 36-year-old records manager for a defense contractor. He served in the military on active duty from 2000 to 2005, receiving a general discharge under honorable conditions. He earned an associate's degree (AA) in 2005 and continues with undergraduate courses at university. (AX B) He is not married but has a fiancée and has two children with her. Applicant has worked for his current employer since 2011. He was previously granted a security clearance. He completed a security clearance application in 2012. (GX 1)

### **Financial Considerations**

The SOR alleges 12 delinquent debts, including judgments, collection accounts, medical accounts, and charged-off accounts, which total approximately \$36,000. (GX 4) The amended SOR also alleges that Applicant filed for Chapter 13 bankruptcy in 2015. (GX 5-8)

After leaving the military, Applicant sought employment in the civilian sector. He was unemployed from October 2010 until July 2011. (GX 2). He also experienced unemployment in 2007 and 2005. He has worked as a contractor for various government agencies. (AX C) However, due to lay-offs and company downsizing, he found himself without sufficient funds to pay all bills during several periods of time. He prioritized and paid other bills. In 2013 and 2014, he contacted creditors and arranged payment plans, but when he became unemployed again, he could not maintain the payment arrangement. He submitted the letters that he wrote to each creditor. Applicant obtained the services of a private debt verification firm to help him dispute or validate individual debts.

As to SOR 1.a (\$11,893) for vehicle repossession, Applicant paid the car note for four years. He asked the company if he could refinance it, but he was rejected. (Tr.64) The car was taken by the company in 2014. Applicant attempted to settle the amount, but it is now included in the Chapter 13 bankruptcy. It is not clear if the car was sold.

As to SOR 1.b (\$10,543) for a charged-off account, this was the result of a vehicle that Applicant purchased in 2005 and made payments until 2009. At that time,

he was unemployed and had no income. (Tr. 71) The company sold the car in 2009. Applicant tried to negotiate with them on the \$10,543 deficiency balance, but he failed. This account is included in the Chapter 13 bankruptcy.

As to SOR 1.c (\$974), this was the result of an issue arising from an apartment complex where Applicant and his fiancée lived for four years. He had many problems with the condition of the apartment and he wrote to the manager many times. They encountered ceiling leaks, flooding and wet carpet. (Tr. 74) This affected his two young children in the apartment. Applicant produced a letter that he wrote as a formal complaint. His fiancée also wrote and explained the problems. Applicant advised that his family would move. At that point, he was on a month-to-month lease. They were processed out after an inspection. The complex still had the security deposit. They later found out that the complex charged them for various items in the apartment. This is now included in the Chapter 13 bankruptcy.

As to the other remaining SOR debts, Applicant paid the following: SOR 1.d, a medical account in the amount of \$393; SOR 1.h, a cable account in the amount of \$960; SOR 1.i, a vet bill for \$218; SOR 1.j, a consumer account in the amount of \$1,357; SOR 1.k, a parking ticket in the amount of \$100, and SOR 1.l, a phone account in the amount of \$1,018. He produced his bank transactions to prove his assertions. (AX M)

In 2007, Applicant purchased a condominium. He and his fiancée both had incomes, and they paid the mortgage. However they both lost their jobs about the same time, and they also had their first child. (Tr. 59) The 2009 judgment in SOR 1.e (\$1,525) arose from a dispute about a security system that was left in the home. The home went to foreclosure due to more unemployment. Applicant could not sell the house and he left the home. He could not retrieve the security system. He made arrangements to arrange a payment plan, but they would not accept the plan. This judgment debt is now included in the Chapter 13 bankruptcy. (Tr. 83, 84)

As to SOR 1.f, a 2009 judgment in the amount of \$5,831, this is the result of homeowner fees that Applicant could not pay on the home that was foreclosed. Applicant contacted them and did a promissory note. After agreeing to pay \$50 per month, he again became unemployed. He has contacted them several times, but they have not responded. (Tr. 88) This judgment debt is included in the Chapter 13 bankruptcy.

As to SOR 1.g, a collection account in the amount of \$1,502 this alleged debt was the result of Applicant using a corporate credit card to pay his rent in 2008 when he did not have sufficient money. He told the credit company what happened and his intent was to pay it back. He forgot about it and does not know whether he ever paid it. When he contacted the credit card system, they could not find it in the system. (Tr. 90) This account is now included in the Chapter 13 bankruptcy.

Applicant consulted a bankruptcy attorney and was advised to file for bankruptcy. After learning the difference between Chapter 7 and Chapter 13, Applicant elected to

file for Chapter 13 so that he could pay his creditors. (GX 5 ) He spoke to his security manager at work and his supervisor. (Tr. 68) Although, he was reluctant to consider bankruptcy, he was advised it was the best option for him. The term of the bankruptcy is three years. He has made the required consistent payments for ten months. The term of the Chapter 13 bankruptcy expires in 2019. He provided documentation that he pays \$200 a month for the first half of the bankruptcy and the second half \$600 a month.

Applicant's annual salary is about \$88,000. His fiancée works part-time from home for an hourly rate. He has a savings account. He has a budget that he uses each month and is current with his daily bills. He has a net monthly remainder. He is current on his car payment and daily expenses. (AX J) He received financial counseling. He is also paying on certain student loans and others are deferred. (Tr. 107) (AX K )

Applicant submitted many letters of reference which attest to his character and reliability. One airman who has known him for 14 years read the SOR and does not believe it is reflective of a poor character or irresponsible person. (AX S) He believes that this debt has been a set of unfortunate events and family hardship. He trusts Applicant and recommends him for a security clearance.

During his time in the military Applicant received many awards and medals for his active duty in several operations abroad. He also has many certifications that he has earned for his work. (AX Q) He submitted performance evaluations which reflect that he consistently acts with the highest ethical standards. His overall rating is "frequently exceeds" standards. (AX D)

## **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.

## **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

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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.*

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 sufficient evidence to show that Applicant accrued delinquent debts and filed for Chapter 13 bankruptcy in 2015. The Government produced credible evidence to establish the debts. 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.

After leaving the military, Applicant was unemployed for various periods of time. He suffered many challenges while attempting to provide for his family. His initial financial difficulties began in 2007-2008, and each time he addressed his difficulties, another event occurred. He had circumstances that caused him financial difficulty. He took care of basic expenses. He did not ignore his creditors. He obtained the services of a consolidation program. He paid some smaller debts. He was credible and candid at the hearing. He successfully disputed certain accounts. He has shown a commitment to resolving his debts. Under professional advisement, he is using Chapter 13 bankruptcy to resolve his debts. This is a legitimate means of addressing delinquent debt. AG ¶ 20 (b), (c), (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.

Applicant is 36 years old and served in the military. He disclosed details of his discharge on his security clearance application. He disclosed his debts in his 2012 application. He was unemployed several times. He never ignored creditors. He took steps to contact creditors and make payment plans. He has two children and supports them. He continued to go to school after receiving his AA degree, so that he could improve job opportunities. He has prioritized his debts. He takes responsibility for what he owes. He paid some smaller SOR debts, as well as some non-SOR debts. He was credible and candid in his assurances that he has been addressing his delinquent debts. He has paid, resolved, settled, or made payment arrangements for non-SOR debts as well as SOR debts. He provided documentation of his payments and other evidence of payment arrangements.

Applicant established that he has taken sufficient actions to reasonably and responsibly within his limited finances to resolve delinquent debts. Applicant has shown that he can responsibly manage his financial obligation. He continues to resolve other debts. He was organized at the hearing. Although reluctant to do so at first, he followed professional advice and filed for Chapter 13 bankruptcy. He is making his payments. He elected not to file Chapter 7 relief. Overall, the record evidence leaves me without questions and doubts as to his judgment, trustworthiness, reliability, and eligibility for his security clearance. I conclude that Applicant has presented sufficient evidence of mitigation of his financial considerations security concern.

### **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.m:	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