



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



In the matter of:

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) ISCR Case No. 15-02085  
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Applicant for Security Clearance

**Appearances**

For Government: Andrea Corrales, Esq., Department Counsel

For Applicant: *Pro se*

08/17/2016  
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**Decision**  
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LYNCH, Noreen A., Administrative Judge:

On October 10, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The action was taken under Executive Order 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 review based on the written record in lieu of a hearing. The case was assigned to me on August 11, 2016. Department Counsel submitted a File of Relevant material (FORM), dated February 2, 2016.<sup>1</sup> Applicant received the FORM on February 9, 2016. Applicant timely responded

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

to the FORM. 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 denied the SOR allegations under Guideline F (1.a and 1.b), and he provided explanations. Applicant denied the falsification allegation under Guideline E. (Item 2)

Applicant is 69 years old. He is married. He served in the United States Air Force (USAF) from 1968 until 1993 on active duty and received an honorable discharge. Applicant completed his most recent security clearance application in 2014 and has been employed as a federal contractor since 2004. He has held a security clearance for many years. He has worked all over the world (120 days or more) for his employers. (Item 3)

The SOR alleges two delinquent debts, including a charged-off account in the amount of \$22,236 (creditor 1.a), and a charged-off account in the amount of \$10,051 (creditor 1.b) (GX 4-6) The approximate total for the delinquent debts is \$32,000. Applicant cites his financial difficulties to major illness. In February 2010, he had triple-bypass surgery and developed throat cancer in August 2011. During that time, Applicant and his wife fell behind on some bills. Also, Applicant was terminated from his employment when he alerted the company about his cancer. He had the following periods of unemployment: February 2011-May 2011; January 2012-March 2012; August 2013-September 2013; and December 2013-January 2014.

As to SOR allegation 1.a an account in the amount of \$22,236 for a boat that Applicant purchased about seven years ago, he purchased a warranty plan. He paid on the boat for seven years, but he fell behind in payments when he was terminated in 2011. He paid monthly (\$372) on the boat until 2011. Applicant asked the bank about a hardship program, but he was refused. The boat was repossessed and Applicant paid all interest charges. The warranty plan did not cover the situation. Applicant tried to get much of his own expensive equipment from the boat, but was not allowed. The bank auctioned the boat, but claimed that Applicant still owed \$22,000. He never received any notice about an amount that he owed. He believes he was the victim of the bank, and disputes the delinquency balance. (Response to FORM) A credit report shows a Key Bank account that has been paid as agreed, account current, account paid. (Item 6)

As to SOR allegation 1.b, an account in the amount of \$10.051 for a credit card used for remodeling, Applicant's wife had a payment plan with the bank. The balance is zero. The account was paid in 2015. Applicant provided documentation to support his assertion. (AX A) His credit report also confirms that the account has been paid. (Item 4)

It is noteworthy that the three different credit bureau reports in the record show that over the years all accounts have been paid as agreed. There are no repossessions listed and a few 30, 60, or 90 day delinquencies. (Items 4-7)

Applicant responded that in regard to intentionally falsifying his 2014 security clearance application by not listing any debts under Section 26: Financial Record, he was working out of the country, and had no records with him. He was given three days to complete the form. He believed the Key Bank was not an issue. He did not have any credit records with him and knew his wife was handling financial matters with his income. (Response to FORM)

The report of investigation, dated May 2014, confirms Applicant's explanation about the omission of debts. (Item 7) He assumed the Key Bank was settled, and he never heard any more from the bank. (Item 7)

Applicant reported his 2014 income as \$4,300 a month. He has a surplus, which he saves. He has paid his bills all his life. The circumstances beyond his control with illness and unemployment created his financial problems.

### **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 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 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 E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information.

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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.*

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following condition is relevant here.

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

In this case, AG ¶ 16 (a) does not apply. Applicant answered his 2014 security clearance application to the best of his ability. He was in a rush and out of the country. He had no credit records with him. When interviewed, he told the investigator that he believed the allegation in SOR 1.a was settled. He did not realize the other account was an issue. He knew that this was in a payment plan. He discussed this with the investigator, as reflected in the 2014 report. He denied that his answer was a falsity. He was candid with the investigator. I do not find that he intentionally falsified his 2014 security clearance application. This disqualifying condition was not established.

## **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.

The Government produced credible evidence that Applicant had two delinquent accounts on his credit report. 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.

Applicant provided documentation to show that he has resolved his debts. He paid his accounts all his life. The issue in SOR 1.b is settled. 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) is applicable.

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) applies. Applicant's medical condition, surgery, and other medical expenses were beyond his control. He was terminated in 2011 when he told his employer about his cancer. He experienced other unemployment. He paid his bills as long as he could, made a repayment plan, and asked for help in terms of a hardship program, but was refused. I believe he acted responsibly.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has application. He provided documentation that he has resolved his debts or has the means to do so. There is no information that he has received financial counseling. 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), however, does 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 69 years old. He has held a security clearance for many years. He has served in the military. He became very ill and needed surgery on two separate occasions. He lost his employment. He has served his country in the military for over 20 years and worked for contractors all over the world. There is nothing in the record concerning any criminal behavior. He has worked hard for many years. I have no doubts that there are clear indications that his financial problems have been resolved. He has mitigated the security concerns under the financial considerations guideline.

I do not find that Applicant intentionally falsified his security clearance application. Applicant omitted information about his finances in his responses to Section 26. However, he detailed information about his debts in a follow-up investigation. His explanation that he had only a few days to complete the form and was out of the country with no records is credible. He also believed the two allegations were not at issue.

Applicant has provided sufficient information to establish mitigation under the financial considerations guideline. Security concerns under the personal conduct guideline were not established.

### **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:

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|---------------------------|---------------|
| Paragraph 1, Guideline F: | FOR APPLICANT |
| Subparagraphs 1.a-.b:     | For Applicant |
| Paragraph 2, Guideline E: | FOR APPLICANT |
| Subparagraph 2.a:         | 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