



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



In the matter of: )  
)  
) ISCR Case No. 15-03434  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: John O. Iweanoge, II, Esq.

11/14/2016

**Decision**

LYNCH, Noreen A., Administrative Judge:

On November 13, 2015, 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 Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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 June 6, 2016. A notice of hearing was issued on July 15, 2016, scheduling the hearing for September 30, 2016. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified, and submitted Applicant Exhibits (AX) A-M at the hearing, which were entered into the record without objection. At Applicant's request I kept the record open until November 4, 2016, so that he could supplement the record. The transcript was received on October 11, 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 SOR allegations under Guideline F and provided an explanation for the debts at issue.

Applicant is 40 years old. He has been married for 12 years and has two sons. He served in the U.S. military from 1998 to 2005 on active reserve. He received an honorable discharge. (AX B) While in the military, he obtained a security clearance. He has been employed as a systems administrator since 2010. (Tr. 32) He obtained his undergraduate degree in May 2003. (AX M) He completed a security clearance application in 2013. (GX 1) He also worked as a real estate agent for a period of time.

The SOR alleges three delinquent debts for an approximate total of \$35,000. Included in the delinquent debts are two collection accounts and a balance due on a repossession of a truck for \$17,965.

Applicant denied the three delinquent debts, based on the actions that he has taken to resolve them, and explained that he addressed other non-SOR debts, such as a student loan. His 2016 credit bureau report shows multiple accounts that reflect "pays as agreed." He also presented documentation from a 2008 credit account to the same creditor as 1.b, that has been paid. (AX D)

Applicant emphasized that his financial problems began in 2008, when he was underemployed and the economy was "stagnant." He had part-time employment as a real estate agent and the real estate market was faltering. He earned about \$40,000 a year, but he could not maintain payment on his bills. In addition, he started a trucking business with a friend. The business closed in two years due to lack of profit. (AX A)

As to SOR allegation 1.a, a collection account in the amount of \$11,165, is for a credit card. In 2008, Applicant missed several payments due to his lack of funds. He had some temporary employment, but still could not make the payments. When he became gainfully employed in 2009, he established a payment plan with the collection agency. (AX H) He has paid \$125 monthly, which is directly debited from his account since 2009. (Tr. 37) The current balance is \$6,440. (AX C) He anticipates that the account will be paid in full by the end of next year.

As to SOR allegation 1.b, in the amount of \$5,954 for a collection account that was the result of a car loan when Applicant was unemployed, he claims that this account was paid in full in 2010 or 2011. (AX I) He based this on his credit report which shows the account is paid and closed. (AX B) He stated that there was a deficiency balance that his deceased father-in-law paid. (Tr. 63)

As to SOR allegation 1.c, a voluntary truck repossession charged-off account in the amount of \$17,965. As mentioned, Applicant and a partner started a truck leasing business in 2008. (Tr. 40) The business closed in 2010 and the truck was returned to the dealership. The company agreed to auction the truck and if any amount was owed, it would be the responsibility of Applicant. (Tr. 43) Applicant recalled receiving a 1099 form. He has not received any letter from the company. (Tr. 75) He stated that he has

not received any letter concerning any deficiency that he owes. He stated that if he does owe any money, he will pay the amount.

Applicant's annual salary is \$94,000. He has a savings account. After household expenses, he has a net monthly remainder of \$1,700. He has a savings account. He received financial counseling (AX F) He has no current delinquent debt. His wife is now working and contributes to the household expenses. (AX K, L) He uses a budget.

Applicant submitted seven letters of recommendation all of which attest to his good character, trustworthiness, and good judgment. (AX A) His awards and certificates from his military and civilian life were submitted in AX N.

## **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>1</sup> The burden of proof is something less than a preponderance of evidence. <sup>2</sup> The ultimate burden of persuasion is on the applicant. <sup>3</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship

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<sup>1</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>2</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>3</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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>4</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>5</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>6</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**

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 incurred delinquent debt from collection accounts, and a voluntary truck repossession. 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 her and mitigate security concerns.

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<sup>4</sup> See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>5</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>6</sup> *Id.*

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." Applicant's financial difficulties occurred in the past nine years. 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) does not fully apply.

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 was unemployed or underemployed for long periods of time. He paid other debts that were not on the SOR. When he became gainfully employed in 2010, he began paying his delinquent debts. There were other circumstances beyond his control when the trucking business failed. Applicant has not ignored creditors, but has resolved delinquent debts. He is still in a repayment plan for the debt in 1.a.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has application. Applicant obtained financial counseling. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem) and there are clear indications that the problem is being resolved, or is under control) also 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 40 years old. He has been with his current employer since 2010. He is married and has two children. He has held a security clearance without incident for years. he served in the U.S. military for many years, receiving an honorable discharge. He submitted excellent character references. He could not foresee the unemployment or failure of the trucking business. He has provided for his family and paid the bills that were possible to pay.

Applicant presented a track record of payments and progress. Applicant presented sufficient information to carry his burden of proof in this case. He has mitigated the 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.c	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