



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



In the matter of:

Applicant for Security Clearance

)  
)  
)  
)  
)  
)  
)

ISCR Case No. 15-05732

**Appearances**

For Government: Charles C. Hale, Esq., Department Counsel  
For Applicant: *Pro se*

---

**Decision**

---

LYNCH, Noreen A., Administrative Judge:

On August 9, 2016, 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.<sup>1</sup>

Applicant timely answered the SOR and requested an administrative determination. Department Counsel submitted a File of Relevant Material (FORM)

---

<sup>1</sup>In this case, the SOR was issued under Adjudicative Guidelines effective within the Defense Department on September 1, 2006. Revised Adjudicative Guidelines were issued on December 10, 2016, and became effective on June 8, 2017. My decision and formal findings under the revised Guideline F would not be different under the 2006 Guidelines.

dated September 22, 2016.<sup>2</sup> Applicant received the FORM on October 3, 2016. He did not submit a response to the FORM. The case was assigned to me on August 8, 2017. Based on a review of the case file, submissions, and exhibits, eligibility for access to classified information is granted.

### **Findings of Fact**

In his answer to the SOR, Applicant denied the sole allegation in the SOR under Guideline F, with explanations. His denial was based on the fact that he does not legally owe the debt. (Item 2)

Applicant is 38 years old. In 2006, he earned a master's degree. He has no military service. He was married but separated from his wife in 2013. He has one daughter. He has worked for his current employer, as a quality systems engineer, since 2012. He completed his security clearance application (SCA) in 2014. (Item 3)

The SOR alleges that Applicant is indebted on a charged-off account in the approximate amount of \$36,374. (Item 1) In his answer, he denied the debt. He claims that he does not legally owe the amount. The amount is tied to a foreclosure of a rental property. (Item 2)

Applicant purchased a \$200,000 home in 2006. A non-judicial foreclosure was recorded on October 5, 2011. The property was sold in 2012 for \$69,100. Since there were two mortgages on the property, the first mortgage after the sale of the home was satisfied. The home equity loan was not satisfied.

In his 2015 investigative interview, Applicant stated that as of 2007 the property was a rental property owned by Applicant and his wife. He listed a different home address on his SCA for the 2007-2011 time frame. He explained that during a temporary separation of two months in 2011, he could not afford the mortgage payment. He acknowledged that he fell behind in the mortgage payments. He stated that he tried to sell the rental property. In his SCA, Applicant answered that he "had a foreclosure on a rental property." He further explained that in 2011 the financial issue began and stated that the bank wanted Applicant to "catch up" or pay the full amount. He stated that due to the marital situation he could not make payments. He stated that he offered to do a short sale. There is no information in the record concerning the amount of the monthly mortgage payment or Applicant's earnings. (Item 4)

The 2014 credit bureau report lists the charged-off account alleged in the SOR as a collection account (home equity loan) in the amount of \$36,374, with a reported delinquency in 2012. All other accounts listed in the credit bureau report are current and state "pays as agreed." The 2015 credit bureau report also lists the charged-off account with a balance of \$36,374. (Items 5 and 6)

---

<sup>2</sup>The Government submitted six items for the record.

A memorandum from a law firm, dated August 19, 2016, advised Applicant that he should dispute the amount listed on the credit bureau report and that under his state anti-deficiency statute any deficiency remaining after a foreclosure is extinguished. (Item 2) The debt was resolved in 2012. The memorandum from the law firm explained in great detail why Applicant did not legally owe the debt, which was tied to the foreclosure and quoted in detail the state anti-deficiency statute. Applicant acted upon the legal advice.

## **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(a), 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 national security eligibility will be resolved in favor of the 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>3</sup> The burden of proof is something less than a preponderance of evidence. <sup>4</sup> The ultimate burden of persuasion is on the applicant. <sup>5</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

---

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

<sup>4</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

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

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>6</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>7</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>8</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 to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgement, or unwillingness to abide by rules and regulations, all of which can raise questions about an individuals’ reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus be a possible indicator of, other issues of personnel security concerns such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at a greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The Government provided credible evidence that Applicant had a charged-off account in the amount of \$36,374. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability to satisfy debts) and AG ¶ 19(b) (unwillingness to satisfy debts regardless of the ability to do so) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

---

<sup>6</sup> See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

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

<sup>8</sup> *Id.*

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) applies. The unique circumstances that occurred were due to a marital separation and have been resolved years ago. In addition, (FC MC) AG ¶ 20(b) (the conditions that resulted in the financial problem were largely beyond the person's control) apply due to a marital separation, and there is sufficient information in the record concerning the legal advice concerning Applicant's desire to do a short sale and that he acted responsibly. From the record it appears that Applicant was behind in his payments before the separation. He also stated that since 2007, the property was a rental. Applicant's reliance on the state-anti-deficiency statute in this case is sufficient. He tried to resolve the financial issue but the home went to foreclosure. He submitted a legal memorandum explaining in detail the entire situation and how the debt was resolved in 2012. His credit reports reflect that he timely pays his other financial obligations.

### **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(d):

(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 38 years old. He has worked for his current employer since 2014. He is separated and has one daughter. There is no information in the record about his employment or his financial earnings. As of 2007, the property was a rental. In this case, there is a state anti-deficiency statute, which supports the fact that the debt was resolved years ago and that Applicant acted responsibly. He has met his burden of proof in this case.

### **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

Subparagraph 1.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.

---

NOREEN A. LYNCH  
Administrative Judge