



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



In the matter of:

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) ISCR Case No. 15-07578  
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Applicant for Security Clearance

**Appearances**

For Government: Benjamin Dorsey, Esq., Department Counsel

For Applicant: *Pro se*

04/27/2017  
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**Decision**  
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LYNCH, Noreen A., Administrative Judge:

On April 29, 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.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on December 2, 2016. A hearing was scheduled for March 9, 2017, but was postponed for good cause. A notice of hearing, dated February 3, 2017, was issued, scheduling the case for April 6, 2017. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified and submitted Applicant Exhibits (AX) A-G, which were admitted without objection. The transcript was received on April 14, 2017. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

## **Findings of Fact**

In his answer to the SOR, Applicant admitted one allegation and disputed the others in the SOR under Guideline F, with explanations for each item.

Applicant is 54 years old. He is single and has three children. He graduated from high school in 1981. He works as a driver contractor and he has been employed by his current employer for about six years. However, he worked in the defense field for about 10 years before he was unemployed. Applicant was unemployed in 2007 and 2008. Applicant has held a security clearance since 1998. He completed his security clearance application in 2014. (GX 1)

In his 2014 security clearance application, Applicant disclosed several accounts that were delinquent and stated that as a result of unemployment, he could not maintain his expenses and he incurred delinquent debt. In addition, he explained that he purchased a home in 2001 or 2002 with his fiancée. They each had an income and both paid the household bills. When she left in 2004, Applicant could not maintain the mortgage and all the expenses. A child was born in 2005. He began to use credit cards when he was unemployed for almost two years in 2007-2009. He used savings to help pay bills and he took any part-time job that he could find. (Tr. 33) The jobs were sporadic and low paying ones. He pays child support for his three children. Applicant stated that he has paid consistently about \$700 a month since they were born. He sees them on weekends. (Tr. 46) He also provides for their clothing and food when they visit and receives no money from the mother. The child support is automatically deducted from his pay. (Tr. 90)

Applicant sought counseling with a debt consolidation company in 2011. (AX F) He learned that he could not afford the fee that the company charged. (Tr. 57) He did not contact the creditors himself, because he acknowledged that he needed assistance and did not know what to do.

The SOR alleges 14 delinquent debts totaling approximately \$17,000. They include collection accounts, a charged-off account, two judgments, and medical accounts.

As to SOR allegation 1.a, for a collection account in the amount of \$4,061, Applicant disputed the amount. He did not know the origin of the account, but he has not contacted the creditor to investigate the account. (Tr. 54) In his OPM interview, he stated that when he learned who to pay, he would do so when he had the money. (GX 2)

As to SOR allegation 1.b, for a collection account in the amount of \$1,685, Applicant submitted documentation that the circuit court dismissed the case in 2015. (AX D)

As to SOR debt 1.c, for a collection account in the amount of \$1,402, Applicant believed the account was paid but he did not have any documentation to support the claim. He thought that he had already submitted something. He relied on his credit report, which noted that the account was open. (AX C) He also submitted a chart that he compiled with check numbers and the various accounts in the SOR and the amount that was last paid. (AX E) At the hearing, he testified that he was not sure if the account was paid. (Tr. 65) He has not contacted the creditor recently.

As to SOR allegation 1.d, for a charged-off account in the amount of \$1,401, Applicant believed that this account should have been removed from his credit report. He explained that his belief was if an account was charged off, it would be removed from his credit report. He was credible when he stated he believed that was how the process worked and admitted that he had not paid the account. He was intent on trying to get the account removed from the report. (Tr. 66) He had been paying \$50 monthly on this account in the years before 2010, but could not continue to make the payments. Applicant acknowledged that he has not contacted them recently to investigate the issue. (Tr. 68) He stated that he had called the creditors a while ago.

As to SOR allegation 1.e, for a collection account in the amount of \$1,155, Applicant thought it was the same account as listed in SOR 1. a. He has not contacted the creditor or filed a formal dispute. (Tr. 69)

As to SOR allegation 1.f, for an account that has been charged off in the amount of \$853, Applicant initially stated that he knew it was charged off. It appears from documentation that Applicant submitted that he made a payment of \$125 in July 2011. He has not made any payments since that time. (Tr. 76)

As to SOR allegation 1.g, for a medical account in the amount of \$186, Applicant did not know the origin of the account. He has not contacted the credit reporting company to dispute the debt formally. (Tr. 77)

As to SOR allegation 1.h, Applicant disputed the account in the amount of \$152 because he paid the cable account. He stated that it was his mother's account and it was paid in 2013, but had no documentation. It is possible that since the latest credit report in evidence was one from 2015, that it had not been clarified on the report.

As to SOR allegation 1.i, Applicant satisfied the 2013 judgment in the amount of \$3,200 in 2013. This was the result of a vehicle that a friend purchased and gave Applicant the title. He paid the car insurance and the vehicle was registered in his name. However, his friend wanted the car back and Applicant removed the tags. The friend refused to retrieve the car and when he kept the car on his property he received a warrant and went to court. (AX A, B, G)

As to SOR allegation 1.j, for a 2015 judgment in the amount of \$729, Applicant admitted that he owed the money for this account, which was the result of a time share fee. He contacted them about a month ago and is arranging a plan. (Tr. 79) He has not yet made any payments. (Tr. 79)

AS to SOR allegation 1.k, an account that was charged off in the amount of \$2,350, Applicant stated that the account should not be listed on his credit report. He made monthly payments of \$140 on this account until 2013. He has not contacted the creditor recently. (Tr. 80)

As to SOR allegation 1.l, a medical account in the amount of \$404, Applicant stated that he was not familiar with the account. In his 2015 interview with the OPM investigator, he stated that he did not have medical insurance. (GX 2) At the hearing, he stated that he intends to contact them, and also dispute the bill in a formal manner. (Tr. 82)

As to SOR allegation 1.m, a collection account in the amount of \$132, Applicant stated that he was not familiar with the account. He has not tried to investigate the matter.

As to SOR allegation 1.n, a collection account in the amount of \$55 for a parking ticket, Applicant did not have documentation that it was paid, but he knew it was because the cancelled check he provided to the U.S. Treasury was for tags in 2014. He would not have been able to get his tags and registration if there were an outstanding ticket. (Tr. 85)

Applicant was credible when he explained that he was trying to do the right thing and prioritized the bills. He had to keep his house and provide for his children. When asked what his plan was to resolve debts, he stated that he would have to choose one account at a time, because he does not have the extra money. (Tr. 76) He has no other delinquent debts. He has paid his taxes. He took money from his 401(k) in the amount of about \$6,000 to help pay debts and then he had to deal with the early from the withdrawal of money from the 401(k). (Tr. 90)

Applicant's employment position is stable. His annual salary is about \$32,000. (Tr. 43) Applicant is current with all his expenses. He has recently taken a roommate to help with expenses. She contributes about \$800 to \$1,200 a month. (Tr. 44) He used his retirement savings to pay bills. (Tr. 47)

Applicant submitted his 2014 credit report, which shows some accounts that are paid as agreed and not in collection. (AX C)

### **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 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.

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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).

<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.*

## **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.

Applicant admitted to one delinquent debt and disputed others. The Government provided credible evidence to establish the debts. 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.

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) partially applies. The financial distress began when Applicant's fiancée left the home they purchased in 2002 and he was left with one income to pay bills and support his children. He was not earning a lot of money and then he was unemployed for a period of time. He obtained sporadic part time low paying jobs and was unemployed again in 2007-2008. He still has unresolved debt.

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. As noted above, Applicant's financial difficulties began as described. He attempted to contact a debt consolidation company, but could not afford the fees. He paid monthly on some of the accounts before 2013. A judgment was satisfied. I believe he did his best, but he has not lately contacted any creditors to investigate the issues. He could have been more proactive. This partially applies.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has limited application. Applicant tried to pay some accounts, but did not have any extra money. He used his savings and retirement funds to pay some bills. However, in recent years, he has not formally disputed the accounts or made recent attempts to resolve. He has a plan to pay when he can afford to pay, one account at a time. However, he does not appear to have the ability to do so. 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) does not 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 54 years old. He has worked for his current employer for about six years. He has held a security clearance for many years. He purchased a home and has maintained the mortgage. He supports three children through child support payments. He was unemployed on several occasions and has fallen behind with his bills. He lost an income from his fiancée which caused more financial difficulty. Applicant worked hard to find employment, even though it was sporadic and low paying. He attempted to join a debt consolidation company, but he could not afford the fees. He did have documentation that he made payments before 2013 on certain accounts. One judgment was satisfied.

Applicant has shown good intentions. He did not present sufficient mitigation in this case to meet his burden. He has a plan for the future but cannot implement it now. Any doubts must be resolved in favor of the Government. Applicant failed to meet his burden in this case. He did not mitigate 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 :                      AGAINST APPLICANT

Subparagraphs 1.a-1.n:                      Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

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NOREEN A. LYNCH  
Administrative Judge