



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



In the matter of:	)	
	)	
	)	
	)	ISCR Case No.16-01329
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Michelle Tilford, Esq. Department Counsel  
For Applicant: *Pro se*

12/12/2017

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**Decision**

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LYNCH, Noreen, A., Administrative Judge:

On October 29, 2016, The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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. Revised Adjudicative Guidelines were issued on December 10, 2016, and became effective on June 8, 2017.<sup>1</sup>

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on July 20, 2017. The hearing was scheduled for October 26, 2017, but

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<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 became effective June 8, 2017. My decision and formal findings under the revised Guideline F would not be different under the 2006 Guidelines.

was rescheduled and held on November 16, 2017. Government Exhibits (GX) 1-5 were admitted into evidence without objection. Applicant testified and submitted Applicant Exhibits (AX) A-D. I kept the record open until November 30, 2017, and Applicant presented more documentation, which was marked AX E, and entered into the record. The transcript was received on December 1, 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 denied the allegations at SOR ¶¶ 1.g-j and 1.m-q. He admitted the other allegations. At the hearing, the Government withdrew the SOR allegation under Guideline E at ¶ 2.a. He provided explanations with his responses.

Applicant is a 34-year-old employee of a defense contractor. He is married and has two children. He graduated from high school in 2001, and obtained an associate's degree in 2010. He has been with his current employer since 2015. He completed his security clearance application (SCA) in February 2015. He has not previously held a security clearance. (GX 1)

### **Financial Considerations**

The SOR alleges that Applicant has 17 delinquent debts, which total approximately \$48,000. The delinquent debts include student loans, collection accounts, and medical accounts.

Applicant's answer provided reasons for the delinquent accounts. He acknowledged that his money management was poor. He also stated that he had some short unemployment in 2011 and that did not help. (Tr. 40) He stated that his student loans were in deferment and he did not know that he had to make payments. (Tr. 31) He claims that he accepted responsibility and consolidated them. He believes the total amount is \$41,000. (Tr. 32) He presented a document from 2015 that showed a payment was made for \$75.00. (AX D)

Applicant disclosed on his security clearance application that he had a debt consolidation plan with accounts totaling \$4,000. He provided an exhibit (AX A) with a company that listed five older accounts (2013). It was not clear from the documentation that various payments of \$120.75 made in 2015 addressed the entire debt. The sheet attached to the exhibit showed a beginning balance of \$1,633 and debt remaining in the amount of \$1,261. It was also not clear from Applicant's testimony which accounts were represented or whether the ones listed in the plan are the same accounts listed in the SOR. He stated that the debts in SOR except for the student loans are addressed.

As to the student loans listed as SOR allegations 1.a-1.f and 1.k, totaling about \$41,000, Applicant did not submit any information on a deferment status. He provided the August 2015 default notice on the student loans, and attached a bank statement that showed one \$75 payment. He was given time to provide a post-hearing submission

regarding the student loans, but he did not provide any information. At the hearing, he stated that he was in the process of trying to resolve them. (Tr. 32)

As to SOR 1.g, a medical account in collection for \$1,071, Applicant provided a letter verifying that a payment was made for the full amount in April 2017, and the account was closed. (AX C) He believes the medical account for \$82 in SOR 1.o is included in this account. (Tr. 61)

The debt alleged in SOR 1.h was settled for \$500, and was paid on April 15, 2017. (AX E)

As to SOR allegations 1.i, 1.n, and 1.p, for a communications account, he paid \$260.86 to settle the accounts. (AX E)

The SOR allegation 1.j for a mobile account in the amount of \$495, was settled for \$405.66 in November 2017. (AX E)

As to SOR 1.q the charged-off account for the vehicle repossession, Applicant provided documentation that the account was satisfied in 2015 as a settled charge off for \$1,071, and the rest of the debt was cancelled. (AX B)

Applicant obtained the services of Lexington Law at some point and presented information from his bank sheet that he paid them \$119.95 monthly for a period of time. It is not clear which accounts the firm was trying to resolve. (AX E) He noted on his security clearance application that his wages had been garnished for something to do with an apartment complex for \$3,700. (GX 1)

Applicant's current salary is about \$70,000. He did not present a budget or state that he had financial counseling. He is working with another government agency. He stated that he had an application and investigation already and is waiting to hear about a security clearance with them. He was not sure if the same financial issues had been the subject of the investigation. He had not received a security clearance affirmation at the time of his post-hearing submissions.

### **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( d) requires that “[a]ny doubt concerning personnel being considered for national security eligibility 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 EO 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.

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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.*

## Analysis

### Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially over-extended 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.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

The Government produced credible evidence to establish the delinquent debts and the student loan accounts. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a), 19(b), 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service; and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has had ongoing financial problems. He disclosed garnishments on his SCA. Applicant has recently paid smaller debts and settled some accounts. He appears to have done so after the issuance of the SOR. He did have a consolidation plan for older accounts, but it is not clear what the balance is for those accounts. He has not presented sufficient information to mitigate security concerns. MC AG ¶¶ 20 (a), (b), (c), and (d) do not apply. He has not met his burden to alleviate the security concerns under the financial considerations guideline.

### **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 34 years old. He is married and has two children. He has no criminal record. He is working two jobs. He has a history of delinquent debts. He reported some unemployment, but was not proactive with resolving debts or student loans. He did not provide documentation about his student deferments after the hearing. He has not provided sufficient evidence that he has acted responsibly in rectifying his financial situation.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the record evidence in the context of the whole person, I conclude that Applicant has not carried his burden. It is clearly not consistent with the national interest to grant him eligibility for access to classified information.

**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.f:	Against Applicant
Subparagraphs 1.g-1.j:	For Applicant
Subparagraphs 1.k-1.m:	Against Applicant
Subparagraphs 1.n-1.q:	For Applicant
Paragraph 2, Guideline E:	Withdrawn

**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