



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



In the matter of:	)	
	)	
	)	
	)	ISCR Case No.16-01789
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel Crowley, Esq. Department Counsel  
For Applicant: *Pro se*

05/29/2018

**Decision**

LYNCH, Noreen, A., Administrative Judge:

The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline F (Financial Considerations). The SOR was dated October 15, 2016. 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 November 9, 2017. A notice of hearing was issued on December 19,

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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.

2017, scheduling the hearing for February 23, 2018. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified, presented one witness and submitted Applicant Exhibits (AX) A-D. I kept the record open until April 4, 2018 for additional documentation. Applicant submitted a packet of documents, which were marked as AX E, and admitted into the record without objection. The transcript was received on March 5, 2018. 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 six allegations in the SOR., which include failure to file and pay federal and state income tax returns. He provided explanations for the allegations under Guideline F (Financial Considerations).

Applicant is a 52-year-old machinist for a defense contractor. He is divorced and has one daughter. He graduated from high school in 1984 and attended college, but did not obtain a degree. He worked as a civilian for the U.S. Navy in high school and traveled to various locations. (Tr. 14) He has worked as a contractor since 2015. Applicant completed his first security clearance application (SCA) in June 2015. (GX 1)

### **Financial Considerations**

The SOR alleges five delinquent accounts. Applicant has paid the following debts: SOR 1.d and 1.g. (AX A and B) He provided documentation at the hearing. He is current with his home mortgage (SOR 1.a). Counsel stipulated that according to the latest credit report, Applicant is correct. As to SOR 1.b, a home equity loan in the amount of \$2,082, Applicant presented post-hearing documentation that he is in a payment plan with the bank. (AX E), and is current. He pays between \$100 and \$175 a month and has been doing so since September 2017. (Tr. 26) As to SOR 1.c, a past-due amount of \$152 on a car loan. Applicant stated that he made his car loan payment recently.

The remaining SOR allegations concern the following: SOR 1.e, a state tax lien for \$4,761 entered in 2015; SOR 1.f, a Federal tax lien from 2013 in the amount of \$59,114; SOR 1.h, failure to file Federal tax returns, as required, for tax years 2007 through 2014; SOR 1.i, failure to file state tax returns, as required for tax years 2007 through 2014. Applicant admitted these allegations and presented a letter from his CPA stating that the 2016 and 2017 federal and state tax returns are completed. (AX C).

Applicant's explanation for the delinquent debts include a divorce in 2005, self-employment from 2007 until 2010 with little or no income. In addition, Applicant has many health issues, which he documented. (AX E) Applicant incurred many medical bills, for which he paid about \$8,000. He explained that he sold many large and small personal items to keep paying his daily bills. He believed that because he was not earning much money, he did not have to file tax returns. (Tr. 36, 50)

Applicant maintains that his finances were fine before the divorce in 2005. His wife left the home and Applicant cared for his daughter. When they divorced, Applicant suffered monetary hardships. He lost all of his savings and his retirement fund. (Tr. 53) He has had steady work since 2015. He earns about \$76,000 a year. He also subsidizes his income through a small repair business. (Tr. 41) He submitted a budget as a post-hearing document. His net monthly remainder is about \$148. (AX) E He was proud to note that he sent his daughter to college for two years. (Tr. 42)

Applicant's CPA prepared his 2016 and 2017 Federal and State tax returns. Applicant submitted copies of them post-hearing. It is not clear whether they have been electronically filed. According to the completed tax forms, Applicant will receive a refund of \$1,945 from the state, and a Federal refund of \$6,928. These are for the 2016 tax year. For tax year 2017, Applicant is due a Federal refund of \$5,783 and a state refund of \$1,508. The summary on the front of the forms state that the returns will be electronically filed and the refunds will be deposited into Applicant's account. (AX E) Applicant stated that the 2015 tax returns would be completed next.

As to the federal state tax lien, Applicant disputed the amount and stated that they have him confused with someone else. He called the IRS, but there has been no resolution.

Applicant's witness, a Government supervisor, has known Applicant for ten years. At this time, Applicant does not handle any sensitive information. He is aware of Applicant's financial issues, but recommends him for a security clearance. He described Applicant as a very hard worker, trustworthy, and dependable. (Tr. 61)

### **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 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 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 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

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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.*

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;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required;

The Government produced credible evidence to establish the delinquent debts and the failure to file federal and state tax returns from 2007 to 2014. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a), 19(c) and 19(f).

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; and

(g) the individual has made arrangement with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant had circumstances beyond his control in terms of unemployment, divorce, downturn in economy and many medical issues. He paid the smaller debts and is now current with his home mortgages. He has been working steadily since 2015 and still has some delinquent debt. Applicant provided for his daughter when his wife left and he sent his daughter to college. He could not maintain his expenses. He used his savings and retirement money. He lives frugally. He produced documentation about the debts he has paid. He has received some financial counseling. Mitigating condition AG ¶ 20(b), (c), and (d) apply in part. None of the other mitigating conditions apply.

Applicant incurred financial debt and has not filed his federal and state returns for many years. He has a Federal and state tax lien which he wants to resolve but this has not yet occurred. He did not file his Federal or State taxes for many years. He has recently had his CPA complete the forms for 2016 and 2017. It appears that he will be getting refunds. It is not clear if they have been electronically filed. He has not started on the 2015 tax returns yet. Applicant now has steady employment and earns about \$76,000 a year. However, he has not met his burden to mitigate the financial security concerns in this case.

### **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 52 years old. He was divorced in 2005 and suffered financial hardship. He provided for his daughter. He was self-employed for some years, but did

not make much income. He used his savings and retirement to keep afloat. However, he has been in steady employment since 2015. He has paid smaller debts and is current with his mortgages. He had circumstances beyond his control.

However, as to his failure to file his Federal and state income tax returns for many years and his Federal and state tax liens he has just recently begun to address the issues. He did obtain the services of a CPA and the 2016 and 2017 forms have been completed. It does appear that he will receive refunds. The 2015 tax return will be tackled next. He still has the Federal and state tax liens to address. He is on the right track. He has good intentions and intends to pay all debts and file his returns. Despite promises and good intentions, the issues are not resolved.

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 Applicant has not mitigated the security concerns under Guideline F. Accordingly, I conclude that he has not carried his burden of showing that it is clearly 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.d:	For Applicant
Subparagraph 1.e-f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-l:	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

