



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-05330
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

04/11/2016

**Decision**

LYNCH, Noreen A., Administrative Judge:

On January 29, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The action was taken under Executive Order 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 review based on the written record in lieu of a hearing. The case was assigned to me on March 3, 2016. Department Counsel submitted a File of Relevant material (FORM), dated November 3, 2015.<sup>1</sup> Applicant received the FORM on November 12, 2015. Applicant did not respond

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<sup>1</sup>The Government submitted seven items for the record.

to the FORM. Based on a review of the case file, eligibility for access to classified information is denied.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the SOR allegations under Guideline F (1.a through 1.n), and he provided explanations. Applicant denied the falsification allegation under Guideline E.

Applicant is 30 years old. He is separated from his wife and in the process of divorce. He has two children. He obtained his high school diploma in 2004, and he attends college courses. He served in the United States Marine Corps (USMC) from 2004 until 2013 on active duty and received an honorable discharge. Applicant completed his most recent security clearance application in 2014 and has been employed as a federal contractor since 2013. (GX 1) He has held a security clearance since 2004. (Item 3)

The SOR alleges 14 delinquent debts, including five medical accounts, five collection accounts, and three charged-off accounts. (GX 5-7) The approximate total for the delinquent debts is \$81,000. Applicant cites his financial difficulties to supporting extended family members and his recent marital separation. In 2008, he and his wife took responsibility for his ill mother-in-law, who was unemployed. During that time, Applicant and his wife fell behind on their bills. When he completed his active duty in the USMC, it became more difficult to support the extra family. His priority was to pay housing bills and food expenses. Other bills were delayed.(Item 2)

Applicant did not provide any documentation concerning any payments or payment plans addressing the debts. He and his estranged wife have decided to file for bankruptcy together. He has not provided any details as to when this might occur. He intends to learn from his mistakes.

Applicant responded that in regard to intentionally falsifying his security clearance application by not listing any debts under Section 26: Financial Record, he did not attend to detail. He stated that he had just completed a follow-up investigation to a security upgrade and his debts were detailed on that application. When he completed this application, he just changed addresses and phone numbers. He admits being careless in not checking other areas of the application. When Applicant was interviewed, he discussed this with the investigator and told him that he accidentally overlooked the answer. He states that he had no intention of being dishonest about any information. He spoke with the investigator and was told that a note would be made concerning the omission. He takes responsibility for his lack of attention. (Item 2)

The report of investigation, dated May 2014, confirms Applicant's explanation about the omission of debts. He also responded that he has been working on his debts to get caught up. He voluntarily reported his delinquent debts to the investigator. He also explained that when his mother-in-law came to live with his family, he incurred \$30,000 in medical debts. He has used loans from the Navy Relief Program. Also, in

2012, he was ill and incurred additional medical expenses. He states that he has contacted his creditors and sought credit counseling online through the military. He intends to resolve his debts. (Item 4)

## 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>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

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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).

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 E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following condition is relevant here.

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

In this case, AG ¶ 16 (a) does not apply. Applicant answered his 2014 security clearance application and made required changes, but he was careless. He listed the debts in his followup investigation. He discussed this with the investigator, as reflected in the report. He denied that his answer was a falsity and admitted that he was careless. He was candid that he was careless with the second questionnaire. Some of the accounts he did not know about at the time. I do not find that he intentionally falsified his 2014 security clearance application.

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<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.*

## **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 that he has debts and had delinquencies due to caring for his mother-in-law and medical expenses. After his separation from the military, his financial problems were exacerbated. 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.

Applicant has not provided any documentation to show that he has resolved any debts. He is now thinking about filing for bankruptcy, but no action has thus far been taken. His separation and future divorce also led to indebtedness. However, he has not provided any documentation to show what actions he has taken. He states that caring for his mother-in-law created a large amount of medical debt. He could not pay for his own bills due to her situation. He intends to pay his bills but a promise to pay in the future is not sufficient for mitigation. 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) only receives partial application.

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) partially applies. Applicant's separation, medical condition, and other medical expenses were beyond his control. However, he has not produced documentation that he is resolving his debts or has a plan in place. The filing for bankruptcy is a legitimate means of resolving debt, but he has not yet started the process.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has no application. He has not provided any documentation that he has resolved his debts or has the means to do so. There is information that he has received some financial counseling. 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), however, 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 30 years old. He has held a security clearance for many years. He has served in the military. He provided for his family and took in his mother-in-law, who was ill and unemployed. However, he was not able to continue to pay her large medical bills as well as his own. He had a separation and divorce that impacted his financial status. There is nothing in the record concerning any criminal behavior. He has worked hard for many years. Despite the fact that he intends to pay all his debts, he has not provided any evidence that he has paid any SOR debts or is in a position to pay them. Moreover, given the fact that none of the debts in the SOR have been resolved or in a repayment plan, I have doubts that there are clear indications that his financial problems have been resolved. He has not mitigated the security concerns under the financial considerations guideline.

He has, however, mitigated the personal conduct concern. I do not find that Applicant intentionally falsified his security clearance application. Applicant omitted information about his finances in his responses to Section 26. However, he detailed information about his debts in a follow-up investigation. His explanation that he was careless and acted in haste when he did the application is credible.

Applicant has not provided sufficient information to establish mitigation under the financial considerations guideline. He has mitigated the security concerns under the personal conduct 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: Subparagraphs 1.a-.n:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline E: Subparagraph 2.a:	FOR APPLICANT For 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