



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-05853
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

10/28/2015

**Decision**

LYNCH, Noreen A, Administrative Judge:

On January 22, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations). 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 October 9, 2015. Department Counsel submitted a File of Relevant Material (FORM), dated July 21, 2015.<sup>1</sup> Applicant received the FORM on August 26, 2015. Applicant submitted information in response to the FORM, which was marked and admitted into the record as AX A. Based on a review of the case file, eligibility for access to classified information is granted.

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

## Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations under Guideline F (Financial Considerations) with explanations. (Item 1)

Applicant is a 40-year-old employee of a defense contractor. He received his undergraduate degree in 2002, and his graduate degree in 2013. (Item 2) He is married and has two children. He has worked for his employer since 2008. He completed a security clearance application in 2014. He has had a security clearance since 2003.

The SOR alleges six delinquent debts totaling \$20,900. (Item 1) The majority of the debt is from collection accounts. (Items 4-6)

Applicant attributes his delinquent debts to underestimating the cost of building a home on land he purchased. In 2005, he received an estimate for the construction, but it cost about \$85,000 more than the projected cost. He paid the builder from 2005 until 2006. He used credit to pay for living expenses. He made timely payments on his credit cards. However, over time the required minimum payment increased and he was unable to maintain them.

In addition, his wife could not find full time employment as a teacher. She was a substitute teacher at a lower pay level and had unreliable hours. They also had day care expenses for two children. One child was born in 2008. (Item 3) Applicant paid other bills that were not included in the SOR. He is current on taxes and his mortgage. He has a specific timeline for paying his debts. He and his wife do not use credit cards. (Item 3)

Applicant disclosed the negative financial information on his security clearance application. He also reported it to the investigator during his 2014 interview. Applicant is not accumulating new debt, and he is paying his current bills in a timely fashion. His wife is now teaching full time. His credit report (Item 5) notes many accounts as "pays as agreed."

As to the SOR allegation at 1.a for a charged-off account in the amount of \$14,164, he has an established payment plan. Applicant initially paid \$50 monthly. This has increased to \$150 for the next 36 months. He provided documentation that the account is current and payments received. The balance at the time of response was \$12,790. (AX A)

As to the SOR allegation at 1.b for a collection account in the amount of \$2,149, the account will be paid in full by December 2015. Applicant provided documentation that his payment plan started in December 2014, with an initial payment of \$752 and subsequent monthly payments of \$116.

As to the SOR allegation of 1.c for a charged-off account in the amount of \$836, the account is in repayment status. Payments started in November 2014. Applicant

provided documentation that he is paying \$76 a month on the account. He also included documentation that he paid \$267 on a similar account with a balance of \$304.

Applicant provided documentation for the account in SOR 1.d for a collection account in the amount of \$623. He paid \$186.90 as a first payment and agreed to pay \$62.30 in subsequent months. The balance has been reduced to \$436.

Applicant stated that, as to the alleged debt at 1.e, the account in the amount of \$201, has been paid. Applicant spoke to the company, and they confirmed a zero balance. He is in the process of having it removed from his credit report.

As to the alleged debt at SOR 1.f in the amount of \$2,823, Applicant explained that he has a repayment plan and pays \$125 a month. A recent credit report shows an account with the same number as “pays as agreed.” He noted that he had difficulty with this account, as it was taken over by another company. He entered into an agreement and provided documentation that shows the payment plan. It is not clear that this account is the same one that appears on his credit report as in payment.

### **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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The United States 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

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.

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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.*

Applicant incurred delinquent debt. His admissions and credit reports confirm the debts. Consequently, Financial Considerations Disqualifying Condition (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 notes that the construction costs of building a home exceeded the initial projections. He paid the builder, but over time he could not maintain the minimum payments on the credit cards that he used for daily expenses. At the same time, his wife could not find a full time teaching position and was forced to substitute teach at a much lower salary with unreliable hours. Applicant and his wife also had a child in 2008 and day care expenses increased. His wife is now teaching full time. He is gainfully employed. 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) partially applies.

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. Applicant experienced circumstances beyond his control. He did everything that he could to stay current with the builder and his credit cards, but could not maintain his minimum payments. He is now in repayment status.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. He resolved debts that were not listed in the SOR. He provided for his family. He paid one debt on the SOR. He arranged payment plans for the others. He is current with his mortgage and bills. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and 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 40-years old. He is married and has worked many years. He has held a security clearance without incident.

Applicant answered the FORM with more information on two accounts that are in repayment status. He produced sufficient information concerning payment plans for the delinquent debts. He is current with his mortgage and daily expenses. He and his wife are now both employed and in a position to have steady income. The circumstances beyond his control, when his wife could not get full time employment, and the income was greatly reduced, did not stop him from acting responsibly. He paid other debts that were not listed on the SOR. He has no new debt. I have no doubts about his judgment and reliability based on the record. His credit report shows a track record of financial responsibility before the isolated financial difficulty.

### **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
Subparagraphs 1.a-1.f:	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.

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NOREEN A. LYNCH.  
Administrative Judge

