



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-06525
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

08/31/2015

**Decision**

LYNCH, Noreen A., Administrative Judge:

On January 27, 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 hearing before an administrative judge. The case was assigned to me on April 13, 2015. A notice of hearing was issued on June 1, 2015, scheduling the hearing for July 30, 2015. On that date, it was rescheduled for good cause. The hearing took place on August 4, 2015. Government Exhibits (GX) 1-5 were admitted into evidence without objection. Applicant testified and submitted Applicant Exhibits (AX) A-H, which were admitted without objection. I held the record open for additional submissions until August 21, 2015. Applicant timely submitted a packet of documents, which was admitted as AX I-M, without objection. The transcript was received on August 12, 2015. 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 the SOR allegations under Guideline F, with the exception of 1.h through 1.l . He provided explanations for each alleged debt.

Applicant is 35 years old. He graduated from high school and attended college until 2007, but did not obtain a degree. He served in the United States military from 1997 until 2004, receiving an Honorable discharge. Applicant is single and has one child. Applicant has been with his current employer since 2014. He attends college courses at night. He completed a security clearance application in 2012. (GX 1)

The SOR alleges approximately \$33,000 in delinquent debt, which includes outstanding child support payments, automobile repossessions, and student loans.(GX 2 and 3)

Applicant was candid at the hearing by saying that he had no excuses for his behavior and the “lackluster” attention he gave to managing his finances in the past. He had some hardships, but he does not use that as an excuse. (Tr. 10) He disputes the accuracy of the amount of delinquent debt. He believes he has about \$5,000 in delinquent debt. (Tr. 11) He has been on notice since his 2012 investigative interview. He pays \$1,400 a month for child support, which is directly deducted from his wages. (AX A) He at times has taken a second job to help with his expenses.

As to SOR allegation 1.a, Applicant provided documentation that he had an agreement with the child’s mother (AX I) to forgive the amount of the arrearage, if he paid her \$4,000. He also presented documentation that shows he is current with his child support. (AX A) The arrearage occurred due to unemployment.

Applicant disputes the debt in allegation 1.b for \$4,570. This collection account is for an auto loan. He states that this was a voluntary repossession and that the vehicle was sold and the account is closed. Applicant explained that he has been disputing this account since 2008. (Tr. 21) He claims that he paid \$4,500 after the car was sold. (Tr. 23)

As to the debt in 1.c for \$4,516 for a student loan in collection, Applicant presented a letter from the school that noted the debt would be forgiven if he registers, completes the program and graduates. (AX B). However, he then presented a post-hearing document to show that in August 2015, he requested the student loans be rehabilitated. The first payment is due September 5, 2015. (AX L)

As to the debt in 1.d for an account that is 120 days or more past due in an amount of approximately \$2,211, Applicant purchased furniture, which he claimed was

defective. He disputes the account but stated that he had made several payments. Applicant submitted information that on July 30, 2015, he arranged a payment of \$945.06 to bring his account to a current status. (AX C)

Applicant presented documentation that he settled the debt in 1.e for a phone account in the amount of \$306. (AX D) He purchased the phone for his sister, but she did not pay the bill. (Tr. 27 )

As to the 2008 judgment in 1.f for \$4,333, Applicant started a payment plan in February 2015. He agreed to pay \$2,800. Applicant claimed that he has made payments. (AX E, Tr. 32) He provided a post-hearing submission that shows he is current on this account and pays as agreed. (AX J).

Applicant claimed that the debt in 1.g was a medical account that went to judgment in 2007 for \$917. He states that it does not appear on his credit report. (AX F) He believes that he paid the account many years ago.

Applicant denies the debts in 1.h, through 1.i. He claims they are not accurate and he has disputed them. He emphasized that they have been removed from his credit report. (Tr. 35) He stated in a post-hearing narrative that he does not have the documentation regarding the dispute history because the credit reporters will not send the information to him electronically.

Applicant testified that the debt in 1.m is the same as the debt in 1.f. (Tr. 35) He also stated that 1.n is a duplicate account.

Applicant explained that he has had bad credit for about eight years and he has finally been approved for a car loan. He has not missed a payment on the car loan. (Tr. 37) He also has a credit card and submitted documentation after the hearing that it is paid in full. (AX M)

Applicant was unemployed in 2012 for about three months and received unemployment wages in the amount of \$300 a week. (Tr. 42) He was also unemployed in March 2013 until October 2013, and for about five months in 2014. (Tr. 54).

Applicant's yearly salary is about \$96,000 a year. He provides financial support to his mother who is ill. He works in a consultant status at this time. He believes he has a monthly net remainder of \$2,000, which included money from a second job.

### **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

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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.*

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.

Applicant admitted that he incurred delinquent debt and his credit reports confirm 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.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." Applicant still has unresolved debt. He also paid several debts after his hearing was postponed in July 2015. He has been on notice since the 2012 interview with the security investigator. He recently started a payment plan with one debt. 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) does not apply.

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) does not apply. Applicant was employed for many years. He was unemployed on several occasions when contracts ended. However, he did not provide a nexus between the unemployment and the debts. He stated that he was immature and had too much on his plate. I cannot find that he acted responsibly under the circumstances.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has some application. Applicant as noted above recently took steps to pay some debts and arrange payments with one. He has disputed some debts, but has no documentation to substantiate his claim. 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 38 years old. He has been with his current employer since 2013. He is single and pays child support. He has served in the military. He stated that he is very sorry for the situation and mistakes that he made. He stated that this would never occur again.

Applicant provided information concerning his current status with child support and the fact that he has paid several debts. However, he paid them after the SOR was issued, but he knew of the Government's concern about his finances since the 2012 investigative interview. He has made payment arrangements with one account. He disputes many accounts but he does not have documentation to substantiate the claims. He is beginning to address his debts, but he has not shown a meaningful track record to mitigate the security concerns under the financial considerations guideline.

Applicant did not persuade me that he refuted or mitigated the Government's case concerning the financial considerations security concerns. Any doubts must be resolved in the Government's favor.

## 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 :	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.d:	Against Applicant
Subparagraphs 1.e-1.f:	For Applicant
Subparagraphs 1.g-1.l:	Against Applicant
Subparagraphs 1.m-1.n:	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