



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



In the matter of:	)	
	)	
	)	ISCR Case No. 15-01208
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrea M. Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

05/31/2016

**Decision**

LYNCH, Noreen A., Administrative Judge:

On August 19, 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 April 11, 2016. Department Counsel submitted a File of Relevant material (FORM), dated December 24, 2015.<sup>1</sup> Applicant received the FORM on December 28, 2015. Applicant responded to FORM with a packet of documents. Based on a review of the case file, eligibility for access to classified information is denied.

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

## Findings of Fact

In his answer to the SOR, Applicant denied the SOR allegations under Guideline F (1.a through 1.u), and he provided explanations.<sup>2</sup>

Applicant is 48 years old. He is married and has one young child. He obtained his undergraduate degree in 1993. Applicant completed his security clearance application in 2012. He has been with his current employer since 2012. This is his first request for a security clearance. (Item 3)

The SOR alleges 21 delinquent debts, including twelve collection accounts, and nine charged-off accounts. (Items 4-5) The approximate total for the delinquent debts is \$96,650. Applicant attributes his financial difficulties to his unemployment which occurred in 2009. He referred to this as an economic depression which was the first time in his life that he was unemployed. His salary was reduced from \$85,000 per annum to \$400 a week in unemployment benefits. Applicant explained that he paid all of his bills through June 2010 in the hopes of finding another job soon. He claimed he sold his assets and used his savings to pay his mortgage. The unsecured debts went unpaid. He emphasized that his delinquent debts were due to an inability to pay and not an unwillingness to pay. (Item 2)

Applicant believed that his case should be mitigated because his case should rest on one or two mitigating factors such as circumstances beyond ones control and the behavior happened long ago. He is certain that this will not occur again. He claimed that he did not lack judgment or self-control in this situation. He believed that he acted responsibly in the situation because he paid his mortgage, his health insurance, his car insurance, bought food for his family, paid utilities, and terminated cable. He also borrowed from his family. He prioritized his debts. He stopped paying his consumer debts in June 2010.

Applicant's answer to the SOR explains that for each delinquent account nothing is owed because the account has been deleted or will soon be deleted. He elaborated that although some have not been removed, that they are a cancelled debt. (Item 2) He noted that since the debts are about six years old and have been charged-off accounts, he does not owe the money for the account listed on the SOR. He emphasized that charged-off means the creditor has cancelled the debt. He also noted that he had received a letter of cancellation of debt for another account, but cannot locate it. (Answer)

Applicant submitted documents showing his unemployment earnings in 2009, 2010, and 2011. (AX A) He submitted a 2012 credit bureau report showing that before 2010, he had been paying his accounts. (AX B) He provided a 2011 Form 1099-C for a

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<sup>2</sup>Applicant objected to his 2012 Personal Subject Interview on the basis that it was not authenticated and is over three years old. Since it was so long ago, he cannot be certain that it is accurate. I did not consider the 2012 interview.

cancellation of debt for the account in SOR 1.b in the amount of \$19,999. (AX C) This debt was dismissed by court order in May 2015. (AX D) He included a letter dated July 2013 to a credit repair company, but he soon cancelled the service because he could not pay. (AX H) In 2014, he obtained the services of another company, but company records do not reflect that any payments were negotiated or made to Applicant's consumer accounts. He included several letters to a few creditors not listed on the SOR asking them to negotiate a settlement. He noted a state statute of limitations from one state that has absolved him from unsecured debts after four years. (AX F) He received a letter from a dentist (AX K) that reflects that he made partial payments for his bill in the amount of \$50 per month and asked for a settlement. (AX K) There was no response to the letter in the file. He also received a letter referring to a settlement for another account, but he did not include a response. There is no information in the record concerning his present income.

Applicant notes that he has not incurred new debt and cites to his most recent credit report. (AX J) He presented a certificate of ownership for his two automobiles dated 2013 and 2014 to show that they are paid. He presented a release of lien, dated 2015, from a homeowners association because he paid a special assessments tax on his home beginning in 2010. (Response to FORM) He presented a copy of a credit score that had risen to 726, which is considered, a good score. (AX G) He presented his bank statements that show he has been paying back the loan from his father. (AX F)

In Applicant's Response to FORM, he stated that he does not intend to service any of the SOR debt, that he is not being harassed or pressured and can't be sued and the debt has expired. He believes it would be highly irresponsible and illogical for him to start to pay back tens of thousands of dollars for debt that is no longer being collected by anyone.

### **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>3</sup> The burden of proof is something less than a preponderance of evidence.<sup>4</sup> The ultimate burden of persuasion is on the applicant.<sup>5</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>6</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>7</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>8</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:

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<sup>3</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>4</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>5</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>6</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>7</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>8</sup> *Id.*

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.

The Government produced credible evidence that Applicant incurred delinquent debts and had delinquencies due to unemployment. 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 is now employed and states that his unemployment from 2009 was unique to the economic downturn and will not occur again. He provided information that he paid his mortgage and prioritized debts. However, his significant amount of collection account debt is not resolved nor in any plan. 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 long unemployment was certainly beyond his control. He provided for his family, paid basic bills, paid for two autos and initially thought he would try to settle his other debts. However as time went by, he decided that the unsecured debts were not a priority and due to the age of the debts and the fact that some were charged-off indicating that he is not legally required to pay the accounts. However, he does not believe that he owes any of the debts on the SOR because he at the time had no ability to address them. He insists that he is not unreliable but was a victim of the economic downturn. He has no intention of paying on "old" debts. Despite his efforts to pay basic bills and inability to pay at the time, does not provide sufficient mitigation for security concerns.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has some application. He has provided some information that he paid non-SOR debts and one SOR debt. There is no information that he has received formal 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 48 years old. He was unemployed in 2009 during the economic downturn. He provided for his family and paid his mortgage. He paid his basic bills. He could not find a job immediately and received unemployment benefits. He prioritized his bills. He decided that the unsecured debt payments had to stop in 2010. At first he decided to settle accounts. He paid some bills and provided documentation for them. He disputed some. It was not his fault that he was unable to pay all the debts listed on the SOR. However, he now believes that due to the age of the debts and the fact that they are charged-off, he is not responsible for them. He does not intend to pay any of them listed on the SOR, There is nothing in the record concerning any criminal behavior. He has had steady employment since 2012 and has no new debts. He clearly believes that he has mitigated the security concerns under the financial guidelines because he would be silly to pay old debts now and that he has shown that he paid his mortgage and other accounts. This is not sufficient mitigation for security clearance guidelines under financial considerations.

## 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:  
Subparagraph 1.a:

AGAINST APPLICANT  
Against Applicant

Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1q:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraphs 1.s-t:	Against Applicant
Subparagraph 1.u:	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