



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-04604
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Greg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

07/10/2015

**Decision**

LYNCH, Noreen A., Administrative Judge:

On November 25, 2014, 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 July 1, 2015. Department Counsel submitted a File of Relevant Material (FORM), dated June 30, 2015<sup>1</sup>. Applicant received the FORM on June 1, 2015. Applicant submitted documentation in response to

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

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

### **Findings of Fact**

In his answer to the SOR, Applicant admitted all SOR allegations under Guideline F (financial considerations) with explanations. (Item 1)

Applicant is 45 years old. He served in the United States Marine Corps (USMC) from 1988 to 1997. He received his associate's degree in 2007. Applicant is married and has two children. He has been employed with his current employer since April 2008. (Item 3) He has held a security clearance since 1988.

The SOR alleges five collection accounts, including a delinquent mortgage loan account, totaling approximately \$145,000. He disclosed his delinquent account on his security clearance application. (Item 3)

Applicant cites job loss, reduction in pay, and medical issues as the reason for the delinquent accounts. Before 2008, he had no financial difficulties. His credit report confirms his claim. (Item 4)

As to the allegation in SOR 1.a, a settlement occurred in 2012, which involved paying \$200 a month. Applicant provided documentation that the account is current and in good standing. As of June 8, 2015, the balance was \$1,640 (reduced from over \$10,000). Applicant attempted a hardship loan but he was not successful. (Response to FORM)

The collection account alleged in SOR 1.b for \$39,764 became delinquent in 2009. Again Applicant attempted to establish a hardship agreement, but was unsuccessful. Applicant settled the account in 2013, and agreed to pay \$150 a month until the balance was paid in full. He provided documentation that \$150 has been automatically deducted each month and that the balance, as of June 2015, was \$36,385.

Applicant provided documentation that his home mortgage loan is current and in good standing. Applicant obtained a loan modification in 2014. The first payment was made in December 2014. The delinquent account in SOR 1.c for \$65,455 was addressed and the account is current. Applicant provided documentation that the monthly mortgage amount of \$3,634.01 was paid in June 2015. The statement shows that the account is not past due. It also reflects that \$18,257.93 has been paid year to date. (Response to FORM)

As to SOR 1.d, a collection account in the amount of \$6,204, Applicant admits that it was charged off in 2009. This was his wife's credit card account and he was a secondary user. His wife sent a letter in 2009 advising that she was not disputing the debt, but due to the financial hardship she could not make the full payment amount.

Applicant's wife offered to make monthly \$25 payments. The check was attached and is in the file. The company did not accept the offer. In his response to FORM, Applicant states that the debt expired in 2013, and he is not legally liable for it. He attached the applicable state civil law concerning the issues. (Response to FORM)

As for the collection account in SOR 1.e, Applicant states that this was a credit union debt for a line of credit. He could not make the \$707 monthly payment due to his decrease in pay and hospitalization of his daughter. He agreed to terminate his membership in the union. Applicant paid two other outstanding debts in 2012. He has another account with the credit union that he is paying as agreed, which is not reflected in the SOR. His 2015 credit bureau report confirms that another account with the same credit union is in good status. Applicant's credit bureau report clearly reflects accounts that are in good standing. Applicant provided documentation that in 2009, he wrote to the credit union and asked for an opportunity to modify his payment. He also sent a check for \$25 in good faith. Applicant disclosed this information on his security clearance application. (Item 3)

Applicant has resolved many accounts that became delinquent due to his job loss in 2008 and reduction in pay. He worked with his creditors and managed to retain his home by modifying the mortgage loan.

### **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 (EO) 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

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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.*

financially overextended is at risk of having to engage in illegal acts to generate funds.”

Applicant admitted that he incurred delinquent debt. His credit reports confirm delinquent 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.

Applicant’s delinquent debts are not recent and occurred when he lost his employment. His credit reports confirm that before 2008, he had no financial difficulties. Applicant addressed all his debts. He did not ignore his creditors. He was proactive and arranged for plans and told creditors about his hardship. 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) 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) also applies. Applicant presented sufficient documentation that he has acted responsibly to resolve his debts since 2008.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has application. 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) also applies. The SOR debts have been addressed, and non SOR-debts have been paid as well. Applicant presented evidence that he has consistently made his monthly payments on his payment plans. He is current with the payments.

### **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



