



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-06578
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

02/23/2016

**Decision**

LYNCH, Noreen A., Administrative Judge:

On April 29, 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 January 20, 2016. Department Counsel submitted a File of Relevant Material (FORM), dated October 8, 2015.<sup>1</sup> Applicant received the FORM on October 16, 2015. Applicant did not submit a response to the FORM. 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 five items for the record.

## Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegations (1.a through 1.p) under Guideline F. He also provided explanations.

Applicant is 52 years old. He is married and has one child. He graduated from high school in 1982. (Item 3) He also obtained a certification from a technical institute. He was unemployed for six months in 2013; three months in 2011; and eleven months in 2006. Since 2014, Applicant has been employed with his current employer. He completed an application for a security clearance on June 5, 2014.

Applicant informed an OPM agent during his 2014 subject interview that when he was unemployed, he was financially supported by his wife and unemployment benefits. However, he stated that his wife was "in and out of work," but he did not specify the dates of her unemployment. (Item 5)

## Financial

The SOR alleges a 2013 state tax lien, 2012 unsatisfied judgment, six collection accounts, five delinquent medical accounts, a past-due mortgage account, and failure to file state and federal income tax returns from 2007 to the present, with unpaid taxes for those years. (Items 3, 4, and 5) In his security clearance application Applicant listed his failure to file the tax returns and collection accounts. The reasons for the delinquencies included his wife's unemployment and his periodic unemployment.

As to SOR 1.a, a state tax lien in the amount of \$4,728, Applicant provided no documentation that the lien is satisfied or that there is a plan in place to resolve the lien. In his interview and in his security clearance application, he claims he is paying \$100 a month.

Applicant attributes the alleged debt in SOR 1.b for \$1,995 to a 2012 judgment for unpaid rent. He did not have the funds to pay the account, and he still is unable to pay. (Item 5)

As to the collection accounts listed in SOR 1.c to SOR 1.n, Applicant admitted that he was delinquent on the accounts. In his 2014 interview, he stated that he would research the accounts so that he could pay them. He provided no evidence of any payment plans or payments. He noted that he would consult with a bankruptcy lawyer in July 2014 to discuss the resolution of the debts using bankruptcy. The record does not provide any information however, on financial counseling or a petition for bankruptcy.

The unpaid state taxes for 2007 to the present, listed in SOR 1.o, are still unresolved. The unpaid taxes to the federal government from 2007 are still unresolved. SOR 1.p, and the tax returns have not been filed.

## 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 applicant concerned." <sup>5</sup> "The clearly consistent standard indicates that security clearance

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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.

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.

Applicant incurred delinquent debt in the amount of approximately \$113,000, and he did not file his state tax returns for tax years 2007 to the present. He has a state tax lien, unpaid taxes, and numerous collection accounts. His admissions and credit reports confirm the delinquent debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), FC DC AG ¶ 19(c) (a history of not meeting financial obligations), and FC DC AG ¶ 19(g) (failure to file federal or state tax returns as required by law) 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 difficulty make it difficult to conclude that it occurred “so long ago.” Applicant’s debts remain unpaid. He provided no information or documentation that he has made any payments on the debts or filed the tax returns. 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,

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<sup>6</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>7</sup> *Id.*

divorce or separation) and the individual acted responsibly under the circumstances) does not apply. Applicant noted periods of unemployment for himself and his wife. He stated lack of funds and an inability to pay but he did not show a nexus between the unemployment and his failure to file tax returns, pay taxes, or make payments on collection accounts. He has been employed since 2014. He has not provided any evidence of payments made to any accounts. He says that he intends to pay his delinquent debts, but he has not shown any efforts to repay by submitting documentation. He has not 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) does not apply. There is no evidence in the record to support this mitigating condition. There is no information to show that he has obtained recent 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) 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 a 52-year-old man who is married and has one child. He has been employed with his current employer since 2014. He was unemployed for a period of time, but he stated that he was financially supported by his wife and unemployment benefits. He gave no reason for not filing his state income tax returns. He stated that he intends to pay his delinquent debts. He maintained that he would schedule a meeting with a bankruptcy attorney to resolve his financial issues. However, a promise to pay in the future is not sufficient for mitigation. He did not respond to the FORM to

