



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



In the matter of:	)	
	)	
	)	ISCR Case No. 15-01102
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

05/31/2016

**Decision**

LYNCH, Noreen A., Administrative Judge:

On September 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 review based on the written record in lieu of a hearing. The case was assigned to me on May 20, 2016. Department Counsel submitted a File of Relevant Material (FORM), dated January 30, 2016.<sup>1</sup> Applicant received the FORM on February 11, 2016. Applicant did not respond 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 seven items for the record.

## Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegation under Guideline F (1.a) and denied the others with provided explanations. (Item 2)

Applicant is 46 years old. He is married and has three children. He received his associate's degree in 2002, and attended undergraduate courses until 2005. He served in the United States Air Force (USAF) from 1991 until 2011 on active duty and received an honorable discharge. Applicant completed his most recent security clearance application in 2012 and has been employed as a federal contractor since 2011. He has held a security clearance since 1991. (Item 3)

The SOR alleges five delinquent debts, including three collection accounts, a past-due mortgage account, and a wage garnishment totaling over \$50,000. Applicant admitted that he is in debt to the bank for the mortgage account in the amount of \$27,032, with a total balance of \$265,298. He explained in his answer to the SOR that he was denied for a modification. He further noted that he remodeled the house and is seeking a realtor for the property. He stated that he has coordinated his actions with the bank. (Item 2) He did not provide any evidence to show that this account is resolved. His latest credit report reflects the delinquency. (Item 7)

Applicant did not provide any documentation concerning any payments or payment plans addressing the other debts. In his 2012 investigative interview, he stated that he did not know of the accounts and had no intention of paying them because he does not owe anything. (Item 5)

As to the SOR allegation 1.b, Applicant denied the debt listed as a garnishment for a government debt in the amount of \$24,978. He stated that he had a loan in 2005 after hurricane Katrina in 2005. He stated that he was on active duty and deployed and the account was sent to collection. He stated that he spoke to an attorney and the account was removed from the collections department. (Item 2) In his credit report, dated 2015, and entry for a government debt lists a government loan in the amount of \$24,978, with a comment that states "paid by garnishment."

As to the SOR allegation 1.c, Applicant denied he owed a debt for the amount indicated of \$610. He stated he closed the account in 2007 and paid it in full. It stated that he had contacted several collection agencies over the validity of the debt and it had been removed from his credit report. (Item 2) He did not provide any evidence to support his claims.

As to the SOR allegation 1.d, Applicant denied he owed the amount of \$1,504 in collection. He stated that he closed the account in 1999, but he paid it in full. He stated that it must have been sold to another collection agency. (SOR 2) It is still noted on his credit report as delinquent since 2012.

As to the SOR allegation 1.e, for a collection phone account in the amount of \$427, Applicant denied that the account was his responsibility. He stated that he rented a house in 2003 and the prior occupant did not settle the account. He contacted the company and closed the account. He stated that he paid what he owed and has tried to have it removed from his credit report. (Item 2) The latest credit report lists that the account is unpaid. (Item 7)

In his answer to the SOR, Applicant expressed frustrations about the background investigations. He noted that he has had a clearance for almost 25 years and he feels that the insignificant financial concerns pale in comparison to his service to his country and other public officials.

Applicant did not supplement the record with any documentation to support his claims concerning his financial issues. There was no information in the file supporting any financial counseling. He did not list any circumstances that occurred beyond his control to cause any financial problems.

### **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 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.

Here the Government introduced credible evidence showing Applicant has incurred considerable delinquent debt. His admission to the past-due mortgage in the amount of \$27,032 is sufficient to invoke two disqualifying conditions. 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 has not provided any documentation to show that he has resolved any SOR debts. He still has a significant amount of delinquent 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 merit 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) does not apply. Applicant provided no explanation in his answer to show that he suffered any circumstances beyond his control, nor has he produced documentation that he is resolving his debts or has a plan in place. He has not acted responsibly.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has no application. He has not provided any documentation that he has resolved his debts, although he claimed that he has. There is no information that he has received 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 46 years old. He has held a security clearance for almost 25 years. He served in the USAF and received an honorable discharge. There is nothing in the record concerning any criminal behavior. He was on active duty and served many years. However, he has not provided any evidence that he has paid any SOR debts or is in a position to pay them. His credit reports do reflect many accounts that are current and paid as agreed, but he has not carried his burden in this case. Moreover, given the fact that none of the debts in the SOR have been resolved or in a repayment plan, I have doubts that there are clear indications that his financial problems have been resolved. He has not mitigated the security concerns under the financial considerations guideline.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a-.e:	Against 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