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

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| In the matter of: | ) | |
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| | ) | ISCR Case No. 14-00156 |
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| Applicant for Security Clearance | ) | |
| | ) | |

**Appearances**

For Government: Philip Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

08/07/2014

**Decision**

LYNCH, Noreen, A., Administrative Judge:

On March 13, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging 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; 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 June 4, 2014. A notice of hearing was issued on June 12, 2014, scheduling the hearing for July 10, 2014. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified. He submitted Applicant Exhibits (AX) A-C, which were admitted into the record without objection. I kept the record open until August 4, 2014, for additional submissions, and Applicant timely offered AX D, which was admitted without objection.

The transcript (Tr.) was received on July 21, 2014. 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 denied the allegations in the SOR under Guideline F (Financial Considerations), with explanations.

Applicant is a 65-year-old employee of a defense contractor. He graduated from college in 1972, and he obtained a master's degree in 1984. Applicant is single and has no children. Applicant has been with his employer since October 2011. (GX 1) He was unemployed for periods of time in 2006-2007 and 2010. Applicant has worked as a trainer in the defense contracting field for 20 years. He maintains that he has held a security clearance for a number of years. (Tr. 67)

The SOR alleges fifteen unresolved debts totaling $78,839, including a 2012 judgment, collection accounts, and a collection account for a home mortgage loan. Applicant's credit report confirms the delinquent debts. (GX 3) None of the delinquent debts have been paid. He claims that he had no knowledge of the delinquent bills until his 2013 OPM interview. However, he acknowledged the mortgage account in his interview, stating that he did not owe anything to the bank because they foreclosed on his home and sold the property. (GX 2)

Applicant has had several heart attacks in recent years. The first attack occurred in December 2007. His second attack occurred in March 2008. Applicant was employed at the time, and he had health insurance. He is not certain that all the medical bills were paid by his insurance company.

Applicant owned a property in one state from June 2004 until October 2010. (Tr. 54) At the hearing, Applicant's explanation about the bank holding his mortgage and his mortgage account was vague and confusing. He claimed that he paid his monthly mortgage payment from 2004 until 2010. Applicant stated that unbeknownst to him, the bank stopped accepting his last two mortgage checks in 2010. (Tr. 47) He claimed that an eviction notice appeared on the door of the home and he vacated. He could not explain why this particular process occurred (Tr. 69) He never contacted the bank, but filed a complaint with a consumer protection agency. (Answer to SOR)

In October 2010, Applicant was homeless, unemployed, and did not have health insurance when he suffered another heart attack. (Tr. 22) Applicant's latest heart attack occurred in February 2014. He has a pacemaker and feels much better. He now has health insurance.

Applicant explained that he is loyal and hardworking. He attributes his financial problems to his unemployment (amounting to about one year) from 2007 until 2011. (Tr.64) He admitted at the hearing that he had charged-off credit accounts, but he had no idea that he owed so much. (Tr. 81)

Applicant earns approximately $95,000 a year. After expenses and debt payments, he has a monthly net remainder of about $800. (GX 2) Applicant is current with all household bills. He has $12,000 in savings. He does not have a budget. He no longer uses credit cards. However, despite steady income since 2011, Applicant has made no attempt to pay any delinquent bills. In his 2013 OPM interview he indicated that he would obtain a credit report and resolve some debts. (GX 2)

Applicant submitted three letters of recommendation from supervisors, managers, and a friend. All attest to his ability to be a team player and accomplish any given task. (AX A) His current supervisor endorses Applicant as a reliable and honest person.

A current manager who interacts with Applicant on a daily basis has never questioned his character, judgment, reliability, or loyalty. He is aware of Applicant's financial situation, but does not consider him a security risk. (AX B)

A close friend of Applicant who has known him personally and professionally for the past 42 years understands the nature of the Government's security concerns. He states that Applicant has been extremely hardworking all his life. Applicant's friend has total trust in Applicant's workmanship and ability to keep confidences. He is an extremely loyal man and would never do anything to adversely impact the nation's security. (AX C)

Applicant hired an attorney recently to seek advice for his financial difficulties that were causing the security concerns that might affect his job. (Tr. 90) He was advised to file bankruptcy. He was not certain which chapter he would file. He claimed he paid a filing fee of $306. However, he claims that he has not completed the paperwork. The record was kept open for Applicant to submit documentation. Applicant submitted a business card and an unsigned retainer agreement, dated July 29, 2014. There was no indication that a filing fee had been paid or that any bankruptcy filing had begun. (AX D)

## 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The 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. . . ."[1] The burden of proof is something less than a preponderance of evidence.[2] The ultimate burden of persuasion is on the applicant.[3]

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."[4] "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."[5] Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.[6] 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.

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[1] *See also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

[2] *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

[3] ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

[4] *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

[5] ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

[6] *Id*.

## Analysis

### Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

> Failure or 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. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

> (a) inability or unwillingness to satisfy debts;
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> (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
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> (c) a history of not meeting financial obligations;
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> (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
>
> (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;
>
> (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
>
> (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;
>
> (h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and

(i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant has delinquent debts amounting to approximately $78,000. His credit report confirm his debts. Consequently, the evidence is sufficient to raise disqualifying conditions in ¶¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate security concerns. The following are potentially relevant:

(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;

(b) the conditions that resulted in the financial problem 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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant has experienced health issues since 2007. He suffered heart attacks in 2007, 2008, 2010, 2011, and 2014, causing periods of unemployment. Applicant has incurred delinquent debts, but he has only recently sought advice to resolve the financial issues. He certainly has had circumstances beyond his control, but he did not act responsibly. He admitted that none of the debts have been paid. He is now consulting an attorney, but has not begun the actual process of filing bankruptcy. None of the mitigating conditions fully 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 relevant 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 65 years old. He has worked in the defense contracting field for many years. He has held a security clearance. He has letters of recommendation from supervisors.

Applicant had severe health issues and several heart attacks from 2007 until 2014, causing periods of unemployment. The circumstances were beyond his control, but he has not contacted his creditors. He did not act responsibly. He now has steady full-time employment, but has only recently contacted an attorney to start the process of bankruptcy. I have doubts about his judgment, reliability, and commitment to be financially responsible. Applicant has not met his burden of proof. 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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.a-1o.: | 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's security clearance. Clearance is denied.

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NOREEN A. LYNCH.
Administrative Judge