



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



In the matter of:	)	
	)	
	)	ISCR Case No. 15-01082
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

10/30/2015

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**Decision**

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LYNCH, Noreen A., Administrative Judge:

On May 16, 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 October 9, 2015. Department Counsel submitted a File of Relevant Material (FORM), dated July 30, 2015<sup>1</sup>. Applicant received the FORM on August 25, 2015. Applicant timely submitted a response to the FORM. Based on a review of the case file, eligibility for access to classified information is granted.

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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.i) under Guideline F. He also provided explanations.

Applicant is 32 years old. He is married, and has no children. He graduated from high school in 2003, and received his undergraduate degree in 2007. (Item 2) Since 2012, Applicant has been employed with his current employer. He completed an application for a security clearance on August 31, 2012.

### Financial

The SOR alleges nine delinquent debts totaling approximately \$150,000, of which five are "private" student loans and the other five are federal student loans. (Item 4 and 5) In his answer to the SOR, Applicant stated that the first and second set of student loans were in collection because he had not reached an agreement with the company for an affordable payment plan. After contacting them several times, he arranged a payment plan. He submitted information with his Answer to the SOR that he reached an agreement on the first set of student loans (1.a-1.d), which required him to pay \$1,000 as a down payment and \$600 that would be automatically deducted from his bank account monthly beginning in June. Applicant stated the settlement amount for this plan is \$103,044.97.

As to the second set of student loans (1.e-1.i) , Applicant's answer noted that they are currently in good standing. He is on a payment plan, which requires him to pay \$256.06 each month.

Applicant admits the student loans became delinquent due to periods of unemployment and underemployment. (Item 1) He worked part-time jobs while he was in college. After graduation, he took a series of low paying jobs due to the poor economy. He submitted his pay stubs to show that he made about \$9.20 an hour. He found a position in his field, but he was laid off. His unemployment spans the following periods: from 10-2008 to 3-2009; from 9-2007 to 1-2008; and 6-2006 to 1-2007. (Item 2) In addition, he explained that the interest rates on the student loans increased.

Applicant's 2012 security clearance application noted that he agreed that his wages would be garnished at a rate of 10% based on a salary of \$40,000, because he could not pay the amount requested for the student loans. He had no routine delinquent debts. (Item 2 and 3)

Applicant responded to the FORM by supplementing documentation and evidence to show that he is on a payment plan for both sets of student loans. He provided a copy of his banking statement as proof that an amount of \$256.06 is automatically deducted from his account. (Response to FORM; AX A)

Applicant 's payment plan for the first set of student loans is \$600 a month. He provided proof that this amount is also automatically deducted from his bank account.

The payment plan started in June 2015. He submitted evidence to show that he is current with the payments.

### **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

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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).

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

Applicant incurred delinquent debt in the amount of \$150,000. 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), 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.

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 remained unpaid until recently. However, they are in payment plans. 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) partially 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,

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<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.*

divorce or separation) and the individual acted responsibly under the circumstances) applies. Applicant worked through college, but after graduation, he could not find steady employment. He had periods of unemployment. He worked in various part-time jobs, which were low-paying. He found a permanent position, but was then laid off. Since 2012, he has been employed, and agreed to a wage garnishment. He has recently arranged two separate payment plans for the student loans. He is current with the plans. He acted responsibly under the circumstances. He did not incur new debts.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies, There is some indication that he agreed to a garnishment in 2012. However, the two payment plans are recent. 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) partially applies because there are indications his financial problems are being resolved or under control.

### **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 32-year-old man who is married and has no children. He had student loans that he could not pay due to a series of low paying jobs and unemployment. He now has two separate payment plans in place for the student loans and is current with his payments.

Applicant provided sufficient mitigation to mitigate the financial considerations security concerns.

