



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



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|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 18-00045 |
|                                  | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: Jeremiah J. Sullivan III, Esq., Law Offices

March 13, 2019

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**Decision**

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Lokey Anderson, Darlene D., Administrative Judge:

On January 7, 2017, Applicant submitted a security clearance application (e-QIP). On February 12, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security 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).

Applicant answered the SOR on March 7, 2018, and requested a hearing before an administrative judge. The case was assigned to me on May 2, 2018. The Defense Office of Hearings and Appeals issued a notice of hearing on November 30, 2018, and the hearing was convened as scheduled on December 6, 2018. The Government offered four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. The Applicant offered nine exhibits at the hearing, referred to as Applicant's Exhibits A through I, which were admitted without objection. Applicant testified on his own behalf. The record remained open until close of business on December 20, 2018, to allow the Applicant the opportunity to submit additional supporting documentation. Applicant submitted one Post-Hearing Exhibit, referred to as

Applicant's Post-Hearing Exhibit A, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on December 17, 2018.

### **Findings of Fact**

Applicant is 68 years old. He is married with two children. He has a Master's degree in computer resource management. He is employed with a defense contractor as a Lear Jet Pilot. Applicant started working for his current employer in December 2016, and is now reapplying for a security clearance in connection with his employment.

### **Guideline F - Financial Considerations**

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information.

After completing his Bachelor's degree, Applicant was commissioned in the U.S. Navy in 1973. Following a twenty year stellar Navy career, where Applicant served honorably as a pilot, he retired in 1993. (Applicant's Exhibit G.) Throughout his military career, he held a security clearance without incident. He then went back to school to obtain his Master's degree.

In March 1995, Applicant went to work with Federal Express where he worked as a flight engineer for four years, and then a co-pilot and pilot for sixteen years. His job required him to have a security clearance and a Special Background Investigation, as he carried weapons in the cockpit, and every six months had to requalify with the weapon. Every two years he had to go through two days of hand to hand combat fighting in the cockpit in close quarters. (Tr. p. 27.) After retiring from Federal Express in 2015, Applicant has not had a clearance. Applicant had no history of financial problems during his Navy career or while working for Federal Express. Applicant's financial problems began when he hired an attorney to assist him in obtaining two loan modifications.

The SOR identified two delinquent mortgage accounts on two separate homes totaling in excess of one million dollars. Applicant admits both allegations under this guideline. Credit Reports of Applicant dated April 6, 2017; and February 1, 2018, confirm the indebtedness listed in the SOR. (Government Exhibits 3 and 4.)

Applicant explained that he had two houses, a primary residence in California, and a summer house in Montana. Since both homes had variable interest rate loans, his plan was to refinance the loans to get fixed rates once he retired from Federal Express. It about June 2015 Applicant received a letter from an attorney in a Real Estate Law Firm soliciting business, indicating that he could assist the Applicant in obtaining a mortgage refinance. The cost to represent the Applicant with both properties was \$5,000 up front, and \$1,500 monthly until the matters were concluded.

Applicant hired the attorney, paid the initial fee of \$5,000, and then paid the \$1,500 fee for twenty months, before learning that he had been swindled. (Applicant's Exhibit A.) This was in December 2016, when Applicant learned that his primary residence was being foreclosed upon. While Applicant thought that the attorney was working with the bank to get his mortgages refinanced, Applicant's Montana home was foreclosed upon and his primary residence in the process of being foreclosed upon and the attorney he had hired was being disbarred for malpractice. (Applicant's Exhibit B, C, D and E.) During the twenty months that Applicant was making payments to the attorney of \$1,500 monthly, Applicant continued to make his mortgage payments until the attorney told him to get at least two payments behind. Eventually, Applicant stopped making the payments when the bank no longer accepted the payments because the house was in foreclosure. It turns out that for some of 2016 and about all of 2017, Applicant did not make his mortgage payments on his primary residence. His attorney prepared and filed a lawsuit on behalf of the Applicant against the bank for predatory lending. When the attorney was disbarred, another law firm from Seattle took over the affairs from Applicant's attorney's real estate law firm. The lawsuit was dismissed by the court in November 2018.

Sometime in 2018, Applicant hired a new attorney who recommended filing for Chapter 13 bankruptcy to stop the Applicant's primary residence from being foreclosed upon. Applicant testified that his current attorney is still trying to get his primary residence refinanced with the bank. However, since February 2018, Applicant has been making his mortgage payments of \$2,901 each month to the bank. In June 2018, he filed for Chapter 13 bankruptcy and is following the monthly payment plan set up by the bankruptcy trustee in the amount of \$4,440. (Applicant's Exhibit F, and Post Hearing Exhibit A.)

The following debts were alleged on the SOR:

1(a) A delinquent mortgage account owed to a bank with a total balance of \$314,555.00 was past due in the amount of \$71,432 and in foreclosure status. Applicant explained that this was the debt owed on the Montana summer home. It was foreclosed upon in February 2018 and sold in April 2018. The house sold for \$238,000 for the property. Applicant believes he owed \$248,000 on the loan at the time of the sale. (Tr. p. 51 - 52.) Applicant states that the sale of the house settled the amount he owed on the loan. Applicant's Post-Hearing Exhibit A, indicates that there is no outstanding debt, as deficiency judgments are not allowed in Montana.

1(b) A delinquent mortgage account owed to a bank with a total balance of \$724,222.00 was past due in the amount of \$103,122.00. Applicant's new attorney is currently in negotiations with the bank to obtain a loan modification. As mentioned above, Applicant has filed a Chapter 13 bankruptcy to stop the foreclosure on his primary residence. Applicant is under the five year plan with the court, requiring him to pay \$4,440 monthly that goes toward his bills and mortgage arrearage. Applicant testified that after taxes, with his retirement as well as his current salary, he brings home about \$159,000 annually. He stated that he can comfortably continue to make these payments without difficulty. Applicant's Post-Hearing Exhibit A provides copies of

checks paid to the bankruptcy trustee each month from July 2018 through November 2018 in the amount of \$4,440.

Applicant has received a number of awards and accolades during his career with the Navy, his employment with Federal Express, and his current employer. (Applicant's Exhibits G, H, and I.)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the 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, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The 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 national security eligibility 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon 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 or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant became delinquently indebted when he hired the wrong attorney to help him obtain loan modifications for his properties. Instead of being helpful, the attorney led him down the wrong path. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and 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.

Circumstances beyond Applicant's control started his financial problems. Applicant was a victim of a crooked attorney, who squandered Applicant's money, and did not properly represent his best interests. As a result, the attorney was disbarred. Applicant lost his summer home, and is currently involved in a Chapter 13 bankruptcy for the next four years in order to keep his primary residence. There is nothing else in the record that leads one to believe that Applicant is not forthcoming or that he has been unreasonable and irresponsible. In fact, from Applicant's experience, it can be gleaned that he clearly understands the responsibilities required in holding a security clearance. He knows that he must live within his means at all times, and pay his bills in a timely manner. So far, he has acted reasonably and responsibly with respect to his debts. Much of his situation was not his fault, but can be attributed to the fact that he trusted his attorney. Accordingly, it is found that his debts are now under control. Furthermore, Applicant has demonstrated that future financial problems are unlikely. There are clear indications that his financial problems are being resolved.

### **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 the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Applicant honorably served our country on active duty for twenty years and held a security clearance without incident. Following that he worked for Federal Express for another twenty years, held a security clearance and again had no problems. Since obtaining a more competent attorney, following his advice, Applicant has been making his mortgage payments, and following the bankruptcy trustee's payment plan according to the Chapter 13. Applicant has shown good judgment and reliability and demonstrated that he is financially responsible.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

|                           |               |
|---------------------------|---------------|
| Paragraph 1, Guideline F: | FOR APPLICANT |
| Subparagraph 1.a:         | For Applicant |
| Subparagraph 1.b:         | For Applicant |

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson  
Administrative Judge