



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



In the matter of: )  
)  
) ISCR Case No. 18-02000  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

**06/04/2019**

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**Decision**

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HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. National security eligibility for access to classified information is denied.

**History of the Case**

Applicant submitted a security clearance application (SCA) on October 6, 2017. On August 15, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F, Financial Considerations. Applicant answered the SOR on September 6, 2018, and requested a decision based upon the written record. Department Counsel converted the case into a hearing on September 25, 2018.

I was assigned to the case on December 4, 2018. On December 13 2018, I issued an order to both parties to produce their documentary evidence by December 26, 2018, and the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for January 9, 2019. I convened the hearing as scheduled.

Government's Exhibits (GE) 1 through 7 were admitted, without objection. Applicant testified, and Applicant's Exhibits (AE) 1 through 13 were admitted, without objection. The record was held open until January 14, 2019, to allow Applicant to submit an additional document, which is admitted as AE 14, without objection. I received the transcript (Tr.) on January 16, 2019, and the record is closed.

## Findings of Fact

Applicant is 42 years old. He has been married to his wife since 2001, and they have three children. He received a bachelor's degree in 2000, and he has worked for his current employer as a senior systems engineer since October 2013. He has continuously held a top secret security clearance since 2003. (GE 1; AE 11 at 6; Tr. 10-11, 23-24)

In 2002, Applicant and his wife purchased a home for \$253,500 with a 30-year mortgage from Bank A. In approximately 2004, the loan was transferred to Bank B, and Applicant continued to make his \$2,800 monthly mortgage payments. (GE 1; GE 2 at 1; GE 3 at 6; GE 4; GE 7; AE 11 at 2-3; AE 13; Tr. 26, 34-36)

In 2005, Applicant took out a \$70,000 home equity line of credit (HELOC) from Bank C to consolidate his debt and make improvements to his house. The payments were approximately \$180 a month. In July 2015, Applicant sent a letter to Bank C requesting the bank produce the promissory note that he signed when he opened the account to affirm that Bank C still owned the loan. He sent this letter due to information he learned regarding global mortgage fraud. Bank C did not respond to his letter. Applicant made his last payment to Bank C in December 2015, and the account was ultimately charged off by Bank C in the amount of \$69,473. (GE 2 at 1; GE 3 at 8; GE 7; AE 4; Tr. 26, 36-41, 63)

In January 2016, Applicant sent a request for debt validation to Bank B regarding his primary mortgage. During 2016, he made inconsistent mortgage payments and made his last payment toward the debt in late 2016 or early 2017. During his December 2017 interview, Applicant stated that he stopped making payments and wanted verification of the debt, because he never signed a promissory note with Bank B. He believed that his actions were valid based upon information he learned from the news. He did not consult with an attorney before he ceased making payments to the mortgage or HELOC accounts. Applicant testified that Bank B did not respond to his request for validation. The outstanding loan balance is nearly \$320,000, and the account is almost \$50,000 delinquent. (GE 2 at 1; GE 3 at 6; AE 5; AE 11 at 2-3; AE 13; Tr. 26, 34-36, 40-42, 44-47, 50)

In February 2017, Bank B sent Applicant notice of its intent to foreclose on his home. A month later, Applicant and his wife, representing themselves, filed a lawsuit against Bank B, claiming they no longer owed Bank B any money. In April 2018, a stay was entered to prevent Bank B from foreclosing on Applicant's home pending the outcome of his lawsuit against Bank B. (GE 4; GE 5; GE 6; AE 5; AE 11 at 2-3; AE 13; Tr. 46-48, 50-)

In June of 2018, the court found in favor of Bank B and dismissed Applicant's lawsuit. That same month, Applicant filed for Chapter 7 bankruptcy to prevent Bank B from foreclosing on his home. Shortly thereafter, the Chapter 7 bankruptcy was dismissed, because it was determined that Applicant had sufficient income and resources to pay his financial obligations. In July 2018, Applicant appealed the court's dismissal of his lawsuit. (GE 5; GE 6; GE 7; Tr. 27-29, 48, 50)

Applicant testified that in August 2018, the Chapter 7 bankruptcy was converted into a Chapter 13 bankruptcy to allow him to resolve the mortgage and HELOC debts. He also wanted the trustee to determine if the mortgage and HELOC debts were valid. There was no evidence presented during the hearing that Applicant made any bankruptcy payments. (GE 7; Tr. 27-28, 49, 51-53)

In October 2018, the Chapter 13 bankruptcy was dismissed based upon Applicant's request. According to Applicant, the bankruptcy was no longer necessary to protect his interest in his home, because the mortgage debt and HELOC were "paid in full" and he wished to "pursue his claims against" Bank B and Bank C in state court. At the hearing, Applicant reiterated that he paid in full the mortgage debt and HELOC, and this belief is reflected in his personal financial statement. (GE 7; AE 2; AE 3; AE 6; AE 7; AE 8; AE 9; AE 10; AE 12; Tr. 27-28, 33, 51-52, 67)

Applicant testified that his failure to pay his primary mortgage and HELOC is based on a civil dispute, not an inability to pay the mortgages, as he is able to live within his means. If he is found to be legally responsible for the two mortgage debts, he claimed he will pay both debts. Applicant continues to reside in the home with his family, and the foreclosure proceedings are stayed, pending the outcome of Applicant's appeal. Applicant is representing himself in the appeal process. (GE 5; GE 6; Tr. 28, 33, 52-57, 62, 67)

Despite his multiple claims that the mortgage and HELOC have been paid in full, at the hearing, Applicant admitted that he has not paid \$320,000 plus interest to Bank B, nor has he paid \$70,000 plus interest to Bank C. His claims that he paid both accounts in full are based upon Bank B and Bank C failing to provide the validation that he requested. Applicant's wife has been continuously employed throughout their dispute with the lenders. (Tr. 28, 52, 63)

Applicant owes the Internal Revenue Service approximately \$3,500 for tax year 2017, and at the time of the hearing he did not have a payment arrangement. Additionally, he owes approximately \$1,000 in property taxes for his house. (Tr. 57-59)

Applicant works with charity organizations. (Tr. 25) His work has been recognized with numerous certificates of appreciation, and he was awarded an employee of the year award from his current employer. He is proud that he has contributed to creating secure network systems for the government. (Tr. 25-26)

### **Policies**

This case is adjudicated under Executive Order (EO) 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), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 the national security."

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." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters 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 safeguard 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 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 concern under Guideline F (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 . . . .

Applicant's admissions and the documentary evidence establish two disqualifying conditions under AG ¶ 19:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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 and is adhering to 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 purchased a home in 2002, he made payments toward his mortgage. In 2004, the debt was transferred to a second mortgage company. At that time, Applicant did not dispute the legitimacy of the transfer or Bank B's ownership of the loan. He continued to make monthly payments for over ten more years. In 2005, Applicant opened

a HELOC and made payments for over ten years. There is no evidence that this debt was transferred or held by a secondary company.

In approximately 2015, Applicant developed a belief, based upon information he learned from a news program, that if he requested validation from both Bank B and Bank C, and they failed to provide proof of the promissory notes that he signed, he no longer owed either company any money. He did not consult with an attorney to determine if this was a valid dispute, but discontinued making payments toward the mortgage and HELOC accounts. Applicant continued to reside in the home, but has not made mortgage payments since approximately early 2017.

Applicant filed a lawsuit against Bank B in 2017, this lawsuit was dismissed in June 2018. He is currently appealing that decision; however, he did not consult with an attorney during the initial court proceeding, nor did he consult with an attorney when he filed an appeal. Applicant filed for bankruptcy to prevent Bank B from foreclosing on his home, but there is no evidence that he made any payments into the bankruptcy.

Applicant's assertions that he is not responsible for the mortgage and HELOC debts because he has a valid basis to dispute the legitimacy of the debts are insufficient to mitigate the SOR allegations. There is no evidence that either bank acted in an inappropriate manner, which was validated by the lower court's dismissal of Applicant's lawsuit. Additionally, there is no evidence that Applicant was unable to pay the alleged debts due to financial issues beyond his control. Rather, it was a conscience choice and remained a choice, even after the lawsuit was dismissed, and the SOR was issued.

Applicant's tax issues further demonstrate that his financial issues are not isolated and raise additional questions regarding his judgment, reliability, and trustworthiness.

Mitigation under AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) was not established.

### **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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's favorable character evidence.

I conclude Applicant did not meet his burden of proof and persuasion. He failed to mitigate the financial considerations security concerns.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:                      AGAINST APPLICANT

Subparagraphs 1.a - 1.c:                      Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

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CAROLINE E. HEINTZELMAN  
Administrative Judge