



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



In the matter of: )  
)  
) ISCR Case No. 18-02072  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

03/04/2019

---

**Decision**

---

GOLDSTEIN, Jennifer, Administrative Judge:

Applicant exercised financial irresponsibility when he made a strategic decision to default on his home mortgage in 2011. Resulting security concerns were not mitigated. Based upon a review of the pleadings, and exhibits, national security eligibility is denied.

**History of Case**

On August 20, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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 Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implemented June 8, 2017.

Applicant submitted an Answer to the SOR, denying the sole allegation, on September 11, 2018, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted its file of relevant material (FORM) on October 24, 2018. Applicant received it on November 6, 2018. The Government's evidence is identified as Items 1 through 7. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted an email with an attached credit report dated November 27, 2018, as his response to the FORM (Response). Items 1 through 7 and the Response are admitted into the record. The case was assigned to me on February 11, 2019.

### **Findings of Fact**

Applicant is a 66-year-old naturalized U.S. citizen. He is married and has two children. He has worked for a government contractor since February 2011. He served on active duty in the U.S. Navy from 1984 to 2007, when he retired honorably. He denied the delinquent debt alleged in SOR ¶ 1.a. (Answer; Item 4.)

The SOR alleged that Applicant was indebted to a mortgage holder in the amount of \$296,546. This debt was reflected on his May 2017 and July 2018 credit reports as a charged-off account. (Item 5; Item 6.) Records reflect Applicant purchased a condominium in 2005 for \$379,000, for his daughter to reside in while Applicant was stationed overseas. He financed the purchase with a \$303,192 fixed-rate loan from lender 1 and a flexible-rate loan of \$75,798 from lender 2. Lender 1 apparently sold the debt for collection (or transferred the mortgage) to the creditor identified in SOR ¶ 1.a. In July 2011, Applicant purchased his current residence for approximately \$369,900 financed through a different lender. He then decided he wanted to sell the condominium he bought for his daughter to reside in. He explained in his Answer:

During the real estate down market in 2011, with the assistance of a Real Estate Agent, I attempted to sell my condominium located at [address omitted]. However, the bank refused to settle and instead foreclosed the property and sold it to the highest bidder. (Answer.)

He attached a property profile for the condominium, which showed that the property was sold through foreclosure in November 2012 for \$180,000. (Answer.) The record does not allege or reflect the status of the home loan made by lender 2.

In his Response, Applicant attached a recent credit report, which shows he has an excellent credit rating. He indicated "the foreclosure, which will not happen again, occurred a long time ago (seven (7) years to be exact) due to the real estate down market." (Response.)

## Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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(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." 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "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 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 that an applicant may deliberately or inadvertently fail to 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.

Finally, 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 concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes one condition that could raise security concerns and may be disqualifying in this case:

(b) unwillingness to satisfy debts regardless of the ability to do so.

As alleged in the SOR, Applicant's mortgage account was charged off by the creditor in the approximate amount of \$296,546. His decision to purchase another property and let this property fall into foreclosure was a strategic decision and reflected an unwillingness to abide by his financial obligation to the creditor. These facts establish *prima facie* support for the foregoing disqualifying condition, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's admitted financial difficulties:

(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, 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; and

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

Applicant's financial problems arose as a result of a strategic default on his mortgage. While the decline of his home value may have initially caused difficulties selling the property, he did not present evidence that he acted responsibly under the circumstances. While he attempted to sell his condominium, he also purchased another home just prior to his choice to default on his condominium mortgage. Applicant's default on his mortgage loan shows financial irresponsibility. While he has an excellent credit score, he has done little to show that similar lapses in judgment are unlikely to occur. Mitigation was not established under AG ¶¶ 20(a) or 20(b).

Applicant offered no evidence of financial counseling, or budget information. Although his 2018 credit report indicates he is responsibly paying his current debts, which is evidence of partial mitigation, he failed to overcome his past questionable decision to strategically default on his condominium mortgage. Accordingly, Applicant established limited mitigation of financial security concerns under the provisions of AG ¶¶ 20(c) or 20(d).

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who is accountable for his choices to incur substantial debt and not repay it. He is credited with his military service. However, he has not demonstrated responsible action

under the circumstances, and he has not documented a good-faith effort to resolve his mortgage debt. His foreclosure dates back seven years, but a determination cannot be made that similar circumstances are unlikely to recur. His charged-off mortgage continues to cast doubt on his current reliability, trustworthiness, and good judgment. Financial concerns remain despite the presence of some mitigation demonstrated in his good credit rating and military service. Overall, the evidence creates significant doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. National security eligibility for access to classified information is denied.

Jennifer Goldstein  
Administrative Judge