



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



In the matter of: )  
)  
) ISCR Case No. 18-02302  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Michelle Tilford, Esq., Department Counsel  
For Applicant: *Pro se*  
03/29/2019

**Decision**

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on March 10, 2017. On October 19, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. This 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 the adjudicative guidelines (AGs) implemented by DOD on June 8, 2017.

Applicant timely answered the SOR with a detailed 13-page answer, denying all of the alleged delinquencies. He attached several documents to his answer. The case was assigned to me on January 25, 2019. The Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for February 27, 2019. I convened the hearing as scheduled.

The Government's Exhibits (GE) 1 through 5 were admitted into evidence without objection. At the hearing, Applicant testified and submitted Applicant's Exhibits (AE) A through K, which were admitted without objection. The transcript (Tr.) was received at DOHA on March 13, 2019.

### **Findings of Fact<sup>1</sup>**

Applicant is 52 years old. He was married from 1990 to 2017. (Tr. 44) His wife is deceased. He has two adult children that live with him. (Tr. 45) Applicant obtained his Bachelor's degree in electrical engineering in 1988. (Tr. 43) He reports no military service. He has been employed as an engineer for a major federal contractor for 22 years. (Tr. 41) He received exemplary performance evaluations. He provided a resume and seven pages of individual achievement awards and certificates. (AE K) He reports having a security clearance since 1997 with no incidents. (Tr. 12)

The SOR alleges four delinquent debts totaling \$394,812 including a charged-off mortgage loan at SOR ¶ 1.a, in the amount of \$239,347, and a charged-off second mortgage on the same property at SOR ¶ 1.b. It also alleges a related debt in the amount of \$69,648 placed for collection at SOR ¶ 1.d. Applicant co-invested in two homes with others in 2006, and he purchased a third home himself that year, at the height of the housing market bubble. (Tr. 36) This was an investment strategy launched when the properties were appreciating in value. Almost immediately, the market crashed with the subprime mortgage scandal of 2008 and ensuing financial collapse. Applicant and his co-investor sold the first house and he incurred a loss of a few hundred dollars. (Tr. 50) They sold the second house around 2009 and he incurred a loss of approximately \$15,000. (Tr. 48)

Applicant owned house number three (# 3) alone. It was losing value rapidly. He tried a short sale of the property but was informed that he would have to stop making payments. He did so, but the lender would not agree to the short sale anyway. (Tr. 52) In 2012, Applicant was struggling to make mortgage payments because his overtime opportunities decreased. He obtained a home-equity line of credit (HELOC) of \$98,700 to use for mortgage payments on house # 3. (Tr. 21, 53) He knew it was depreciating but hoped that the market would recover. (Tr. 54) He tried to sell it but received no offers. Eventually, he gave up and both the primary and second loan were defaulted. He allowed it to go to a foreclosure-auction sale in February 2014. (Tr. 56) Applicant had the two Bank of America (BOA) mortgage loans on the property totaling \$300,000. (Tr. 57) A loan-servicing company bought house # 3 for \$120,000 at the auction.

Applicant testified that shortly after the foreclosure sale he received a packet in the mail from an unknown loan-servicing or collection agent at SOR ¶ 1.d (D.O.) demanding that he pay approximately \$230,000, which presumably was for the balance he owed after foreclosure on the two mortgage loans. (Tr. 57, 67) Applicant assumed

---

<sup>1</sup> Unless stated otherwise, the source of the information in this section is Applicant's March 10, 2017, security clearance application (SCA) (GE 1).

the amount was incorrect and he discarded this mail in 2014. (Tr. 67, 70) He was confused and thought that “charged-off” on his credit report meant forgiven. He also thought that aged-off his credit report accounts were closed. (Tr. 58, 76) He did not contact D.O. or the BOA or anybody else from 2014 until late 2018 to try to resolve this deficiency that he knew he owed. (Tr. 68) He admitted that he should have been more proactive. (Tr. 70)

After his clearance interview in June 2018, Applicant began to put the pieces together and realized that D.O. was a collection agent for BOA or its successor creditors. Still he took no action. (Tr. 62) After receipt of the SOR in October 2018, he contacted D.O. and settled the primary mortgage for \$33,000 on February 27, 2019. (Tr. 58) He provided a copy of the compromise and settlement agreement reflecting that the original mortgage loan debt of \$263,992 was settled for \$33,000. (AE B) He has not received an IRS Form 1099 for this income (resulting from forgiven debt) yet. (Tr. 76-77)

SOR ¶ 1.b was a charged-off debt in the amount of \$83,101 for the second mortgage loan on house # 3. Applicant testified that he only recently started communicating with BOA representatives in an effort to resolve this long-standing debt. (Tr. 75) He provided a packet of correspondences with BOA and its various collection agents showing his efforts to resolve this matter. (AE A, AE D) (Tr. 33-35) It remains unresolved.

SOR ¶ 1.c alleges a charged-off credit-card account in the amount of \$2,716. Applicant testified that he paid this debt in full on March 13, 2017. (Tr. 20) He explained that this was a credit-card debt run up by his late wife without his knowledge. He provided documentary evidence attached to his answer to the SOR reflecting that the account now has a zero balance and it is paid in full.

Applicant attached several documents to his November 2018 answer to the SOR including; a copy of a certificate showing that he completed a few hours of financial counseling on November 8, 2018; pay stubs reflecting his gross pay of \$5,413 every two weeks; a personal financial statement reflecting a current mortgage of \$153,000 on his primary home; a stocks and bonds investment portfolio and 401(k) account statement reflecting that Applicant has assets valued at well over \$2 million, plus other bank account and IRA statements showing his substantial net worth.

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the adjudicative guidelines 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG, Appendix A, ¶ 2(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG, Appendix A, ¶ 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. Under Directive ¶ E3.1.15, 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, and has the ultimate burden of persuasion as to obtaining 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 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 risk of compromise of classified information.

## **Analysis**

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

The security concern relating to 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 abuse, 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable here:

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

Applicant's delinquent debts alleged in the SOR are confirmed by his testimony, credit reports, and documents submitted at the hearing. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(b) and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.<sup>2</sup>

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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 . . . , 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 non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual has initiated and is adhering to a good-faith effort to repay overdue creditors and otherwise resolved debts.

---

<sup>2</sup> Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

Applicant endured the death of his wife in 2017, and a real-estate market collapse in 2008. These conditions were beyond his control. However, he did not act responsibly under the circumstances. He engaged in a real estate investment plan, which did not work out. He speculated by obtaining a HELOC on a property that was already depreciating and in distress. When he could not sell the property, he made a decision to walk away and allow it to go to foreclosure sale. Documents he produced, show that Applicant is a sophisticated investor. He testified that he thought charged-off meant forgiven, and that if delinquent debts aged off his credit reports, they were closed. I do not find that testimony to be credible. He had substantial assets available to pay his delinquent debts well before the evening of his hearing. He willfully engaged in a strategic default on house # 3, and then deliberately ignored creditors and collection agents for the period between 2014 and 2018, while amassing a prodigious investment portfolio. He has not produced relevant and responsive documentation showing good-faith efforts before the compromise and settlement in late February 2019. He still has not satisfied the second loan at SOR ¶ 1.b.

Applicant appropriately obtained credit counseling to address his financial problems in November 2018 after receipt of the SOR. He produced documentation showing payment in full on SOR ¶ 1.c, and an eleventh-hour compromise and settlement of SOR ¶¶ 1.a and 1.d in February 2019. He was prompted into action by the security clearance process. He did not previously engage in a good-faith effort to resolve debts. His efforts were too little, too late. He has not met his burden to show that his financial problems are under control, and that his debts were incurred under circumstances making them unlikely to recur. The mitigating conditions enumerated above in AG ¶ 20 do not 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 the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG, Appendix A, ¶ 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, Appendix A, ¶ 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. Some of the factors in AG, Appendix A, ¶ 2(d) were addressed under that guideline.

Applicant's finances remain a security concern. The record evidence leaves me with serious questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under Guideline F, financial considerations.

### **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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a, 1.c, and 1.d:	For Applicant
Subparagraph 1.b:	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 a security clearance. Eligibility for access to classified information is denied.

---

Robert J. Kilmartin  
Administrative Judge