



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



In the matter of: )  
)  
) ISCR Case No. 12-05113  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline Heintzelman, Esq., Department Counsel  
For Applicant: Stephen Silvers, Personal Representative

September 17, 2014

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant defaulted on the mortgages for his residence. He has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 17, 2012, Applicant submitted an e-QIP. On March 12, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective September 1, 2006.

Applicant answered the SOR on May 12, 2014 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on July 21, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July

30, 2014, scheduling the hearing for August 25, 2014. The hearing was convened as scheduled by video teleconference between Woodland Hills, California, and Arlington, Virginia. The Government offered Exhibits (GE) 1 through 6, which were admitted without objection. Applicant offered Exhibits (AE) A through F, which were admitted without objection. He also provided a trial brief, marked AHE (Applicant Hearing Exhibit) I. Applicant testified on his own behalf and called three witnesses. The record was left open for Applicant to submit additional exhibits and on September 8, 2014, Applicant presented five additional exhibits and a brief marked AE K through AE O.<sup>1</sup> Department Counsel had no objections to AE K through AE O and they were admitted. The record then closed. DOHA received the transcript of the hearing (Tr.) on September 3, 2014.

### **Findings of Fact**

Applicant is 60 years old. He has been employed with a Government contractor since 1979. He has held a security clearance since 1980. He has been married twice. His first wife passed away in 1993. He married his second wife in 1999. He divorced her in January 2014, although he currently resides with her. He has one adult child with his ex-wife. (GE 1; GE 2; Tr. 41-42, 50.)

The Government alleged that Applicant is ineligible for a clearance because he has 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. The SOR identified a medical debt; two delinquent mortgages; and a 2000 Chapter 7 bankruptcy as security concerns. Applicant admitted allegations 1.b, 1.c, and 1.d in his Answer. He denied the medical debt in 1.a. All of the alleged debts were listed on credit reports dated July 2014; February 2014; and April 2012. (Answer; GE 2; GE 4; GE 5; GE 6.)

Shortly after Applicant's second marriage in 1999, Applicant bought a new house and moved into it with his now ex-wife. After their move, Applicant received credit card applications through the mail. Unbeknownst to Applicant, his then wife applied for and received several credit cards. She then charged the maximum limits on the cards. Applicant was unaware of the credit cards until they became delinquent. He spoke to an attorney who advised him to file bankruptcy. In July 2000 Applicant took the advice of the attorney and filed for Chapter 7 bankruptcy. He discharged approximately \$70,000 worth of delinquent debt in October 2000, as identified in allegation 1.d. Applicant testified that as a result of the bankruptcy, his special access clearances were suspended but he retained his security clearance. (GE 1; GE 2; GE 7; Tr. 40-41, 58.)

After his 2000 bankruptcy, Applicant worked to improve his credit rating. In 2006, his credit rating improved enough that he was able to buy a new home with 100% financing. He purchased the home for \$365,000. He financed it with a primary fixed-rate mortgage of approximately \$292,000 and a second, flexible-interest rate mortgage of \$73,000. He was able to make his monthly mortgage payments for only two years. (GE 7; Tr. 40-45, 62-70.)

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<sup>1</sup> Applicant did not submit any exhibits labeled as AE G through AE J. These letters were omitted in his labeling of his exhibits and are omitted herein intentionally, to remain consistent with Applicant's labeling.

The primary mortgage, identified in allegation 1.b, is delinquent in the amount of \$150,227. The second mortgage, identified in allegation 1.c, was charged off in the approximate amount of \$72,056. Both were purchase-money loans. Applicant stopped paying on both of these mortgages in April 2008, despite his annual income of approximately \$100,000. He attributed his delinquencies to the high cost of a marital separation that occurred in July 2008 and led to his divorce, which was finalized in January 2014. He requested that the Judge presiding over his divorce proceedings approve a short sale of the home, but “the Judge refused to order a short sale at the time because of a minor in the house.” (Tr. 45.)

The home has not yet been foreclosed upon by the primary mortgage holder. His ex-wife and daughter were permitted to reside in the house by the divorce decree, until such time as it is foreclosed upon. At the same time, the property value declined due to a depressed national economy. Since there has been no foreclosure action to date, Applicant’s ex-wife and daughter remain in the property. To save money, Applicant also moved back into the house in April 2014. He asserted in his post-hearing documents that he is now looking for an apartment to rent. The primary mortgage holder offered Applicant a loan modification, but Applicant was unwilling to accept it, although he testified that he believed he could afford the loan modification payments. In an undated letter to the primary mortgage holder, Applicant rejected the loan modification offer and requested a deed-in-lieu of foreclosure. The Applicant has not had any contact with the second mortgage holder in three-to-four years. He believes that his state’s anti-deficiency laws preclude collection against him on both the primary mortgage and second mortgage. He presented evidence to show that borrowers who take purchase-money loans on owner-occupied residences are not liable to the lenders for deficiencies following non-judicial foreclosure in his state. (AE C; AE F; AE K; AE L; AE M; AE N; AE O; Tr. 42-46, 70-71.)

Applicant’s other SOR-listed debt is a delinquent medical bill for his wife’s dental care that occurred after their separation in 2009. It is listed in allegation 1.a. Applicant denied this debt because it was not his legal obligation. He contacted this creditor and contested the debt. It was removed from his most recent credit report. This debt is resolved. (AE B; Tr. 45-47.)

Applicant testified that he had one additional delinquent debt that was identified as delinquent on his credit report. He owed approximately \$800 in legal fees for the attorney that represented his daughter in his divorce proceeding. He testified that the bill went to his home address, but he was not currently residing there at that time and did not receive it. He paid it after he learned of the debt. It is identified as “paid” on his February 2014 credit report. (GE 5; Tr. 51-53.)

Applicant’s alimony and child support obligations ended in December 2013. He testified that he only has two ongoing financial obligations. In early 2014, he financed the purchase of two vehicles. He bought a 2012 Chevy Malibu for approximately \$14,000 and a 2012 Toyota truck for \$23,000 to \$24,000. The vehicles were for his ex-wife and daughter. His ex-wife is supposed to give him money for the monthly payments on her vehicle. (GE 4; Tr. 53, 65-66, 75-76.)

Applicant's personal financial statement shows that Applicant has a 401K valued at over \$205,000.<sup>2</sup> His annual salary for 2013 was \$140,000. He did not attend any counseling or debt consolidation services. Applicant's uncle, who is a retired Certified Public Accountant (CPA), is advising him on his financial affairs. He counseled Applicant not to take money out of his 401K to repay his debts. (GE 2; Tr. 69-71, 80.)

Applicant's brother, mother, and a family friend all testified on his behalf. They indicated Applicant is trustworthy and dedicated to his family. They indicated Applicant lives a modest life style and does not gamble, use drugs, or drink alcohol. (Tr. 30-40.) Additionally, Applicant presented letters of recommendation from three professional contacts. Each recommended Applicant for a clearance. He has a reputation at work for being hard-working, loyal, and honest. (AE A.)

### **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(a) 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 access to classified information 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, 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 clearance decision.

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<sup>2</sup> Applicant testified his 401K plan has increased to \$225,000 since he completed his personal financial statement.

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 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 for Financial Considerations is set out in AG ¶ 18:

Failure or 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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

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

In 2000 Applicant accumulated a significant amount of delinquent credit card debt. He discharged approximately \$70,000 worth of delinquent debt in October 2000. In 2006, he had rehabilitated his credit enough to allow him to fully finance the purchase of a new home. However, two years later, he defaulted on his payments on that home. Despite the means to satisfy his obligations, he has failed to satisfy his delinquent mortgages. His actions have demonstrated both a history of not addressing his debt and an unwillingness to do so. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations 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 (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(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;

(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.

The evidence shows that Applicant's primary and second mortgages are not resolved. Despite his argument that his state's anti-deficiency statute will preclude a default judgment and relieve him of liability once the property has been foreclosed upon, it would be premature to hold that the statute applied before foreclosure has been perfected. His debts are recent and ongoing. Further, given his present and past financial problems, I cannot find that future financial problems are unlikely to occur. Applicant's financial history continues to cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) is not applicable.

AG ¶ 20(b) is not fully applicable. Applicant explained that the decline in the housing market and his costly divorce led to his financial problems. These are circumstances largely beyond his control. However, to be fully applicable, AG ¶ 20(b) requires that the individual act responsibly under the circumstances. Applicant did not responsibly address his delinquent primary and second mortgages. He stopped paying his mortgages in April of 2008, months before he moved out of his marital home. He was making approximately \$100,000 at that time. He had no contact with his second mortgage holder since he defaulted on his loan. He has had contact with the primary mortgage holder, and was offered a loan modification that he testified he could afford. However, he decided that he would seek a deed-in-lieu of foreclosure instead. He, his ex-wife, and his daughter are all still living in the property for free. He testified he has \$225,000 in retirement savings and earns \$140,000 per year. Under these circumstances, I cannot hold Applicant is acting responsibly with respect to his

mortgage debt as alleged in subparagraphs 1.b and 1.c. He did act responsibly by resolving the debt alleged in 1.a through a formal dispute.

Applicant did not attend formal financial counseling, but does receive help from his uncle who is a retired CPA. However, he presented no evidence that his financial problems are resolved or are under control. AG ¶ 20(c) does not apply.

Applicant resolved one debt, through dispute. He has not made a good-faith effort to pay or resolve his remaining delinquent debt, despite the means to do so as set out above. It is unclear if his request for a deed-in-lieu of foreclosure will be accepted. AG ¶ 20(d) is not applicable.

Applicant presented evidence to show that he formally disputed allegation 1.a and it was removed from his credit report. AG ¶ 20(e) is applicable, in part.

### **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(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.

I considered the potentially disqualifying and mitigating conditions in light of all relevant 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 ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant is respected by his family and professional contacts for his honesty, hard work, and dedication to his job. However, in his position as a Government contractor, he makes a substantial annual income, and has more than \$225,000 in retirement savings. He was recently able to afford the purchase of two cars for his daughter and ex-wife. Despite his income, Applicant failed to address his primary and second mortgages in a meaningful way. He has not paid for the residence that he owns since 2008. Yet, he lived there for free from April 2008 until he moved out in July 2008 and again in April 2014 to present. His ex-wife and daughter remained in the residence for the past six

years without payment. Applicant has exercised questionable judgment in his financial priorities. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated Financial Considerations security concerns.

### **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:	For Applicant
Subparagraphs 1.b:	Against Applicant
Subparagraphs 1.c:	Against Applicant
Subparagraphs 1.d:	Against Applicant

### **Conclusion**

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

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Jennifer I. Goldstein  
Administrative Judge