



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-08929
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Pamela Benson, Esquire, Department Counsel  
For Applicant: *Pro se*

06/29/2016

**Decision**

WHITE, David M., Administrative Judge:

Applicant incurred delinquent debts when his career transition after a military career coincided with the housing market crash. He has taken effective steps to address the delinquencies, and has substantially resolved them. His long-term marriage to a former citizen of the Philippines and her present connections to that country pose no heightened risk. Former security concerns were mitigated. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application on March 23, 2012. On February 5, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations), and Guideline B (Foreign Influence). The action was taken under Executive Order 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 for Determining*

*Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on March 19, 2015, and requested a decision on the administrative record without a hearing. While that process was taking place, he changed his mind and requested to have a hearing before an administrative judge.<sup>1</sup> Department Counsel was prepared to proceed on October 21, 2015. The case was assigned to me on October 29, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on November 16, 2015, setting the hearing date for December 8, 2015, and I convened the hearing as scheduled. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection; and Hearing Exhibit (HE) I, a Government exhibit list. Applicant offered Exhibits (AE) A through K, which were admitted without objection, and testified on his own behalf. I granted Applicant's several requests to leave the record open until February 2, 2016, for submission of additional evidence.<sup>2</sup> DOHA received the transcript of the hearing (Tr.) on December 16, 2015. On February 2, 2016, Applicant submitted AE L, which was admitted without objection, and the record closed.

### **Findings of Fact**

Applicant is a 55-year-old employee of a defense contractor, where he has worked since August 2006. He is a high school graduate, with about three years of college courses but no degree. He honorably retired at pay grade E-7 in May 2006, after serving in the U.S. Air Force for 24 years. He has held a security clearance since 1983, in connection with his military service and current employment. He is married and has two teenage children. (GE 1; AE C; Tr. 8-9, 28, 40-43.)

Applicant admitted the factual allegations set forth in SOR ¶¶ 1.a, 1.c, 1.d, 1.e, 2.a, 2.b, and 2.c, with explanations and updated information. He denied the remaining allegation in SOR 1.b, because, at the time, he was unable to determine who the alleged creditor was or the origin of any underlying debt. (AR.) Applicant's admissions and explanations are incorporated in the following findings.

Applicant purchased a home in 2003 near the Air Force base where he served his final tour on active duty, and planned to remain there with his family after his retirement. However, with the beginning of the economic downturn in 2006 he was unable to find local employment during the summer after he retired. That August, he was offered a position with the major defense contractor for whom he still works, but that required him to relocate to a distant city with substantially higher costs of housing and living. This presented his only reasonable option for post-service employment, so he accepted the offer and moved to the new location with his family. (GE 1; Tr. 28-29, 43, 48.)

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<sup>1</sup>See Tr. 15-18.

<sup>2</sup>See AE L.

Appellant rented the family's former home in late 2006 while also having listed it for sale, but due to the downturn in the housing market he was not able to get enough rent to cover the mortgage expenses as the home was losing value. He received one offer to purchase the home in 2007, but the prospective buyer failed to qualify for financing. He discovered that the renters had caused substantial damage to the property, and had to evict them during early 2008. Once he completed repairs on the house, he was unable to find another renter in the depths of the housing crisis while it remained listed for sale. Eventually, he was unable to continue making mortgage payments on that home while also remaining current on his housing and living expenses in the new location. A November 2009 credit report entry showed his first mortgage payments to be past due in the amount of \$10,602 as alleged in SOR ¶ 1.a. The lender took possession of the home through foreclosure proceedings in February 2009. At the time, the loan's principal balance was \$265,808 and the lender took possession of the property for a fair market value of \$150,000, leaving a remaining deficiency of \$115,808. The lender cancelled this deficiency debt effective March 2, 2009, and issued Applicant and his wife an IRS Form 1099-C, which they filed with their income taxes for that year.<sup>3</sup> This debt is fully resolved. (AR; AE D; AE H; AE K; Tr. 28-30, 43-47, 50-56.)

The \$1,801 debt alleged in SOR ¶ 1.b involved a department store credit card that was issued in Applicant's wife's name. It became delinquent in 2009 and was placed for collection with the alleged creditor in 2011. That creditor provided Applicant a letter, dated December 7, 2015, acknowledging that the account had been paid in full (for \$2,524) and closed on May 10, 2013. (AE E; Tr 57-61.)

SOR ¶ 1.c alleges a judgment entered against Applicant in August 2009 for the \$19,396 balance due on a line of credit loan he and his wife had taken out against the equity in their former home. Applicant documented that he has been consistently making \$650 monthly payments toward this debt, as agreed with the creditor, since November 2009. The balance due has been reduced to about \$13,500, and Applicant intends to continue making monthly payments until the balance is reduced to the point that he can negotiate a lump-sum payoff. (AR; AE F; Tr. 61-65.)

The \$42,830 secured credit card (home equity line of credit) debt alleged in SOR ¶ 1.d was opened in May 2006 and became delinquent in January 2009. This loan was also secured by equity that existed at the time in Applicant's former home. On December 11, 2013, the creditor (a major bank) discharged and cancelled this debt, and issued IRS Forms 1099-C to Applicant and his wife. This form was filed with their 2013 Federal income tax return, and all applicable taxes were paid. (AR; AE G; Tr. 47-50, 56-57.)

SOR ¶ 1.e alleges a \$387 debt to a chain home and building supply store. Applicant made several efforts to identify and resolve this debt with store personnel before his hearing, but they were unable to identify it and declined to accept payment.

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<sup>3</sup>Applicant and his wife had their income tax returns prepared by a CPA for all tax years involved, and paid all taxes due. (Tr. 54-57.)

The record was left open after his hearing to provide Applicant additional time to resolve the status of this debt. After a customer service representative conducted an account review, she told Applicant that the account was closed and considered non-recoverable. It had been charged off after becoming delinquent in May 2009. He asked if he could pay the debt anyway, and was provided instructions on where to send payment. On February 1, 2016, the creditor finally cashed his \$387 check to pay this debt in full. (AR; GE 4; AE L; Tr. 65-67.)

Applicant has been working consistently to pay and otherwise resolve the delinquent debts that he and his family accrued between his retirement in 2006 and the foreclosure on their former home in 2009 after their attempts to maintain payments on it until it could be sold were unsuccessful. They have incurred no new delinquencies, and have paid all tax obligations on the canceled portions of the debts secured by their former home that lost substantial equity in the housing crash. Applicant now earns sufficient income to avoid future financial problems. (GE 4; AE K; Tr. 29-30, 41-42, 55-57, 67-72.)

Applicant's first Air Force duty station was in the Philippines. He met his wife there in 1984 and they married in 1987. They spent the next 13 years of his Air Force career assigned to overseas duty stations in Asia and Europe. His wife became a naturalized U.S. citizen on December 3, 2014. In early 1991, Applicant's wife bought a house in the Philippines for \$5,000. The house title is solely in her name, and Applicant himself owns no assets outside the United States. They never occupied that house, but her brother (a citizen of the Philippines) moved into the house and still lives there. The estimated value of the house is now \$10,000, and to Applicant's knowledge his brother-in-law doesn't pay any rent for the house because his wife's family is very poor. The brother-in-law is a fisherman, and has no connection to the government there. Applicant, himself, has no assets in the Philippines. Department Counsel submitted no request for administrative notice concerning the Philippines, and basically conceded that changed circumstances since issuance of the SOR have mooted any foreign influence concerns that may have existed in the past. (AR; AE J; Tr. 22, 72-74, 83.)

Applicant submitted letters from two supervisors and a coworker describing their high opinions of his character, trustworthiness, dedication, integrity, and judgment. (AE B.) I found his testimony to be forthright, credible, and knowledgeable in all respects.

### **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 (DCs) and mitigating conditions (MCs), 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, 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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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, "[t]he 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." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying 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.

## **Analysis**

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

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 record evidence potentially raises security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant incurred some significant delinquencies after retiring from active duty in 2006 and relocating for his post-service employment. His former home went into foreclosure, and two loan debts that had been secured by its equity were canceled while a third was reduced to judgment. Two small consumer debts were also delinquent. These facts provide substantial evidence under the foregoing DCs, thereby shifting the burden to Applicant to mitigate resulting security concerns. The SOR allegations and evidence do not support any other DC under this guideline.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's 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), 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.

Applicant's financial problems arose due to the unexpected crash of the housing market and general economy starting in 2006, and his unplanned need to relocate for post-service employment. He tried to sell his former home as it rapidly lost equity, and rented it for over a year to help him afford his mortgage payments. However, the renters badly damaged the home, and after evicting them he was unable to find new renters in the deteriorating market. Applicant prioritized his spending to remain current on his

housing and living expenses in his new location but was temporarily unable to meet all his debt obligations. This unique confluence of major career change and severe economic conditions began ten years ago, were largely beyond his control, and are unlikely to recur. His actions were demonstrably responsible under the circumstances, and do not cast doubt on his current reliability, trustworthiness, or judgment..Applicant accordingly established substantial mitigation under AG ¶¶ 20(a) and (b).

The home they were unable to rent or sell, after moving to obtain Applicant's current employment, went into foreclosure in 2009. The first mortgage lender canceled the \$115,808 deficiency remaining after taking possession, and another home equity lender later canceled its \$42,830 debt. Applicant lawfully paid all resulting taxes. A different home equity lender obtained a \$19,396 judgment against Applicant, toward which he has been timely making agreed monthly payments since November 2009. Applicant had repaid one of two small delinquent consumer debts almost two years before issuance of the SOR, and had to convince the creditor involved in the other one to accept payment after significant efforts to identify it. Accordingly, these clear indications that the problems are resolved or under control, and Applicant's good-faith efforts to repay his creditors or otherwise resolve his former debts, establish additional mitigation under AG ¶¶ 20(c) and (d).

"An applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has 'taken significant actions to implement that plan.'" ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)). Applicant has successfully established a meaningful track record of debt resolution that continues to date, and has reestablished a solvent and responsible financial situation.

## **Guideline B, Foreign Influence**

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. The SOR allegations and evidence in this case raised potential security concerns under four foreign influence DCs:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant's wife was a citizen of the Philippines when they met in 1984, and married in 1987, and served as a military spouse in duty stations around the world throughout the remainder of his 24-year Air Force career. After they settled into their post-service life, she became a naturalized U.S. citizen. In 1991 she purchased a \$5,000 home in the Philippines, in which her brother has lived ever since. He is a poor fisherman, with no connection to the government, and cannot afford to pay for housing on his own. The value of this house is about \$10,000 and it represents the only asset either Applicant or his wife owns outside the United States. Department Counsel did not formally withdraw the SOR allegations under this guideline, but acknowledged that changed circumstances significantly diminished their import and offered no evidence of any heightened risk arising from the identity and nature of the country involved. I find that Applicant's relationship with his U.S. citizen wife, and her connections to the Philippines, do not create a heightened risk of foreign exploitation, inducement, manipulation, pressure, coercion, or influence under AG ¶¶ 7(a), (c), or (d). Similarly, they create no potential for conflict of interest between Applicant's obligation to protect sensitive information or technology and his desire to help a foreign person, group, or country under AG ¶ 7(b).

AG ¶ 8 provides conditions that could mitigate security concerns. Those that would obviously provide conclusive mitigation of any theoretical security concerns in this case are:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign



individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

### **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 pertinent facts and circumstances surrounding this case. Applicant is a sincere and mature individual, with a lifelong history of dedicated and loyal service to the United States. He has accepted accountability for his former debts, and resolved all but the one toward which he continues making agreed payments in a timely manner. His actions to address both the sources and results of his indebtedness have substantially eliminated the potential for pressure, coercion, or duress, and make continuation or recurrence of significant financial problems unlikely. His longstanding but minimal contacts with the Philippines also create no potential for pressure or exploitation. Overall, the record evidence creates no doubt as to Applicant's present eligibility and suitability for a security clearance.

### **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:	FOR APPLICANT
Subparagraphs 1.a through 1.e:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a through 2.c:	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's eligibility for a security clearance. Eligibility for access to classified information is granted.

DAVID M. WHITE  
Administrative Judge