



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 12-10298
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Bryan J. Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

12/24/2015

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant mitigated security concerns raised by the foreclosure of his home in February 2012. He attempted to resolve his mortgage situation before the lender foreclosed on the property. In the nearly four years since the foreclosure, Applicant has responsibly managed his finances and his current finances appear to be under control. Clearance is granted.

**Procedural History**

In February 2012, Applicant alerted his facility security officer (FSO) regarding the foreclosure of his home. His FSO submitted an adverse information report to the Defense Security Service, triggering the current reinvestigation. Applicant submitted a new security clearance application (SCA) in May 2012, disclosing and explaining the circumstances leading to the foreclosure. He was then interviewed by a background investigator in June 2012. He provided the investigator further details regarding the circumstances leading to the foreclosure and his finances. See Exhibit (Ex.) 3 – 5.

On June 12, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR),<sup>1</sup> alleging that Applicant's circumstances raised security concerns under the financial considerations guideline.<sup>2</sup> On July 17, 2015, Applicant answered the SOR and elected to have his case decided on the written record without the benefit of a hearing. See Hearing Exhibit (Hx.) I.

On September 9, 2015, Department Counsel prepared a file of relevant material (FORM) and sent it to Applicant. The FORM contains eight documentary exhibits (Ex. 1 – 8) that are admitted into the record without objection. On October 30, 2015, Applicant timely submitted a response to the FORM. His response (Ex. 9) is admitted into the record without objection. On December 1, 2015, I was assigned Applicant's case.<sup>3</sup>

### **Findings of Fact**

Applicant, after 12 years of working full time and helping to care for his then infant children, received his undergraduate degree in 1999. After earning his degree, Applicant was hired as a federal contractor and received his initial security clearance. He has been with his current employer since 2007.

Applicant's first marriage of 12 years ended in divorce in 2003. He spent about \$30,000 in legal fees and took responsibility for about \$20,000 in marital debt. He resolved the marital debts through bankruptcy. He was awarded custody of his children. His former spouse did not pay the court-ordered child support and owes about \$10,000 in back child support.

Applicant's finances remained stable until about 2010, when his former accountant did not file his taxes on time. Applicant incurred a sizeable tax debt of approximately \$15,000. He hired a new accountant, contacted the IRS, and entered into an installment agreement to resolve the tax debt. He paid the debt, and since then has filed and paid his taxes on time.<sup>4</sup>

Applicant's recent financial trouble took place in February 2012, when the single-family home that he had lived in for six years with his new wife and their children was foreclosed. Applicant explained that following the 2007-2008 housing market collapse his former home's value plummeted by about forty percent. He needed to downgrade to

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<sup>1</sup> The record is silent as to the nearly three and half year delay in processing Applicant's case. However, Applicant has not claimed any prejudice from the delay and the delay appears to have worked in his favor. ISCR Case No. 08-10170 at 2 (App. Bd. Jul. 8, 2011).

<sup>2</sup> This action was taken under Executive Order (E.O.) 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 implemented by the Department of Defense on September 1, 2006.

<sup>3</sup> See also Hx. II (administrative documents and Applicant's acknowledgment of FORM).

<sup>4</sup> The bankruptcy and tax debt were not alleged in the SOR. They are only being considered in assessing Applicant's history of financial issues, mitigation case, and whole-person factors.

a smaller home because his wife started having medical issues that impacted her ability to get around their old two-story home. Also, his children were graduating from high school and planning on going to college, so he no longer needed as big a home. Applicant attempted to sale the property but, due the depressed housing market, his efforts were to no avail. He also attempted to modify his mortgage, but his efforts resulting in minimal savings.

Applicant spoke to a number of real estate professionals before allowing his property to be foreclosed. He also reviewed the advice of well-known financial analyst, who counseled individuals in his predicament to let the bank foreclose on the depressed property versus trying to save it. His former home, which he had purchased for \$338,000, was sold after foreclosure for about \$220,000. His former lender did not pursue a judgment for the purported deficiency balance. Under state law, Applicant is not liable for the deficiency balance. Although a credit report from May 2012 reflects the charged-off mortgage debt referenced in SOR 1.a, a current credit report, Ex. 8, does not reflect a delinquent mortgage account.<sup>5</sup>

After the home was foreclosed, Applicant downgraded to a smaller one-story rental home that he has lived in with his wife and his stepchild for the past three years. He has been paying his recurring monthly expenses on time and has not incurred any other delinquent debt, as corroborated by recent credit reports from 2014 and 2015. He recently purchased a new home for approximately \$250,000, or about \$80,000 less than he paid for his former home.

Applicant's yearly salary is approximately \$125,000, which does not include year-end bonuses. His wife earns about \$50,000 annually. They have retirement accounts with a balance of about \$55,000. Before purchasing their new home, Applicant had about \$4,000 in monthly discretionary income to pay debts and unexpected expenses.

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865, § 2.

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<sup>5</sup> I have taken administrative notice of the state's anti-deficiency statute. I have also considered reliable, publically-available resources explaining the statute and discussing the housing market collapse. These matters were marked Hx. III and made a part of the record. While resolving issues of state law is not ideal, where the statutory language is clear on its face and the case law interpreting the statute is also clear, as in this case, the speculation or conjecture regarding the applicability of a state statute is absent. After considering Applicant's uncontroverted statement that the state's anti-deficiency statute prohibited recovery of any alleged deficiency balance, the statute, the lack of evidence regarding a judgment or lien, and the other evidence presented, I find that the lender cannot recover the purported mortgage debt alleged in SOR 1.a. See *generally*, ISCR Case No. 12-04806 (App. Bd. Jul. 3, 2014). See *also*, ISCR Case No. 14-01515 (Noel, A.J., Dec. 17, 2014); ISCR Case No. 11-04697 (Noel, A.J., Mar. 29, 2013).

When evaluating an applicant's eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15.

An administrative judge must ensure that due process proceedings are conducted "in a fair, timely and orderly manner." Directive ¶ E3.1.10. Judges are required to make certain that an applicant "received fair notice of the issues raised, had a reasonable opportunity to litigate those issues, and was not subjected to unfair surprise." ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014)

In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b). Moreover, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. See also ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009), "[o]nce a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance."

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. 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 an 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.

## **Analysis**

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

The security concern under this guideline is explained at 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 record evidence establishes that Applicant has a history of financial issues, raising the financial considerations security concern. It also raises the disqualifying conditions at AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

The record evidence also reveals a long track record of Applicant responsibly addressing debts that he incurs due to, in whole or in part, matters beyond his control. Recently, the housing market collapse, which caused his home to lose 40% of its value, and his wife's medical issues contributed to the circumstances leading to Applicant's inability to sell his former home and the eventual foreclosure of the home. At the same time, it appears that Applicant had the financial resources to continue paying his old mortgage but elected to strategically default. An individual who elects to strategically default on their financial obligation(s) faces a heavy burden in mitigating security concerns raised by such decision.

Applicant met his heavy burden of persuasion and mitigated the security concerns raised by the foreclosure. Before the issues that contributed to the foreclosure, Applicant lived in his home for six years and generally paid the mortgage on time. He attempted to mitigate his situation through a loan modification and then tried to sale his former home to satisfy the mortgage debt. Only after these efforts proved futile and after receiving the advice of real estate and financial experts did he allow his home to go into foreclosure. In the nearly four years that have passed since the foreclosure, Applicant has lived within his means, reducing expenses; paying bills on time; and not incurring additional delinquent debt. Applicant's current finances, as evidenced by his recent credit report, appear to be under control. His past financial problems no longer raise a concern about his judgment, reliability, or trustworthiness.

Furthermore, the record reflects that if faced with unexpected financial difficulties or obstacles in the future Applicant can be expected to tackle them in a legally responsible manner. Accordingly, Applicant established the full or partial applicability of the following mitigating conditions:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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; and

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Individuals applying for a security clearance are not required to be debt free, nor are they required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. They are also not expected to commit acts of financial martyrdom to maintain a security clearance. However, they are expected to present documentation to refute, explain, or mitigate security concerns raised by their circumstances, to include the accumulation of delinquent debt. Moreover, they bear the burden of showing that they manage their finances in a manner expected of those granted access to this nation's secrets.<sup>6</sup> Applicant met his burden of persuasion.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of all the relevant circumstances, to include the nine factors listed at AG ¶ 2(a).<sup>7</sup> I hereby incorporate my comments under Guideline F, and note some additional whole-person factors.

Applicant has held a security clearance without issue for over 15 years. He self-reported the foreclosure to his FSO as required, showing his continued willingness to comply with security rules and regulations and eliminating the issue as a potential source of vulnerability. He fully cooperated with the ensuing security clearance investigation and freely discussed with a background investigator the circumstances leading to the foreclosure, as well as his overall finances. This favorable evidence, coupled with the other matters noted herein, mitigates the security concerns raised by the foreclosure of his former home nearly four years ago.

A security clearance determination is not intended to punish a person for past conduct or circumstances. Instead, these decisions serve as predictive judgments about an individual's security suitability, where the person's past conduct is the best indicator

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<sup>6</sup> ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

<sup>7</sup> The non-exhaustive list of factors are: (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.

of future behavior.<sup>8</sup> Here, the record reflects a demonstrated track record on Applicant's part of responsibly handling financial challenges, to include those occasioned by matters beyond his control, and that his current finances are under control. Consequently, the record evidence leaves me with no questions or doubts about Applicant's continued eligibility for a security clearance.

### **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 (Financial Considerations)	FOR APPLICANT
Subparagraph 1.a:	For Applicant

### **Conclusion**

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is granted.

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Francisco Mendez  
Administrative Judge

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<sup>8</sup> ISCR Case No. 11-13626 at 3-4 (App. Bd. Nov. 7, 2013). See also, ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004) ("Security clearance determinations are not an exact science, but rather predicative judgments about a person's security suitability in light of that person's past conduct and present circumstances.") (citing, *Egan*, 484 U.S. at 528-529).