



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



In the matter of: )  
 )  
 ) ISCR Case No. 13-00453  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Philip Katauskas, Esq., Department Counsel  
For Applicant: Richard M. Sissman, Esq.

\_\_\_\_\_  
09/27/2013

**Decision**  
\_\_\_\_\_

O'BRIEN, Rita C., Administrative Judge:

Applicant has mitigated the security concerns raised under the guideline for Financial Considerations. His request for a security clearance is granted.

**Statement of the Case**

On May 2, 2013, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) that cited security concerns under Guideline F (Financial Considerations). This action was taken under Executive Order 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; and the Adjudicative Guidelines (AG) implemented by the DOD on September 1, 2006.

In his June 17, 2013 Answer to the SOR, Applicant admitted the three SOR allegations and requested a hearing before an administrative judge. I received the case on July 25, 2013, and the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on August 7, 2013. At the hearing on September 4, 2013, I admitted five Government Exhibits (GE 1-5) and seven Applicant Exhibits (AE A-G). The record also includes Department Counsel's exhibit list, identified as Hearing Exhibit (HE) I; Applicant's exhibit list (HE II); and Applicant's witness list (HE III). DOHA received the transcript (Tr.) on September 12, 2013.

## **Procedural Ruling**

On September 26, 2013, Department Counsel moved to withdraw GE 5 as irrelevant. Applicant had no objection. By Order dated the same day, I granted Department Counsel's motion.

## **Findings of Fact**

Applicant's admissions to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings.

Applicant is 53 years old. He is married with two children in school, aged 16 and 21. Applicant also supports his mother-in-law, who has lived with him since her stroke in 2007. Applicant holds a bachelor's degree in accounting, and a master's degree in finance. He is a certified public accountant, and has owned and operated his own company since 1991. His ten full-time staff and 15 independent contractors provide financial services to federal agencies. Applicant has held a secret security clearance since 2002. He stated in his response to DOHA interrogatories, and at the hearing, that his business experienced a steep decline in 2009 to 2010, during the U.S. economic recession. He lost his major contract, and had no income from his business for about one year. (GE 1; GE 4/Attachment A; AE A; Tr. 29-33, 44-45, 83-86, 102)

Applicant's wife operates a medical services business, incorporated as an "S corporation." In about 2005, a local government department paid for services from her business. However, the county issued the payment to her, under her own social security number, instead of to her business, under its federal tax identification number. When Applicant and his wife completed their joint income tax returns, they reported the income on their personal returns, but then "backed it out," and included it on the corporation's return. In about 2008, State A audited their returns and determined that they had failed to pay the correct income tax for tax years 2005 and 2006. Applicant was convinced the state auditor's position was in error, and retained an attorney. From 2008 to 2010, Applicant contested the state's determination. He testified that his appeal was successful, but, ". . . somehow, somewhere, the communication broke down. The last thing I saw was a lien, and I have to ask a tax resolution company to try to resolve it." State A filed the tax lien in May 2011. (GE 1-4; AE B; Tr. 34-39, 107-114)

In April 2012, Applicant decided to pay the amount the state contended they owed: \$11,051. He testified he made an initial payment of \$1,000, and began a payment plan for monthly installments of \$334. Subsequently, he decided to pay the balance in a lump sum. By check dated June 3, 2013, Applicant paid \$9,866. He provided documentation showing the state released the lien June 4, 2013. (GE 1-4; AE B; Tr. 34-39, 107-114)

In June 2006, Applicant bought two houses (House A and House B) in a run-down urban area. He planned to rehabilitate the homes and rent them. (Tr. 39)

**House A (allegation 1.b):** House A cost about \$77,000. Applicant put down \$17,000. His monthly payment was approximately \$535. After spending about \$40,000 to rehabilitate the property, he rented it for \$1,100 per month. After paying from September to November 2006, the tenants stopped making their monthly payments. The eviction process lasted nine months. Shortly after the house became vacant, it was vandalized. Applicant testified, "You know, my 40,000 in cash that I invested in it was 'down the drain' too. Everything. They just took everything." (AE E, F; Tr. 54-57)

Applicant continued paying the mortgage for about three years. However, he stopped during the financial downturn in his business. Applicant contacted the lender and applied for a loan modification, but was declined. He proposed a deed in lieu of foreclosure. The arrearage is about \$21,000. Subsequently, he offered to restart the payments. However, the lender required all arrearages to be paid at once, which Applicant could not afford. He retained a real estate agent, who eventually found a buyer. However, before the offer was finalized, the lender foreclosed in July 2013. Applicant has not been informed of a deficiency balance. He testified that if a deficiency results, he has the funds to pay it. (GE 2, 4; AE E, F; Tr. 44-45, 54-60, 87-89)

**House B (allegation 1.c.):** Applicant purchased House B for about \$62,000 and made a \$15,000 down payment. His monthly payments were approximately about \$430. Applicant spent \$40,000 to rehabilitate the property. He secured tenants, with a rental charge of \$900 monthly. They paid the rent for the first three months and then stopped paying. The eviction process took nine months. One week after they were evicted in about 2007, the property was vandalized. The thieves took the plumbing, air conditioning, carpeting, refrigerator, and other fixtures. (GE 4; AE C; Tr. 40-44, 47-48, 67-70)

Although Applicant had no income from the property after 2006, he continued to make the mortgage payments. He boarded up the property for about one year. He then rehabilitated the property a second time, spending about \$30,000. The property was vandalized a second time. At about that time, the real estate market crashed, affecting his ability to sell the properties. His loans were "under water": the market value of the houses was less than the balance on his loans. Then his business declined substantially from 2009 to 2010 because of the U.S. recession. Applicant stopped making mortgage payments, and accrued arrearages of approximately \$18,000. He retained a real estate agent in 2011, who sought buyers for House B and helped Applicant deal with the lender. Applicant requested the House B lender to approve a loan modification or participation in any available assistance program. The lender declined, but did agree to consider a deed in lieu of foreclosure. Applicant spent several months providing documentation to finalize it. However, after viewing the vandalized property, the lender reneged, and refused to accept the deed in lieu of foreclosure. (GE 2, 4; AE C, D; Tr. 44-54, 67-70, 78, 87-89)

After trying to sell the property for years, Applicant applied to the lender to short-sell the property. In August 2013, a few days before the hearing, Applicant received a short-sale offer of \$11,000. He is hopeful the lender will accept the offer, which is more than the current fair market value of the property. Applicant testified that, were it not for the real estate crisis, he believes he would have been able to sell the two properties. (GE 4; AE C, D; Tr. 44-54, 62, 78)

Applicant's April 2013 personal financial statement shows that his and his wife's businesses provide approximately \$18,800 net income per month. Their monthly expenses and debt payments, which total \$14,500, include their son's annual tuition of \$40,000 and the cost of supporting his mother-in-law. Their monthly discretionary funds total \$4,300. The listed debt payments include \$334 payments on the state tax lien. (GE 4; Tr. 119-120)

Applicant's February 2013 credit report shows that, other than the SOR debts, Applicant's open accounts are in current status, including the mortgage loan on his residence. He no longer invests in real estate. He does not have credit card accounts; he uses only a debit card for purchases, and if the funds are not available in his account, he does not buy the item. (GE 2; Tr. 60-64)

One of Applicant's witnesses was a conference manager at his company from 1998 to 1999. She continues to have social and professional contact with Applicant. She places her trust in him because she provides him with all of her confidential financial information when he prepares her annual tax returns. Applicant's current office manager has worked for him since 2000. She described him as loyal, honest, and trustworthy, and she trusts him to prepare her tax returns. Applicant's current project manager also testified. He has worked for Applicant for seven years. He spent 37 years in federal government as a deputy finance officer, and has held a security clearance since approximately 1980. He stated that Applicant operates a "fair and upright" business. He allows his employees to exercise judgment and work independently. He described Applicant as being knowledgeable, trustworthy, and dependable. None of Applicant's witnesses were aware of his financial issues. (AE G; Tr. 123-150)

## **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Adjudicative Guidelines (AG).<sup>1</sup> Decisions must also reflect consideration of the "whole-person" factors listed in ¶ 2(a) of the Guidelines.

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<sup>2</sup> Directive 6.3.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (Financial Considerations).

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest<sup>2</sup> for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.<sup>3</sup> A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.<sup>4</sup>

## **Analysis**

### **Guideline F (Financial Considerations)**

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds.

After Applicant purchased two properties in 2006, his tenants stopped paying rent. Applicant paid the mortgage loans for three years. A business downturn affected

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<sup>3</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>4</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>5</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

his finances in 2009 and 2010 and eventually he failed to meet his payments, which resulted in substantial arrearages. State A filed a tax lien against Applicant and his wife in 2011. The following disqualifying conditions apply under AG ¶19:

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

I have considered the following mitigating conditions listed at 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;
- (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 real estate investing is not recent, as he bought the investment properties seven years ago. The negative events surrounding the houses have made him "gun shy," and he has no intent to invest in real estate in the future. The events do not cast doubt on Applicant's current reliability and trustworthiness. AG ¶ 20(a) applies.

Applicant had no way to foresee several events that affected his ability to continue his payments: his tenants' failure to pay the rent; the loss of more than \$100,000 in rehabilitation costs because of repeated vandalism; his mother-in-law's stroke and subsequent need for his full-time financial support; and the nationwide real estate crisis that reduced values precipitously and made the properties virtually impossible to sell. Following the real estate market crash, one of the houses he bought lost approximately 80% of its previous value.

Applicant acted responsibly. He continued the payments for three years after he stopped receiving income from the properties. He repaired both properties after the vandalism, and even repaired one property twice, so that they were marketable. He contacted the lenders and requested to have the loans modified. He hired a real estate agent, who marketed the properties for several years. However, with the real estate market collapse, he was unable to sell them. The House B lender has agreed to a short sale, but the House A lender foreclosed. AG ¶¶ 20(b) and (d) apply.

Applicant and his wife are both employed, and they have substantial monthly income and assets. If he is informed of a deficiency on the foreclosed property, he has the financial resources to resolve it. The remaining property has an offer awaiting approval. Applicant's financial situation is under control and it is unlikely the problem will recur. AG ¶ 20(c) applies.

Applicant is a certified public accountant, with an advanced degree in finance. He had a good-faith belief, based on his professional training and experience, that State A's interpretation of his tax liability was incorrect. However, after several years trying to resolve the issue, he decided to pay the lien. He provided evidence that State A has released it. AG ¶ 20(e) applies.

### **Whole-Person Analysis**

Under the whole-person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of an applicant's conduct and the circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Despite Applicant's knowledge of finance and auditing, the state did not accept his argument concerning the appropriate taxes due on his wife's 2005 and 2006 income. Applicant has paid the resulting tax lien. He invested in real estate in 2006, but

after rehabilitating the two houses, his renters stopped paying, were evicted, and the properties were vandalized. Applicant continued paying the mortgage loans from 2006 to 2009. At about that time, his business suffered losses so that he was without income from his company for one year. His mother-in-law had a stroke in 2007, and he began supporting her full time. The real estate market crashed, causing his properties to drop precipitously in value, and he could not find buyers. He worked with the lenders to resolve the mortgage loans. Although one loan was foreclosed, he has the funds to pay any deficiency that may result. He is awaiting lender approval of the buyer's offer on the other property, which is more than the fair market value. Given Applicant's demonstrated maturity and stability, his substantial resources, and aversion to real estate investing, I conclude such a situation will not recur.

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guideline.

### **Formal Findings**

Paragraph 1, Guideline F	FOR Applicant
Subparagraphs 1.a – 1.c	For Applicant

### **Conclusion**

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

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RITA C. O'BRIEN  
Administrative Judge