



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



In the matter of: )  
)  
) ISCR Case No. 14-01583  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

03/16/2015

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**Decision**

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LYNCH, Noreen A., Administrative Judge:

On June 6, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations) and Guideline B (Foreign Influence).<sup>1</sup> The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on December 29, 2014. A notice of hearing was issued on January 14, 2015, scheduling the hearing for February 20, 2015. Government Exhibits (GX) 1-3 were admitted into evidence without objection. Applicant testified but did not submit any documents for the record. The transcript was received

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<sup>1</sup>At the hearing, Guideline B was withdrawn.

on March 2, 2015. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the SOR allegation ¶ 1.a and denied 1.b.

Applicant is a 33-year-old senior security engineer. He graduated from high school in June 2000. In 2002, Applicant obtained a diploma in network administration from a technical college. He has worked for his current employer for more than nine years. However, he has worked in the field since 2002. This is his first request for a security clearance. (GX 1) He believes that he has a public trust position. (Tr. 28)

Applicant is married and has three children. His first daughter was born prematurely and has severe medical problems, including cerebral palsy. He also has two other children, who are ten and eight years old. (Tr. ) His wife had a medical issue that had prevented her from working. (Tr. 13)

The SOR alleges two delinquent accounts (first and second mortgage loans) in the total amount of about \$92,800. (GX 2) The second mortgage was charged off in the amount of approximately \$72,470. The first mortgage is past due in the amount of \$20,301. This account is in foreclosure status. The mortgage loan was an 80/20 loan.

Applicant purchased a home in 2005. The cost was approximately \$350,000. He was advised that this property was a sound one and that it would have a mortgage of about \$1,500 a month. Applicant's loan was approved. He believed he could afford that amount, and he decided to purchase the house. (Tr. 11) When Applicant went to settlement, he learned that the monthly payment would be about \$2,800. He realizes that he should have chosen not to go ahead with the deal. However, he was told by the loan officer that there could be repercussions since the process was already into closing. (Tr. 27) He did not seek legal advice. At the closing, the broker told him that if he paid six months of mortgage loan payments, he would qualify for a refinance of the loan. During that time, Applicant relied on credit cards for his other living expenses. (Tr. 12) Applicant managed to pay the mortgage loan for almost three years. (GX 1) When he tried to finance the loans after six months, he was denied by the lender. (Tr. 13)

Applicant vacated the property in February 2009. He decided to rent a property that he could afford. He did not realize that he could have remained in the house until a foreclosure. His priority was to provide for his wife and family. (Tr. 14) The house went to foreclosure in 2010. The house sold for \$145,000. (Tr. 23) He learned this by going to property records. After the foreclosure, the bank did not contact Applicant. It was his understanding that due to the selling of the property, he had no balance. (Tr. 14)

Applicant was contacted by the company who owned the second mortgage loan. Applicant told them that the property was foreclosed and that he had not lived in it since 2009. (Tr. 15) Initially, he asked about a short sale or loan modification but was denied.

Applicant was not offered a settlement amount. He understands that it is now on his credit report. Applicant's 2014 credit bureau report shows a zero balance for the first mortgage. (GX 3)

Applicant earns approximately \$85,000 a year. His wife also works and earns approximately \$21,000 a year. Applicant has no difficulty meeting his current expenses. He has also paid his credit card balances. His credit report supports his affirmation and notes zero balances on various credit cards. (GX 3) He has a 401(k) plan and savings of about \$10,000. (Tr. 22)

### **Policies**

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." <sup>2</sup> The burden of proof is something less than a preponderance of evidence. <sup>3</sup> The ultimate burden of persuasion is on the applicant. <sup>4</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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

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<sup>2</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>3</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>4</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

the applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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.”<sup>5</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>6</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>7</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

## Analysis

### Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant admitted he owes delinquent debt as reported in his SOR. His home mortgage loans (80/20) on a home that he purchased in 2005 are not resolved. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant relied on a broker’s advice that (80/20) approved home mortgage loans would result in a total monthly payment of about \$1,500. Applicant knew he could afford that amount. When he went to settlement, he was told by the loan officer that the monthly amount would be \$2,800. He regrets that he did not stop the process, but he was told that he could be liable by the seller since the process already reached closing.

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<sup>5</sup> See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>6</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>7</sup> *Id.*

He was also told that he could refinance after six months of payments. He believed them. He now understands that he should have sought legal advice, but he did not. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) applies.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) partially applies. He relied on the mortgage broker concerning a modification after six months of monthly payments. Applicant made payments on the home mortgage loans for three years. Thereafter, when he tried to obtain a modification, he was denied. He used credit cards to pay for daily living expenses so that he could keep paying the loans for the home. Eventually, he could not. He paid the credit card balances. He moved to a property that he could rent. In 2010, he learned that the home went to foreclosure and sold for \$145,000. He was never contacted by the first loan company. He was contacted by the second company and tried to explain the situation. He was never offered a settlement and he could not pay the entire amount. He also believed since the house was sold, he did not owe any balance. I find that he acted responsibly under the circumstances.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has some application. Applicant took steps toward a loan modification, but was denied. He paid the monthly mortgage loan for almost three years. He paid his credit cards that he had used for his daily expenses. The one mortgage loan is not reflected on his credit report. The home went to foreclosure and he also believed that he did not have a balance. FC MC 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) partially applies.

### **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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 33 years old. Applicant has held a public trust position and has worked for his current employer since 2005. When Applicant purchased a home in 2005, he received bad advice. He understands that he should not have continued with the process at closing, but he was under the impression that he would be liable by the seller. He paid the high mortgage loan for three years. He tried to get a modification after six months, as he was told at the closing. He was denied. Applicant has paid his credit card debts and has provided for his family. He has no other debts. Applicant has steady employment and earns sufficient income to support his family.

Applicant admits that he made a great mistake by not seeking legal advice concerning the mortgage. He realizes that he had to use credit to pay for daily living expenses. He does not intend to make any major purchase in his life until he has all the details. He regrets the mistake. He believed the foreclosure and the sale absolved him from any balance. He has shown sound judgment since then and has been reliable with renting property and paying his credit card bills. He has provided for his family. He has persuaded me that he has mitigated the Government's case concerning security concerns under the financial considerations guideline. I do not believe that this situation will recur. I have no doubts about his current reliability and judgment. He has met his burden of proof.

### **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 :	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2, Guideline B:	WITHDRAWN

## **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 a security clearance. Clearance is granted.

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NOREEN A. LYNCH.  
Administrative Judge