



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-02394
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

05/26/2015

**Decision**

LYNCH, Noreen A., Administrative Judge:

On October 9, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations). 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 February 5, 2015. A notice of hearing was issued on March 17, 2015, scheduling the case for April 30, 2015. Government Exhibits (GX) 1-3 were admitted into evidence without objection. Applicant testified and presented six documents for the record (AX A-F). The transcript was received on May 7, 2015. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

## Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegation under Guideline F, with explanations.

Applicant is 43 years old. He is a telecommunications specialist. Applicant obtained his undergraduate degree in 1996 and has attended post-graduate classes. Applicant is divorced and has no children. Applicant has been with his current employer since 2014. Applicant has held a security clearance since 2004. (GX 1).

The SOR alleges one delinquent debt, which is a home equity account in the amount of almost \$48,000. (GX 2)

Applicant purchased a townhome in March 2006, which was Applicant's residence. (Tr. 25) The purchase price was \$398,500. The structure of the home mortgage was a first mortgage loan and an equity loan of \$50,000. The monthly mortgage payment was initially \$2,100. By 2010, the monthly amount was \$2,500.

In 2008, Applicant purchased a single family home as an investment. (Tr. 33) The purchase price was \$217,000. Applicant financed the total amount of the loan. The monthly mortgage payment was about \$1,500. Applicant hired a management company and rented the property for about one year (from August 2008 until August 2009). (Tr. 34) The property was in a "poor" area and renters would stay for a while and then leave the property. Applicant did not have sufficient income to cover the townhome mortgage and the single family home. (Tr. 36) He used some of his savings to help with the costs. He stopped paying on the single family mortgage loan in about May 2011. (AX B) In 2012, this home went to foreclosure. Applicant believes the deficiency balance is \$122,000. He is trying to settle the amount. He contacted the mortgage company by letter in March 2014. (AX B )

Applicant purchased a third property in May 2008 for a purchase price of \$158,000. (Tr. 39) This house was another investment property. Applicant was able to rent this property for about one year. The rent covered the mortgage payment. Applicant acknowledges that this was a bad decision to purchase this home in the same location as the second property. Applicant stopped payment on this home in May 2011. The home went to foreclosure and left a deficiency balance that Applicant settled for \$1,000. (Tr. 41; AX A)

Applicant's job required him to move to another state. He left the townhome (his residence and first purchase) in 2009. He rented the home and utilized a property manager. The tenant paid a monthly rent of \$1,950. (Tr. 28) Applicant subsidized the remainder of the loan. After one year the renter left the property. When Applicant located another renter later, the rent was reduced to \$1,700. The second tenant remained in the property until about 2011. However, this tenant did not pay rent consistently. Applicant stopped paying on the property in about August 2011. (Tr. 30) He tried to restructure the loan with the bank, but the bank did not agree to a modification. Applicant could not refinance because he had been current with his

mortgage payment. In 2013, he pursued a short sale. (AX C) The bank agreed to settle the first mortgage on the property. (Tr. 45) The home equity loan (SOR 1.a) was not forgiven. Applicant called the bank and sent a letter in March 2014 (AX D). Applicant stated that the bank could not find the mortgage record and referred him to the charge-off department. Applicant did not contact the bank in writing before receiving the SOR. However, when Applicant moved back to his home state in 2011, he did not move back into his townhome residence. There was a friend living in the home. Eventually, Applicant had to evict him for not paying rent. (AX F) However, the friend did pay about \$1,100 for some months he stayed in the home. (Tr. 75) Applicant did not provide the rent money he received from his friend to the bank. He believed he would not be able to refinance the loan if he did. (Tr. 76) Applicant moved back into the home in February of 2013 until May 2013. At the time, he did not pay any mortgage money. The foreclosure proceedings had started. (Tr. 76)

At the same time, Applicant incurred additional expenses by taking care of his father's medical expenses. His dad lives abroad. Since Applicant is the first son, it is tradition that he care for his father. Applicant sent money each month to his father in the amount of \$500 to \$800. (Tr. 51) His father had a stroke in 2013 and Applicant had to fly abroad to help. This took more of his savings. He believes he spent about \$6,000 caring for his father. (Tr. 52)

Applicant submitted documentation that he paid another equity loan. (AX E ) His earlier credit report supports his claim that he paid his accounts as agreed. (GX )

Applicant acknowledges that the real estate investments were a one-time mistake and he does not intend to indulge in this any more. He had a friend who was "flipping" houses and he thought it might be a good idea. (Tr. 64)

Applicant's current position is stable. He earns \$125,000 a year. Applicant's net monthly income is about \$5,200. He lives with a girlfriend who helps pay expenses. He believes he has a net monthly remainder is about \$2,340 a month. He acknowledged that he is current with his expenses. He is adamant that he is not a frivolous spender. He acknowledged that he does financially help relatives on different occasions. (Tr. 58)

Applicant explained that he is not running away from his financial issues. He believes he has been responsible and is working toward a resolution with the home equity loan. He states he has never gambled and has settled other debts. He believes he was not reckless. This was a one-time failure on his part. He intends to resolve the issues. He will contact the bank again.(Tr. 82)

## **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>1</sup> The burden of proof is something less than a preponderance of evidence. <sup>2</sup> The ultimate burden of persuasion is on the applicant. <sup>3</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 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>4</sup> "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." <sup>5</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>6</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant's character. It is

---

<sup>1</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>2</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>3</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>4</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>5</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>6</sup> *Id.*

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 has a delinquent mortgage amount of almost \$48,000. 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 incurred delinquent debt when he could not find renters for his home and had to move to another state for work. At the same time, he invested in two other properties that caused him to incur debt. 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) partially 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. As noted above, Applicant's financial difficulties are the result of his purchase of three properties in a period of two years. His first home has a delinquent home mortgage that he has not resolved. He failed to show 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 limited application. Applicant states that he has settled another mortgage loan on another investment property. He still has another one unresolved as well as the delinquent debt alleged in SOR 1.a. He presented documentation that he has recently pursued the delinquent mortgage on his first property which was his residence. He does not have a plan in place to resolve the second mortgage. 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) does not apply.

### **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 43 years old. He was candid and well-meaning at the hearing. He helps his father and his family abroad. He admits that it was a mistake to invest in multiple properties. He did not have sufficient income to support all the properties if something went wrong. He has tried to address the issues, but he has not been proactive with the home equity loan that is delinquent on his residence. He did not contact the bank about the issue until after receipt of the SOR. He intends to remedy the problem, but a promise to pay in the future is not sufficient.

Applicant submitted documentation that he has settled another loan. He is current with his expenses. However, he has not met his burden of proof in this case. Applicant has not mitigated the security concerns under the financial considerations guideline. Any doubts must be resolved in favor of the Government.

## **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
Subparagraph 1.a:	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 Applicant a security clearance. Clearance is denied.

---

NOREEN A. LYNCH.  
Administrative Judge