



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-03214

**Appearances**

For Government: Adrienne M. Strzelczyk, Esq., Department Counsel

For Applicant: *Pro se*

03/04/2016

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On September 24, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted under Executive Order (EO) 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 (AG) implemented by the Department of Defense on September 1, 2006.

Applicant answered (Ans.) the SOR on October 16, 2014, and requested a hearing. The case was assigned to me on October 1, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 6, 2015, setting the hearing for October 21, 2015. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection.

Applicant testified and offered exhibits (AE) A through T, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional evidence. He submitted AE U through W, which were admitted without objection. DOHA received the hearing transcript (Tr.) on October 29, 2015.

### **Findings of Fact**

Applicant is 53 years old and has worked for a government contractor since 2007. He holds a master's degree. He is married and has two adult children. He retired from the Air Force in 2007 after 27 years of service. He retired as a senior master sergeant (paygrade E-8). He was forced to retire because of a chronic medical condition.<sup>1</sup>

The SOR alleges Applicant had one mortgage foreclosure (SOR ¶ 1.a) with a total loan amount of \$449,600, a second foreclosure with no amount stated (SOR ¶ 1.b), and a delinquent home equity loan in the amount of \$75,896.<sup>2</sup> The debts were listed on credit reports from February 2013, March 2014, and August 2015. Applicant denied SOR ¶ 1.a and ¶ 1.c, but admitted SOR ¶ 1.b.<sup>3</sup>

In 2004, when Applicant was still in the Air Force, he purchased a home (P1) in state A. A few months later, he decided to purchase a second home (P2), which was just a few houses away from P1, as an investment property. He was able to rent P2 without any problems. In 2007, he was forced to retire from the Air Force because of his medical condition. He was offered a job with his current employer in state B. For health reasons, and because of the job offer, Applicant moved his family to state B. He rented both P1 and P2. In 2008, the housing market collapsed and the value of his properties tumbled. His original mortgages on both properties were for a four-year term and he paid interest only. Both sets of tenants moved out of the properties, leaving Applicant with no rental income to pay the mortgages.<sup>4</sup>

Starting in March 2008, Applicant hired a realtor and attempted to sell P1. He received three different offers to buy from May 2008 through June 2009, but each offer was rejected by the lender. These were short-sale offers (the price offered was less than the amount owed by the seller-Applicant). The home was ultimately sold through foreclosure at a price less than any of the short-sale offers. Applicant also sought a mortgage modification, but was rejected by the lender. Applicant attempted similar efforts to short sell, or modify his mortgage on P2. He documented that he settled a second mortgage on P2 in December 2010. He presented documentation that the

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<sup>1</sup> Tr. at 5, 33-34; GE 1.

<sup>2</sup> The Government moved to amend SOR ¶ 1.c to reflect the correct amount of debt as \$75,896 rather than the SOR-stated amount of \$775,896. Applicant did not object and the motion to amend was granted. Tr. at 10.

<sup>3</sup> Ans.; GE 3-5.

<sup>4</sup> Tr. at 34-38; Ans.

mortgage lender for both P1 and P2 was accused of criminal and civil fraud for its mortgage lending practices. P2 was sold through foreclosure within the last year, but Applicant did not know the sale price. For tax year 2011, he received two IRS Forms 1099-A for the P2 mortgage and the home equity loan on P2 (SOR ¶¶ 1.b and 1.c).<sup>5</sup> He expects to receive a similar form this tax year for the P1 mortgage (SOR ¶ 1.a) that recently sold through foreclosure.<sup>6</sup>

Applicant's credit reports indicate that, other than this situation, he has always paid his debts in a timely manner. His current financial status is good. He owns a home in state B and is current on his mortgage and all other debts. His annual income is approximately \$108,000. He has savings of approximately \$10,000 and a retirement fund of approximately \$106,000. He was recognized by his employer for his outstanding work and was awarded "Spot" awards in March 2009, October 2010, and a special recognition award in October 2014. His supervisor attests to his work ethic, honesty, professionalism, and integrity.<sup>7</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions that 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny 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 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.

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<sup>5</sup> Both 1099-A forms show that the fair market values of the properties are greater than balance of the outstanding principal. There is no evidence that the lender sought recoupment. See AE V-W.

<sup>6</sup> Tr. at 36-45, 48, 52-53, 61, 65; Ans.; AE A-Q, V-W.

<sup>7</sup> Tr. at 59-60, 62,-64; GE 3-5; AE R-U.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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.” The applicant has the ultimate burden of persuasion to obtain a favorable decision.

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 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

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

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 guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant had three delinquent debts, including two foreclosures and a home-equity loan. The evidence is sufficient to raise the disqualifying conditions stated in AG ¶¶ 19(a) and 19(c).

Several financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The delinquent debts attributed to Applicant are recent. All the debts have been resolved through foreclosure and issuance of Forms 1099. Since the delinquent debts arose as a result of the financial hardship caused by single situation involving real estate and the depressed economy, it is unlikely to recur. These circumstances do not cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

Applicant's debts became delinquent when he moved to a different state for employment and his two rental properties became vacant at the same time the real estate economy sank. This was a condition beyond his control and he acted responsibly by paying one of the second mortgages, working with a real estate agent to attempt to sell his properties through short sales, and seeking loan modifications from his lender. AG ¶ 20(b) applies.

These three debts were otherwise resolved through foreclosures and when he received Forms 1099 for tax purposes. AG ¶ 20(c) and ¶ 20(d) partially 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 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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's military service. I also considered the circumstances by which he became indebted and how it affected his financial status. I found Applicant to be honest and candid about the circumstances that led to his debts. I find it unlikely that Applicant will find himself in a similar situation in the future.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the financial considerations security concerns.

### **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.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 eligibility for a security clearance. Eligibility for access to classified information is granted.

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Robert E. Coacher  
Administrative Judge