



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 14-05028
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Greg A. Cervi, Esquire, Department Counsel  
For Applicant: *Pro se*

07/31/2015

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**Decision**

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HOGAN, Erin C., Administrative Judge:

On October 21, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006.

On November 7, 2014, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on May 19, 2015. Applicant received the FORM on June 3, 2015. He had 30 days from his receipt of the FORM to submit additional information in response to the FORM. Applicant timely submitted a response to the FORM with attached documents. His Response to the FORM and attached documents are admitted as Item 6. On June 23, 2015, the FORM was forwarded to the Hearing Office and assigned to me on June 24, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **Rulings on Evidence**

Item 5 of the FORM is a portion of the Report of Investigation (ROI) from the background investigation of Applicant. It is a summary Applicant's Personal Subject Interview completed by the investigator conducting his background investigation on April 18, 2014. It is unsworn and unauthenticated. DODD 5220.6, enclosure 2, ¶ E3.1.20 states, "An ROI may be received with an authenticating witness provided it is otherwise admissible under the Federal Rules of Evidence." (see ISCR Case No. 11-13999 (App. Bd., February 3, 2014)).

Although Applicant, who is representing himself, has not raised the issue via an objection, I am raising it *sua sponte* because Item 5 is not properly authenticated. Applicant's failure to mention this issue in a response to the FORM is not a knowing waiver of the rule because he more than likely was unaware of the rule. Waiver means "the voluntary relinquishment or abandonment – express or implied – of a legal right or advantage, the party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it." *Black's Law Dictionary*, 1717 (Bryan A. Garner, editor-in-chief, 9<sup>th</sup> ed., West 2009).

Applicant was not expressly informed of the requirement in ¶ E3.1.20 of the Directive. I cannot conclude he expressly waived this rule because he did not mention it in his response to the FORM. In accordance with the Directive, Enclosure 2, ¶ E3.1.20, Item 5 is not admissible and will not be considered in this Decision because the document is not authenticated.

## **Findings of Fact**

In his response to the SOR, Applicant admits the SOR allegations. (Item 2)

Applicant is a 47-year-old employee of a DOD contractor seeking to obtain a security clearance. He has worked for his current employer since February 2014. He served on active duty in the United States Army from December 1988 to December 1994, and from October 1997 to July 2013. He served in the active reserve from December 1995 to December 1997. He retired from the Army in July 2013. He has been married twice. His most recent divorce was in June 2012. (Item 2; Item 3)

On March 5, 2014, Applicant submitted an electronic questionnaire for investigation processing (e-QIP). In response to Section 26 – Delinquency Involving Routine Accounts, Applicant listed a first mortgage and a second mortgage. The two allegations in the SOR are these mortgages. Applicant indicated that his financial problems began when he and his wife divorced. In November 2013, he applied for and was denied a mortgage modification because he did not have sufficient income. Applicant indicated that he was still working to resolve the matter and he has more income now that he is employed. (Item 3, section 26, at 42-44) Applicant listed two additional delinquent accounts, but they apparently were resolved because they were not alleged in the SOR.

A credit report dated March 18, 2014, indicated that Applicant was past due in the amount of \$14,116 on a mortgage account with a balance of \$349,900. This is alleged as SOR ¶ 1.a. Applicant was also past due in the amount of \$18,438 on a mortgage account with a balance of \$82,079. This is alleged as SOR ¶ 1.b. All of Applicant's other accounts were current. (Item 4 at 3)

In his response to the SOR, Applicant admits to being behind on his first and second mortgage accounts. When he divorced in June 2012, he was held accountable for all of the unpaid bills. His ex-wife had poor credit and all of the bills were placed in his name. They separated in 2008. Since that time, Applicant managed to settle all of the financial obligations with numerous creditors with the exception of his mortgages. (Item 2)

Applicant applied for a mortgage modification program in August 2013. His income was reduced after retiring from the Army. His application was denied because he did not have sufficient income to meet the minimum requirements of the program. After he was hired by his company in February 2014, he reapplied for the mortgage modification program. He was denied because his monthly housing expense was not more than 31% of his gross monthly income. He was also not eligible for a principal reduction program because his income was now too high to qualify for the program. (Item 2)

Applicant qualified to have his mortgage modified to raise his monthly mortgage payment from \$1,756 to \$2,410. He opted to list his home for a short sale. On August 27, 2014, he was approved to participate in the Home Affordable Foreclosure Alternatives (HAFA) short sale program. Under the HAFA program, Applicant's bank agreed that if the home sold at the bank's approved price, the mortgage would be considered to be paid in full satisfaction and the bank agreed to waive their right to pursue a deficiency judgment. Applicant attached his correspondence with the bank regarding his mortgages to his response to the SOR. (Item 3)

In his response to the FORM, Applicant provided proof that both the first and second mortgages were settled as of January 21, 2015. The home was sold at a short sale at a price approved by the bank. (Item 6 at 16–31) He also provided a credit report, dated May 5, 2015, which lists both debts as paid. The credit report did not list additional delinquent accounts. (Item 6 at 32-40)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the 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, which must be considered when determining an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable security 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern relating to the guideline for Financial Considerations is set out in 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 guideline notes several disqualifying conditions that could raise security concerns. I find AG ¶19(a) (an inability or unwillingness to satisfy debts); and AG ¶19(c) (a history of not meeting financial obligations) apply to Applicant's case. Applicant encountered financial problems in 2008 when he and his wife separated, continuing through their divorce in 2012, as well as for a few months after his retirement from the Army in July 2013. The debts of concern were for a first and second mortgage on Applicant's house in the amount of \$14,116 and \$18,438 respectively. Both AG ¶19(a) and AG ¶19(c) apply.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

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);

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

AG ¶ 20(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)

AG ¶ 20(a) applies because Applicant's financial problems were caused by his separation and divorce. Applicant attempted to resolve his mortgage accounts for several years and succeeded in obtaining a short sale on the property. He no longer has any delinquent accounts. His financial problems are unlikely to recur and no longer cast doubt on his reliability, trustworthiness, or good judgment.

AG ¶ 20(b) applies because his financial problems were the result of a marital separation and divorce. In addition, Applicant's income was reduced after his retirement from the Army in July 2013. He did not find full-time employment until February 2014. These were circumstances beyond his control. Applicant acted responsibly under the circumstances. For several years, he worked toward modifying his mortgage. When his attempts at mortgage modification were unsuccessful, he opted for a short sale of his home and was successful.

AG ¶ 20(c) partially applies. While there is no evidence that Applicant has attended financial counseling, his financial situation is now under control. The first and second mortgage accounts were settled when the bank approved the short sale and the home was sold. Applicant is current on his other financial obligations.

AG ¶ 20(d) applies because Applicant demonstrated he made a good-faith effort towards resolving his delinquent accounts. He made several unsuccessful attempts to modify his mortgage before opting to put his house up for short sale. The short sale was successful and the debts alleged in SOR ¶¶ 1.a and 1.b are resolved.

AG ¶ 20(e) is not applicable to the facts in this case.

Applicant resolved any doubts raised by his financial situation. He successfully resolved the first and second mortgage accounts alleged in the SOR and has demonstrated that his financial situation is under control.

## **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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's past active duty service in the Army and his current employment with a DoD contractor. Several circumstances beyond Applicant's control adversely affected his finances, including a divorce and his retirement from the Army. He has since found a suitable full-time position and was proactive in resolving his delinquent accounts. Applicant mitigated the security concerns raised under financial considerations.

## **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

## **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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ERIN C. HOGAN  
Administrative Judge