



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



In the matter of:	)	
	)	
XXXXXXXXXXXX, XXXXX	)	ISCR Case No. 14-06696
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Per se*

02/25/2016

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**Decision**

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TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline F (financial considerations). Clearance is granted.

**Statement of the Case**

On May 2, 2014, Applicant submitted a Questionnaire for National Security Positions (SF 86). On January 29, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline F (financial considerations). The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the national interest to grant a security clearance for Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted or denied.

On February 12, 2015, Applicant responded to the SOR. On May 20, 2015, Department Counsel was ready to proceed on Applicant's case. On June 1, 2015, DOHA assigned Applicant's case to me. On June 11, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice, setting the hearing for July 6, 2015. Applicant's hearing was held as scheduled. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4, which were received into evidence without objection. Applicant testified, did not call any witnesses, and did not offer any evidence. I held the record open until July 24, 2015 to afford the Applicant an opportunity to offer evidence. Applicant timely submitted Applicant Exhibits (AE) A through I, which were received into evidence without objection. On July 14, 2015, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

In his SOR answer, Applicant admitted all of the SOR allegations with explanations. After a thorough review of the evidence, I make the following additional findings of fact.

### **Background Information**

Applicant is a 31-year-old software engineer associate employed by a defense contractor since August 2014. He seeks a secret security clearance to enhance his position within his company. (GE 1; Tr. 13-14)

Applicant graduated from high school in May 2003. He was awarded an associate of science degree in computer programming in July 2009, and a bachelor of science degree in computer science in June 2014. (Tr. GE 14-16) Applicant is not married, but has shared housing with his girlfriend, a nurse anesthetist, since January 2009. He has no dependents. Applicant did not serve in the U.S. armed forces. (GE 1; Tr. 17-18)

### **Financial Considerations**

Applicant's SOR lists two debts – a \$166,006 July 2010 judgment of mortgage foreclosure, and a delinquent \$32,163 second mortgage. (SOR ¶¶ 1.a – 1.b)

Applicant's financial problems began after he purchased a condominium for approximately \$165,000 in 2005 that he financed with a first mortgage of \$129,600 and a second mortgage of \$32,400. At the time of purchase, Applicant was 19 years old and new to the real estate world. He "placed (his) trust into a mortgage broker," who did not explain the realities of an adjustable rate mortgage. Applicant promptly made his combined monthly mortgage payments of \$1,200 for the first two years. However, he was unable to afford combined monthly mortgage payments that had increased three times -- to \$1,600, to \$1,800, and finally to \$2,000. Applicant contacted his lender to renegotiate his mortgage after the first increase and "kept calling them." His lender was unwilling to renegotiate, but informed him they could only

offer relief after he initiated a strategic default for at least three consecutive months. After reaching the point where he no longer could afford to pay the increased monthly payments, he defaulted in 2008 as counseled. However, even after defaulting, the lender refused to renegotiate his loan. In 2009, Applicant attempted to sell his condominium by short sale at a significantly reduced price, but given the depressed housing market at the time, he received no offers. Applicant also had a second mortgage on the property that he stopped paying in 2008. The lender secured a final judgment of mortgage against Applicant in July 2010 for \$166,006. (SOR answer; GE 1 – GE 4; Tr. 9, 19-27, 30-38)

Applicant's first and second mortgage were satisfied from the foreclosure. (Tr. 27-28, 39-40) He submitted post-hearing documents reporting that he consulted with counsel and confirmed that he does not have a balance for those mortgages. Additionally, he submitted local county property records that reflect the foreclosure action against him has been resolved. (AE E, AE I)

Applicant's annual salary is \$69,190. His finances appear to be on the mend. In June 2015, he purchased a \$260,000 home with a \$25,000 down payment and he financed \$231,000. Applicant's budget demonstrates he is living within his means and leads a modest lifestyle. He has a line item on his budget for student loans that reflects he is current on those loans. (AE B, AE G, AE H; Tr. 29-30, 38-38, 44-49) Applicant has not sought credit counseling. (Tr. 44)

## **Character Evidence**

Applicant submitted three reference letters: (1) his project team leader, a software engineering manager associate; (2) his manager, a software engineering manager associate; and (3) a co-worker; a software engineering staff member. The collective sense of these documents describes Applicant as hard working, a team player, honest, and trustworthy. He has been the recipient of several awards for his productivity and contributions. All of the individuals support Applicant for a security clearance. (AE A, AE C, AE D) Applicant submitted his 2014 employee evaluation that documents above average performance and his contributions to his company. (AE F)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue her security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

### **Analysis**

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is established by the evidence presented. The Government established disqualifying conditions AG ¶¶ 19(a) and 19(c).

Five 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;

(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.

Partial credit is warranted under AG ¶ 20(a) because his mortgage debts occurred under such circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. Full application of AG ¶ 20(b) is warranted. Applicant could not have anticipated that the housing market would have declined to the extent it did in 2008. As soon as he knew he would have difficulty paying his increased mortgage, he contacted his lender to negotiate an affordable payment. He repeatedly did so without positive results.

AG ¶¶ 20(c) and 20 (d) are partially applicable. Although Applicant did not receive financial counseling, there are clear indications that his debts are resolved as a result of foreclosure and subsequent resale. Applicant demonstrated good-faith by

repeatedly contacting his lender in an attempt to renegotiate his mortgage. The mortgage debts appear to have been resolved as noted.<sup>1</sup> AG ¶ 20(e) is not relevant.

### **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.

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. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Applicant had the misfortune of having a negative first-time home buyer experience during a very volatile real estate period. Although inexperienced and young, he showed maturity and responsibility by trying to do the right thing when he realized he was in over his head. Applicant repeatedly contacted his lender to renegotiate an affordable monthly mortgage payment. After following the advice of his lender to enter into a strategic default, his lender declined to work with him. It appears the first and second mortgages have been resolved as a result of the foreclosure and proceeds.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. I specifically considered Applicant's financial responsibility before falling into debt, the circumstances that led to his financial difficulties, his financial recovery, the steps he has taken to resolve his financial

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<sup>1</sup>"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

situation, his potential for future service as a defense contractor, his reference letters, and his testimony and demeanor. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole-person, I conclude he has mitigated the financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

### **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 to 1.b:                      For Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Clearance is granted.

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Robert J. Tuidor  
Administrative Judge