



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-08499
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Fahyrn Hoffman, Esquire, Department Counsel  
For Applicant: *Pro Se*

May 20, 2009

**Decision**

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LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on May 9, 2008. On January 28, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR and he requested a hearing before an Administrative Judge. I received the case assignment on March 12, 2009. DOHA issued a notice of hearing on March 18, 2009, and I convened the hearing as scheduled on April 28, 2009. The Government offered Exhibits (GE) 1-5, which were received without objection. Applicant testified in his own behalf. He submitted Exhibits (AE) A-C which were admitted into the record without objection. I held the record open until May

12, 2009 for any additional documents that Applicant wished to submit. Applicant submitted a packet of documents that was marked as AE D and received into the record without objection. DOHA received the transcript of the hearing (Tr.) on May 6, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In his Answer to the SOR, dated February 23, 2009, Applicant admitted the factual allegations in ¶¶ 1.a through 1.c of the SOR. He denied allegations ¶¶ 1.d and 1.e. because he thought they were related to the judgments. He provided additional information to support his request for eligibility for a security clearance.

Applicant is a 31-year-old employee of a defense contractor. After he graduated from high school, he attended college from 1995 until 2001. He worked full time and completed his undergraduate courses and received a Bachelor of Arts degree in 2005. He has worked for his current employer since February 2006 (GE 1). He is single and has no children (Tr. 20). He holds a security clearance (public trust for DoD) (Tr. 22).

Applicant was approached by a family friend in 2006 to engage in a business venture. He learned of three properties that were available for sale in another state (Tr. 24). Applicant agreed to buy the properties and take out a mortgage for each of the properties. The total was approximately \$200,000 (GE 3).

Applicant was ambitious and wanted to “get ahead”. The market was good and he admits being overzealous about becoming an investor (Tr. 31). He agreed to this business deal but admitted that he had not researched the properties and had no knowledge in this area (Tr. 11). He did not schedule a trip to view the properties. He saw pictures of them. His friend was to rehabilitate the properties and find renters for them. This did not occur. Sometime in 2007, Applicant tried to end the partnership.

Applicant learned that payments were not made on the mortgages (Tr. 33). He contacted the banks holding the mortgages (AE A). He was advised by the bank to try a “short sell” the properties. He could not reach his friend by telephone. Applicant did not have the money to pay the mortgages as he had been counting on rental income to pay for the mortgages (Tr. 29). The properties were foreclosed and the banks obtained default judgments in each case.

The SOR alleged five delinquent debts, including three judgments and two past due mortgages. The total amount of delinquent debt is approximately \$200,000 (GE 3). Applicant admitted that the default judgments were for the three properties. He has not paid on any of the judgments. At the hearing, he admitted he had no information to dispute the allegations concerning the late mortgages to the other two banks (GE 4, 5). However, he knows he purchased three properties and signed three mortgages. Applicant submitted documentation after the hearing regarding the three properties and

the judgments. In each case, the judgment was partially satisfied due to a sale of the property. This reduces the amount that Appellant owes on each of them (AE D).

Applicant discussed the situation with a bankruptcy attorney last summer but he does not want to file for bankruptcy. He wants to pay his debts (Tr. 39). In 2007, he wrote a letter to one of the mortgage companies and tried to have a realtor sell the property (AE A). Applicant hired another attorney who is a friend of his to research any options that Applicant may have in this matter because Applicant wants to protect his primary residence. Applicant's lawyer has no information on the properties as yet.

Applicant's current net monthly income is \$4,736 (GE 2). After expenses and payments to current credit card accounts, he has a negative net remainder. He has a budget and a savings plan. He is current on all his expenses (Tr.). He owns a condo and is current on his mortgage. He admits to living pay check to paycheck (Tr. 80).

Applicant acknowledged that he took several vacations in the past few years with bonus money from his employment. He also purchased a car in 2008. He was leasing a vehicle prior to that time.

Applicant emphasized that prior to this business venture, his credit was good. Each position that he obtained earned him a greater salary. He was able to finance his condominium in 2005 with no problems. He currently has about \$26,000 equity in his condominium.

### **Policies**

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2, 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant has three judgments that are unpaid totaling less than \$200,000. He admits that could not meet his financial obligations from 2006 until the present. His credit reports confirm that he has the judgments and the past due mortgages. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Applicant engaged in a business venture in 2006. He wanted to use investment to have a second income. The venture failed recently and his judgments are outstanding in an amount less than \$200,000. This potentially mitigating condition does not apply.

Under AG ¶ 20(b), it may be mitigating where “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.” Applicant freely entered into the business venture without researching the properties. He acknowledged that he had no knowledge of the business. I find this mitigating condition does not apply.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has not received formal financial counseling. He has not paid any of the judgments or late mortgages. He presented no evidence of financial reform or resolution of debts. I conclude these mitigating conditions do 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 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 common sense judgment based upon careful consideration of the guidelines and the whole person concept.

Applicant is an intelligent, young professional. He has been steadily employed since 2001 and has earned a higher income each year. He is single with no children. He purchased his own condominium in 2005. He had good credit. In 2006, he decided to engage in a business venture with a family friend. He did no research on any of the properties involved. He trusted his friend but he signed the three mortgages for the

properties. The mortgages were not paid and default judgments were entered. He decided not to file for bankruptcy but he has no immediate plan in place to pay the judgments that total less than \$200,000. He is consulting another attorney and promises to pay his debts.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case and conclude Applicant has not met his burden in this case.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

NOREEN A. LYNCH  
Administrative Judge