



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-03667
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel  
For Applicant: *Pro se*

September 15, 2010

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**Decision**  
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GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 30, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken 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) effective for cases after September 1, 2006.

Applicant answered the SOR on May 2, 2010, and requested a hearing before an administrative judge. The case was assigned to me on June 14, 2010. DOHA issued a notice of hearing on June 15, 2010, scheduling the hearing for August 2, 2010. The hearing was convened as scheduled. The Government offered Exhibits (GEs) 1 through

14, which were admitted without objection. The Applicant offered Exhibits (AEs) A through J which were also admitted without objection, and testified on his own behalf. The record was held open for Applicant to submit additional information until close of business August 16, 2010. Applicant submitted one post-hearing exhibit consisting of 14 pages, without objection, marked AE K. DOHA received the transcript of the hearing (Tr.) on August 17, 2010.

### **Findings of Fact**

Applicant is a 54-year-old employee of a defense contractor. He has been employed in his current position since 2004. He has an annual income of \$95,000, which has been consistent for approximately the past four years. He has three adult children from his first marriage. He is married to his second wife and has two step-children, ages 17 and 18, that reside with him. (Tr. 94-98.)

In 1988, Applicant purchased his residential property in state A for an undisclosed amount. He refinanced the home several times. He currently has two mortgages on this property. Applicant testified that the debt alleged in SOR subparagraph 1.b. for \$35,205, is the second mortgage on this property. From Applicant's April 19, 2010 credit report, it appears that applicant is past due on this debt and currently has a delinquent balance of \$5,641. Applicant is still residing in this home and claims that he is current on both his first and second mortgages on this property. He failed to produce evidence to support his claim that he is current in his payments. He did present unsigned documentation of a rate reduction in Applicant's mortgage agreed upon by the second mortgage holder in January 2010. (GE 4; GE 14; AE A; AE F; Tr. 99-100.)

Applicant was a member of an investment club that advised members on purchasing investment properties. From 2003 to 2007, Applicant purchased six investment properties. After securing loans for each property in his own name, as the guarantor, he then transferred the asset to a limited liability company, of which he was the sole owner. Applicant believes that by transferring the property to one of two limited liability companies, he is no longer liable for these debts. He admitted in his testimony that he never advised the lenders that the properties had been transferred to his limited liability companies. Each of his six investment properties have been foreclosed upon by the lenders. (GE 3; GE 6; AE B; AE C; Tr. 99.)

Applicant purchased his first investment property, located in state B, in 2003. He testified that he financed the property with a first mortgage of approximately \$150,000 (SOR allegation 1.i.), and a home equity line of credit for \$99,000 (SOR allegation 1.d.). He successfully rented this property and it was occupied almost the entire time he owned it. He indicated he experienced financial problems on this property when his line of credit evaporated in 2008. The home was foreclosed upon on September 22, 2008. A 1099-A, issued to Applicant, indicates that the balance of the outstanding principal was \$143,025.58 and the fair market value of the property was \$173,000. The lender listed on the 1099-A (for the state B property) is discrepant with Applicant's testimony. Applicant contends that he owes no money on the first mortgage and pointed out that

the balance on his first mortgage was listed at zero on his April 2010 credit report. He has not contacted his creditor for the home equity line of credit and has no plans to pay this debt. He believes the debt is “extinguished” due to state B’s foreclosure laws. (GE 7; GE 11; AE A; AE H; AE K; Tr. 69-71, 81,101-103.)

Applicant’s second investment property was located in state C. He purchased the property in 2003, approximately one month after purchasing his first property. He testified that the total purchase price of the property was \$175,000 to \$180,000. He financed the purchase through a first mortgage which has been foreclosed upon with a total loan balance of \$153,000 (SOR allegation 1.e.). He took out a \$50,000 home equity line of credit second mortgage on this property (SOR allegation 1.a.). This property was foreclosed upon in April 2010. He has not contacted his creditor for the second mortgage and has no plans to pay this debt. He believes the debt is “extinguished” due to state C’s foreclosure laws. (GE 3; GE 4; GE 10; GE 11; AE I; AE K; Tr. 46-55,103.)

Applicant’s third investment property was located in state A. The purchase price was \$890,000. Applicant financed \$820,000 (SOR allegation 1.k.) and he put \$70,000 down, as a down payment. He got the money for the down payment by refinancing his personal residence. This property was foreclosed upon in January 2009. He has not contacted this creditor and has no plans to pay this debt. He believes the debt is “extinguished” as evidenced by a letter from his attorney and state A’s foreclosure laws. (GE 3; GE 7; GE 11; AE K; AE E; Tr. 103.)

Applicant’s fourth investment property was located in state D. He purchased the property in 2007 with a first mortgage of approximately \$100,000, a second mortgage of \$26,000 (SOR subparagraph 1.f.), and a \$10,000 down payment. The home was foreclosed upon in October 2008 by the primary lender. He has not contacted his creditor for the second mortgage and has no plans to pay this debt. He believes the debt is “extinguished” due to state D’s foreclosure laws. (GE 4; GE 11; AE J; Tr. 73-77, 106.)

Applicant’s fifth and sixth investment properties were located in state E. He purchased a residential duplex. Each half of the duplex was sold as a separate property. He purchased one for \$120,000 and the other for \$115,000. He had a first and second mortgage on each property. The debt alleged in subparagraph 1.g was for a first mortgage on one of the properties, and the debts in 1.c. and 1.h. were for the second mortgages. Both properties were foreclosed upon in October 2008. He has not contacted his creditors for any of these mortgages and has no plans to pay the remaining debt. He believes the debt is “extinguished” due to state E’s foreclosure laws. However, the 2009 1099-A Applicant provided on one of the two state E properties, indicates that the balance of the outstanding principal was \$92,650 and it indicates that the borrower is personally liable for the repayment of this debt. (GE 2; GE 3; GE 11; AE G; Tr. 66-69, 77-79, 107).

Applicant was successful in renting all of his investment properties, but he was renting them out for less than his total mortgage payments on each property. Applicant

did not attempt to sell any of his investment properties. Instead, he contacted an attorney in state A, who advised him of that state's anti-deficiency laws. Applicant then conducted his own research into the other state's laws to support his claim that his debts have been extinguished. (AE E; AE K; Tr. 108.)

## **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 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.

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 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 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* EO 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 concern 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 accumulated large delinquent debts and has been unable or unwilling to pay his obligations. His delinquencies have been on-going since 2008, without resolution. The evidence is sufficient to raise the above disqualifying conditions.

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.

Applicant's debts are recent and on-going. The debts were incurred because Applicant made investment decisions that failed. His choice to purchase six investment properties, with several mortgages on each property, on an income of only \$95,000 a year, does not demonstrate that he exercises good judgment. AG ¶ 20(a) does not apply.

Arguably, Applicant did not predict the financial downturn, which affected so many Americans, and has caused high foreclosure rates across the United States. However, Applicant's actions do not show he has acted responsibly under the circumstances. The manner in which Applicant financed his properties, taking a second mortgage out on one property for a down payment on another, was risky. Further, he has not demonstrated responsibility since the foreclosures. He ignored the obligations that he personally acquired. AG ¶ 20(b) does not apply.

Applicant offered no evidence to support that he has received or is receiving counseling for the problem. He did contact an attorney, but this does not rise to the level of financial counseling. Further, there are no indications that the problem is under control. AG ¶ 20(c) is not mitigating.

Applicant relied on the fact that he transferred his assets to the limited liability corporations prior to the foreclosures and the anti-deficiency laws of various states to support his claim that his debts have been extinguished. Neither of his excuses for the non-payment of his debts establishes that he has acted in good faith. The lenders were not parties to the transfer, nor did Applicant even inform them that he transferred the property to a limited liability company. Further, he has made no actions to resolve his outstanding accounts. "Reliance on the non-collectability of a debt does not constitute a good-faith effort to resolve that debt within the meaning of the Directive."<sup>1</sup> AG ¶ 20(d) does not apply.

Applicant does not contest that the debts listed in the SOR were financial obligations that he personally guaranteed. He did contest that he was past due on his personal residence (SOR subparagraph 1.b.), but he produced no evidence to show he is current on this debt. AG ¶ 20(e) is not mitigating.

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<sup>1</sup> ISCR Case No. 07-16841 at 5 (App. Bd. Dec. 19, 2008).

## 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 the 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 those guidelines, but some warrant additional comment.

There are significant unresolved concerns about Applicant's finances and judgment. The manner in which he financed his many investments demonstrates poor judgment. He presented no evidence regarding his current character or work performance. Applicant has failed to show he will avoid similar poor financial choices in the future.

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 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:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant

Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Jennifer I. Goldstein  
Administrative Judge