



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



In the matter of:	)	
	)	
	)	
	)	ISCR Case No. 08-09808
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jennifer Goldstein, Esquire, Department Counsel  
For Applicant: *Pro Se*

June 22, 2009

**Decision**

WESLEY, Roger C., Administrative Judge:

**Statement of Case**

On January 27, 2009, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, and Department of Defense (DoD) Regulation 5200.2-R, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on February 19, 2009, and requested a hearing. The case was assigned to me on April 21, 2009. The case was scheduled for hearing on May 19, 2009. A hearing was held as scheduled, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, or deny, Applicant's application for a security clearance. At hearing, the Government's case consisted of five exhibits; Applicant relied on one witness (himself) and five

exhibits. The transcript (R.T.) was received May 31, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Summary of Pleadings**

Under Guideline F, Applicant is alleged to have (a) accumulated two related debts (one charged off and the other associated with a mortgage foreclosure) exceeding \$110,000.00 and (b) filed for Chapter 7 bankruptcy in June 2004 and received a discharge in September 2004.

For his answer to the SOR, Applicant denied the alleged debt covered by subparagraph 1.a and admitted the subparagraph 1.b debt and Chapter 7 bankruptcy petition and discharge covered by subparagraph 1.c. Applicant claimed he did not owe monies to creditor 1.a and disputes the debt covered by creditor 1.b. He claimed his Chapter 7 bankruptcy discharge afforded him a fresh start and chance to improve his financial situation.

### **Findings of Fact**

Applicant is a 28-year-old system administrator for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein and adopted as relevant and material findings. Additional findings follow.

Applicant is unmarried and has no children (see ex. 1). Aided by student loans, he earned a two-degree in information technology from a technical institute in June 2002 (ex. 1; R.T., at 136-137). He has since earned some additional college credits and plans to return to school next semester (ex. 1; R.T., at 101-102). His company assists him financially with his schooling (R.T., at 102).

Concerned about his mounting credit card and student loan debts, Applicant petitioned for Chapter 7 bankruptcy protection in June 2004 (see exs.1 and 3; R.T., at ). He scheduled \$30,000.00 to \$40,0000.00 in credit card debts and student loans that he still is paying on (R.T., at 76). The bankruptcy discharge he received in September 2004 did not wipe out all of his credit card debts or his student loan debts (R.T., at 76-78).

In August 2004, a friend recommended an investment property to Applicant and referred him to another individual to complete the investment (R.T., at 41, 80-81). Applicant formed an oral partnership with this referred friend, with the understanding his new partner would take care of needed repairs and cover the monthly loan payments, and Applicant would obtain the financing for the purchase (R.T., at 41-43, 49). Applicant, in turn, applied for financing of a residential property (priced at \$270,000.00) in the current state of his residence for a 100 per cent interest in the property (R.T., at 43, 81-82). He paid nothing down on the financing he obtained for his

purchase (R.T., at 48). The lender broke the loan into separate loans (one for \$55,000.00 to facilitate his buying the property) and the other a conventional first mortgage for around \$220,000.00 (R.T., at 64-65, 83). Both of these loans were completed with the same lender (R.T., at 53-55, 83-84). Just how Applicant was able to finance the purchase of his investment property for nothing down and little track history, and during a pending bankruptcy, is unclear. Without any of the closing paperwork to cross-check for helpful clues, definitive answers cannot be gleaned from the record.

Records reflect that In August 2005, the original lender sold its second mortgage (most likely a purchase money mortgage) to creditor 1.a (see exs. 2, 3 and A; R.T., at 66, 109-110). The following month the same lender sold its first mortgage to creditor 1.b (see exs. 2 and 3).

Applicant purchased his investment property with the intention of making repairs and reselling the unit for a profit of around \$2,500.00 (R.T., at 49, 80). Although just 23 years of age and with no real estate training, he never discussed the purchase with his parents, never visited the property, and never anticipated having to repay the \$270,000.00 purchase price (R.T., at 48-50, 80-81).

After singularly completing the purchase of the investment property, Applicant deferred to his new partner who committed to making the required \$1,500.00 monthly payments under the terms of his mortgage (R.T., at 49). This putative partner made two or three payments towards both mortgages on the property, and then quit making monthly payments altogether (R.T., at 49-50, 82). Because Applicant did not try to rent the property while it was in a past due status, it generated no income (R.T., at 106). Incoming rents could have been applied (in part) towards the mortgage, or upkeep of the property, even if rents could not fully cover the mortgage given the state of the property at the time (R.T., at 106, 111-114).

Records reflect that the lender resold its two loans in 2005 to two separate entities. It sold its \$55,000.00 second mortgage in August 2005 to creditor 1.a (see exs. 3, 4 and A). The same lender then sold its \$220,000.00 conventional first mortgage the following month to creditor 1.b (exs. 3, 4 and A).

When Applicant's partner ceased making payments on Applicant's investment property, Applicant tried to contact the partner, but without any success (R.T., at 51-52). From November 2004 through October 2006, neither Applicant nor his partner made any payments on the investment property. During this period, Applicant received regular collection notices on his two loans (R.T., at 84-85). He also made several attempts to contact creditor 1.a and perfect a short sale, but without success (R.T., at 55-56, 86-87). Sometime in 2006, creditor 1.a charged off its second mortgage account (R.T., at 86). Applicant could not account for what the charge off meant (R.T., at 86).

In November 2006, the first mortgagee mailed a foreclosure notice to Applicant, and proceeded to try to sell the property at public auction in February 2007 (R.T., at 54-56). Apparently unsuccessful in finding a buyer at the foreclosure sale, creditor 1.b

redeemed the property, assumed ownership, and, according to Applicant, either retained title to the property, or resold it to a third party (R.T., at 59-60, 68-71, 88-89). While Applicant can not document creditor 1.b's ownership interest in the property (R.T., at 69-70), he expresses confidence the creditor will not seek any money from him (R.T., at 89). He assures he checked the county records and identified a third party as the owner of the property (R.T., at 71). Whether this party, Applicant, or creditor 1.b is the actual owner of the property is unclear. His credit reports (exs. 3 and 4) reflect creditor 1.b as the mortgagee of the property, not the owner.

Ownership of the investment property Applicant purchased in 2004 remains a troublesome issue, that cannot be reliably resolved without the aid of a title report or some clear documentation from the lender or official records from the county recorder where the property is located. Creditor 1.a, in the meantime, has charged off its \$55,000.00 second mortgage purchase for reasons unclear (see exs B and E). When Applicant contacted creditor 1.b to ascertain any collection intentions, he was telephonically informed that the creditor was not looking to collect any owed deficiency without any apparent elaboration (R.T., at 110-111). The evidence in the record does not contain any confirmations of collection intentions from either creditor.

Still, Applicant assures he has no deficiency exposure with either creditor 1.a or creditor 1.b (R.T., at 109-111). While his assurances are certainly plausible, they cannot be verified and adopted without corroborative proof from the underlying documentation and/or written confirmation from the creditors themselves.

For the past few months, Applicant has been working with a credit building firm to resolve his disputes with creditor 1.a and 1.b and have these reported debts removed from his credit reports (see ex. E). He assures his credit rebuilding efforts have enabled him to increase his credit score to above 700 (R.T., at 74). He lives in rental housing, earns over \$3,400.00 a month, and adheres to a budget that nets him over \$1,100.00 a month in remainder after all of his expenses and debts have been paid (see ex. 3; R.T., at 75, 91-103).

Applicant has a 401(k) retirement account and a pension plan that are funded by his employer. He estimates to have between \$5,000.00 and \$6,000.00 invested in the two accounts (R.T., at 105). He enjoys working on military contracts and believes his overall finances have improved, and will continue to improve "as time goes on" (R.T., at 107-108).

### **Endorsements and awards**

Applicant did not provide any endorsements from his command or community. Potentially helpful but not available either are his company performance evaluations and any commendations he may have earned.

## **Policies**

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E2(a) of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

### **Financial Considerations**

*The Concern:* "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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts." Adjudication Guidelines, ¶ 18.

### **Burden of Proof**

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted facts alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require

the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

### **Analysis**

Applicant is a system administrator for a defense contractor who accumulated several delinquent debts over the past several years. To resolve his credit card delinquencies in 2004, he sought the protection of the bankruptcy laws. Before completing his Chapter 7 bankruptcy, he contracted to purchase an investment property on the strength of a referral from a good friend. Applicant's purchase was facilitated by a first and second mortgage sans any down payment. When his new partner abandoned his monthly servicing commitments on the purchase, Applicant abandoned his property investment and accepted non-judicial foreclosure by the lender. Whether or not the foreclosing lender actually foreclosed on the property and retains a right to a deficiency is unclear.

Potentially applicable to Applicant's foreclosure in this case is the state's anti-deficiency law (CCP, § 580b). Section 580b of his state's code is fairly all encompassing as it pertains to debt instruments created to facilitate a purchase of a home in the state. Case authorities certainly leave little room for excluding mortgage instruments considered integral to the financing of the home in question. The only exception would be if the listed second mortgage with creditor 1.a can be legally characterized as post-purchase security, which is not covered by CCP, § 580b. Without any furnished loan documentation, it is difficult to ascertain with any degree of certitude whether the creditor 1.a debt qualifies as a purchase money obligation eligible for coverage by the state's anti-deficiency law, or falls outside the law's anti-deficiency exclusion.

Security concerns are raised here under the financial considerations guideline of AG ¶ 18 of the Directive. Under this guideline, "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" AG ¶ 18. To resolve his accumulation of significant credit card and student loan debt, Applicant (in his early twenties) turned to Chapter 7 bankruptcy for protection. His utilization of Chapter 7 bankruptcy procedures and his exposing himself to potential deficiency enforcement as a result of his post-bankruptcy loan defaults and ensuing foreclosure warrant the application of two of the disqualifying conditions (DC) of the AGs for financial considerations: ¶ 19(a), "inability or unwillingness to satisfy debts" and ¶ 19(c), "a history of not meeting financial obligations."

When Applicant made his referenced investment purchase, he had no capital resources of his own to commit and obtained financing of the property with nothing down. He was still involved in a Chapter 7 bankruptcy proceeding at the time and was forced to rely on a friend for loan servicing assistance. Exactly what this friend committed to and expected to derive from the investment is unclear. The record lacks documentation of the purchase and the financial arrangements Applicant reportedly made with this friend. What made Applicant's real estate investment especially risky is his absence of any down payment to secure conventional mortgage financing. Without capital of his own, he relied on a rising real estate market, an extraordinary institutional supply of leverage capital to fund purchase money needs, and a vast array of available mortgage services, to facilitate his investment property purchase. From the outset, Applicant's purchase was laden with risk, even in an advancing real estate market.

For the first several months following his investment property purchase, Applicant and his new partner made the required monthly mortgage payments in a timely way and looked to reaping considerable rewards from their investment. Their hopes for a quick turnaround on their investment were quickly dashed, though, after Applicant's partner ceased making payments, and Applicant failed to cover him.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are explicit in financial cases (as here) and bring into play security concerns covered by the financial considerations guideline.

Extenuating circumstances are not clearly associated with either Applicant's Chapter 7 bankruptcy, or his ensuing investment foreclosure. Based on the circumstances presented here, MC ¶ 20(b) of the financial considerations guideline, "the conditions that resulted in the behavior 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," has no visible applicability to Applicant's financial difficulties.

Since receiving the SOR, Applicant has made no manifest attempt to check his loan documents to ascertain whether creditor 1.a has a potential deficiency claim that it could conceivably enforce against him. He assures that creditor 1.a is not seeking a deficiency on its second mortgage position, and he has relied on a credit building firm to obtain the removal of creditor 1.a's debt from his credit reports. Still, he has not provided any loan documentation or other written proof that creditor 1.a has no deficiency entitlement. His limited contacts to date with creditor 1.a and his credit rebuilding firm by themselves are not enough to justify application of MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

Applicant provides no evidence either of any financial counseling, or personal budgeting. Without any documented counseling or budgeting in the record, MC ¶ 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,” may not be applied.

From a whole person standpoint, Applicant fails to provide sufficient anti-deficiency documentation and documented support from his employer, friends or acquaintances who are familiar with his work and community contributions and can vouchsafe for his good judgment, reliability and trustworthiness. Nor is he able to document extenuating circumstances associated with his financial difficulties. To his credit, Applicant exhibits remorse for his indiscretions, which he attributes to youth and immaturity. His lifestyle changes to date do reflect some improvements in his managing his finances and are to be encouraged. At the same time, his efforts in restoring sound managerial control over his finances remain a work in progress and require additional seasoning before safe predictions can be made that his finances are safely stabilized and averse recurrence risks.

Taking into account all of the presented mitigation considerations in this case, Applicant fails to mitigate judgment, reliability and trustworthiness concerns related to his Chapter 7 bankruptcy discharge and his mortgage-related debts. Unfavorable conclusions warrant with respect to the allegations covered by the financial considerations guideline.

In reaching my decision, I have considered the evidence as a whole, including each of the E 2(a) factors enumerated in the Adjudicative Guidelines of the Directive.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F: (FINANCIAL CONSIDERATIONS):      AGAINST APPLICANT

Sub-paras. 1.a through 1.c:      Against Applicant

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant’s security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge



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