



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



In the matter of: )  
)  
) ISCR Case No. 08-11429  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: D. Michael Lyles, Esq., Department Counsel  
For Applicant: Christopher Graham, Esq.

June 9, 2011  
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**Decision**  
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RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is granted.

**Statement of the Case**

On March 15, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 on September 1, 2006.

Applicant answered the SOR on May 5, 2010, and requested a hearing before an administrative judge. The SOR was amended on January 14, 2011 and Applicant answered the amended SOR on February 10, 2011. The case was assigned to me on

April 5, 2011. DOHA issued a Notice of Hearing on April 13, 2011. I convened the hearing as scheduled on May 24, 2011. The Government offered exhibits (GE) 1 through 12. Applicant did not object and they were admitted into evidence. Applicant testified and did not offer any exhibits. The record was held open until June 1, 2011 to allow Applicant to submit documents. He submitted three documents marked as Applicant's Exhibits (AE) A through C. Department Counsel did not object and they were admitted into evidence. DOHA received the hearing transcript (Tr.) on June 1, 2011.

### **Procedural Matters**

The Government amended the SOR and withdrew all Guideline B and E allegations under paragraphs 1 and 3. It withdrew ¶¶ 2.a and 2.b. It renumbered ¶ 2.c, 2.d and 2.e, and designated them ¶¶ 1.a, 1.b, and 1.c. It added ¶¶ 1.d, 1.e, 1.f, and 1.g to the SOR.

### **Findings of Fact**

Applicant denied SOR ¶¶ 1.a, 1.e, and 1.g and admitted the remaining SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 32-year-old computer administrator. He married in 2002 and divorced in 2009. He has one child from the marriage and pays child support. He remarried in September 2010. His wife is a student. Applicant completed three years of college, but did not earn a degree. However, he has been accepted into an executive master's of business administration program at a prestigious university. He works for a federal contractor and has held a secret security clearance since 2003.<sup>1</sup>

Applicant admitted that in about 2002 or 2003, he bet on sporting events through an off-shore betting organization. He estimated he bet about \$20,000. He has not participated in any similar activity since then. He could not recall if he lost money or won money, but either way it was not a substantial amount. He does not intend to participate in any similar activity in the future. His actions were legal.<sup>2</sup>

In November 2008, Applicant provided a personal financial statement that indicated he had approximately \$1.1 million in assets. Of that, approximately \$880,000 was real estate that he owned. He estimated the mortgages on the properties to be about \$800,000.<sup>3</sup>

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<sup>1</sup> Tr. 69-70.

<sup>2</sup> Tr. 19-21, 71, 74-77.

<sup>3</sup> Tr. 21-22; GE 4.

In August 2001, Applicant purchased a home for \$260,000. When he applied for the mortgage he was employed. The day before he was to close on the house, he lost his job. He was employed in the computer field and the 2000 “tech bubble” burst. Applicant was 23 years old at the time and had been earning \$95,000. He had made a down payment of \$17,500 on the home. At the time, he had been working for five years and was frugal and saving his money. He always contributed the maximum amount allowable to his IRA and pension plan, thereby reducing his taxable income. Because he had savings he was able to complete the purchase of the house. He took a job at a retail electronics store and earned about \$33,000 annually. He had two others living in the house with him who paid a portion of the mortgage. Applicant was able to continue to make his mortgage payments on the house.<sup>4</sup>

In March 2004, Applicant purchased another house. He saw what he believed was a good opportunity to purchase another house. He purchased it for \$352,000. He had sufficient equity in his first house to obtain a loan, but needed cash for the transaction, so he borrowed \$35,000 from his father to use to purchase the new house. He did not have enough time to get an equity loan from his first house to complete the purchase of the second house. However, he did get the loan later and immediately repaid his father. It is alleged that Applicant was earning around \$59,654 at the time he purchased the second home. Applicant credibly testified that his annual income was \$75,000. Each year he would reduce his taxable income by making IRA and pension contributions. He also was frugal and saved his money throughout the years. In 2004, the computer field began to rebound and salaries increased.<sup>5</sup>

Between January 2007 and January 2008, Applicant purchased three investment properties. At the time, his adjusted gross income was about \$94,000 annually, but his actual gross income was about \$125,000, because he maximized his IRA and pension contributions. He sold his first house and made a profit of \$140,000. He used some of the money to purchase a car, some was put into savings and stock trading, and some he used to purchase the properties. He researched the real estate market and found an area where real estate rentals would be good cash flow properties. After he selected a location, he purchased three properties for a total of about \$170,000. Two properties required a 10% down payment (about \$4,000 each) and the third required a 20% down payment (about \$16,000). Applicant had sufficient assets to purchase these properties.<sup>6</sup>

Applicant participated in short-term option trading in the stock market. Financial institutions are required to report the cumulative total amount of trades, including both purchases and sales for the year. Applicant’s financial statement shows this cumulative number. This is not the amount of cash that Applicant has, but rather the total amount of transactions that occurred in the year. SOR ¶ 1.c alleges that in 2007 Applicant had

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<sup>4</sup> Tr. 42-47.

<sup>5</sup> Tr. 47-51.

<sup>6</sup> Tr. 51-57.

\$707,990 in cash. This is incorrect. In 2007, Applicant had about \$86,000 in the account alleged. In 2008, the amount was about \$93,000. Depending on the market, and Applicant's success or failure in trading, this amount fluctuated. In May 2009, Applicant's investment accounts, which included his Individual Retirement Account (IRA) and his 401K retirement account, had \$78,266 and \$56,192 in them, respectively. Applicant has not actively traded in the stock market since May 2009.<sup>7</sup>

SOR ¶ 1.g alleged that Applicant did not file his 2004, 2005, 2006, and 2007 tax returns until September 28, 2008. Applicant had an accountant complete his federal and state income tax returns. In response to the Government's request that he provide copies of past tax returns, Applicant contacted his accountant and requested copies of the returns. The accountant copied the tax returns and included a cover letter dated September 28, 2008. Applicant provided documents from the IRS showing he filed his taxes timely. Applicant filed his taxes timely and received refunds.<sup>8</sup> Applicant estimated his current gross salary is about \$175,000, and he also receives additional commission compensation.<sup>9</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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<sup>7</sup> Tr. 22-41; 65-69; GE 9, 10, 11, 12.

<sup>8</sup> AE A, B, C.

<sup>9</sup> Tr. 41, 57-62; GE 5, 6, 7, 8.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 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. I have considered all of the disqualifying conditions under AG ¶ 19, and conclude none apply. Applicant has been working since he was 18 years old. He has saved and invested his money frugally. His assets are consistent with a person who saves and invests his money wisely. He had one situation in 2002 and 2003, where he participated in sports betting, but his actions were not illegal. He no longer participates in this activity. A misunderstanding by the Government of certain financial documents, led it to believe that Applicant had financial affluence beyond the actual value of his assets. Applicant is not living beyond his means. He is not overextended. To the contrary, he does not have any delinquent debts and his current salary is substantial. The Government also misinterpreted the documents his accountant provided regarding Applicant's tax returns.

There is no evidence he failed to file his taxes on time. The Government failed to provide evidence to convince me that any of the disqualifying conditions under Guideline F 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 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 that guideline, but others warrant additional comment. Applicant is young, intelligent, ambitious, and financially savvy. He has saved his money, invested it in real estate and the stock market, and continued to advance in his career. He consistently filed his taxes on time. There is no indication of financial problems in his background, or suspicious activity that raises concern about affluence that cannot be explained. He has consistently filed his taxes on time. There was no evidence presented by the Government to raise any security concerns. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guideline for 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.g:	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 a security clearance. Eligibility for access to classified information is granted.

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Carol G. Ricciardello  
Administrative Judge