



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 09-00592

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel

For Applicant: *Pro se*

June 14, 2011

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations, but failed to mitigate the security concerns regarding personal conduct. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On July 22, 2008, Applicant applied for a security clearance and submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to the interrogatories on April 27, 2009.² On another unspecified date, DOHA issued him another set of interrogatories. He responded to the interrogatories on May 28, 2009.³

¹ Government Exhibit 1 (SF 86), dated July 22, 2008.

² Government Exhibit 3 (Applicant's Answers to Interrogatories, dated April 27, 2009).

³ Government Exhibit 2 (Applicant's Answers to Interrogatories, dated May 28, 2009).

On June 9, 2010, DOHA issued a Statement of Reasons (SOR) to him, pursuant to 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 and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on June 11, 2010. In a sworn statement, dated June 25, 2010, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on September 28, 2010, and the case was assigned to Administrative Judge Arthur E. Marshall, Jr., on October 8, 2010. A Notice of Hearing was issued on November 5, 2010, but Applicant failed to appear at the hearing scheduled for December 14, 2010. The case was reassigned to me on February 2, 2011. A Notice of Hearing was issued on March 2, 2011, and I convened the hearing, as scheduled, on March 23, 2011.

During the hearing, six Government exhibits (GE 1-6) and seven Applicant exhibits (AE A-G) were admitted into evidence without objection. Applicant testified. The hearing transcript (Tr.) was received on March 31, 2011. The record was kept open until April 6, 2011, to enable Applicant to supplement it. It also remained open until April 18, 2011, to enable the parties to submit written closing arguments.

Rulings on Procedure

During the hearing, Department Counsel moved to withdraw two allegations because the evidence would correctly reflect that the federal tax lien (SOR ¶ 1.a.) and the state tax lien (SOR ¶ 1.b.) identified as being Applicant's were, in fact, not Applicant's debts. The motion was granted.⁴ Department Counsel also moved to withdraw three allegations because the evidence would show that they were actually duplicates of three other allegations. The motion was granted.⁵ Accordingly, SOR ¶ 1.o. was withdrawn as a duplicate of SOR ¶ 1.l.; SOR ¶ 1.p. was withdrawn as a duplicate of SOR ¶ 1.m.; and SOR ¶ 1.q. was withdrawn as a duplicate of SOR ¶ 1.n.

⁴ Tr. at 16-18.

⁵ *Id.* at 93-94.

Findings of Fact

In his Answer to the SOR, Applicant admitted two of the factual allegations (¶¶ 1.h. and 1.i.) of the SOR. During the hearing, Applicant changed his answer pertaining to SOR ¶ 1.c. and admitted the allegation.⁶ Applicant's admissions are incorporated herein as findings of fact. He denied the remaining factual allegations (¶¶ 1.a., 1.b., 1.d. through 1.g., 1.j. through 1.q., and 2.a.) of the SOR. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 47-year-old employee of a defense contractor, currently serving as a senior software engineer and computer system security analyst manager.⁷ He is seeking to retain a top secret security clearance. Applicant has a master's degree in political science and a master's degree in business administration.⁸ Over the years, Applicant has held several different positions with various employers. He was a security analyst from July 1998 until December 1999,⁹ and a computer systems security analyst manager from December 1999 until December 2006.¹⁰ He joined his current employer in December 2006.¹¹ Applicant has never served with the U.S. military,¹² although he attended U.S. Marine Corps officer candidate school for five weeks before opting out of further service.¹³

Applicant was married in March 2005.¹⁴ His wife has two children, a daughter (born in 1985) and a son (born in 1989).¹⁵

Financial Considerations

In June 2002, Applicant purchased a condominium to serve as his primary residence.¹⁶ Because he qualified for a larger loan than he needed for the purchase, in January 2003, he decided to start building wealth by accumulating investment

⁶ *Id.* at 30-31.

⁷ Government Exhibit 1, *supra* note 1, at 13; Government Exhibit 2 (Personal Subject Interview, dated October 6, 2008), at 1, attached to Applicant's Answers to Interrogatories.

⁸ Tr. at 6.

⁹ Government Exhibit 1, *supra* note 1, at 15-16.

¹⁰ *Id.* at 14-15.

¹¹ *Id.* at 13.

¹² *Id.* at 26.

¹³ Government Exhibit 2 (Personal Subject Interview), *supra* note 7, at 2.

¹⁴ Government Exhibit 1, *supra* note 1, at 17-18.

¹⁵ *Id.* at 20-21.

¹⁶ Tr. at 35, 38, 47.

properties.¹⁷ His credit was excellent, and banks and mortgage lenders kept soliciting him to finance new properties or refinance existing ones.¹⁸ His initial purchase of an investment property occurred in January 2003.¹⁹ Over the next two and one-half years, Applicant purchased other older rental properties, sold one property at a profit, and converted his wife's former residence into a rental property. During that period, his annual income was between \$100,000 and \$107,000, and the banks and mortgage lenders performed investment analyses before issuing him mortgage loans.²⁰

Applicant's investment properties were all rented with rents sufficient to cover the respective mortgage payments.²¹ He fixed up the properties, and they all appreciated in value.²² Rental traffic was good, and Applicant had lists of potential renters.²³ At one point, because of his successes in his real estate ventures, one bank urged him to refinance six properties at one time, and he did so.²⁴ Applicant continued his acquisition of investment properties, but did not lose sight of a contingency plan in the event of some future potential problems. His primary contingency plan was to keep his properties rented, but he believed he would be able to cover lost rents if two or three properties were vacant for a couple of months.²⁵ No one predicted a devastated local housing market with no renters.²⁶

There was nothing unusual about Applicant's finances until the latter part of 2007 when, because of the downturn in the economy, he started to lose renters in his investment properties. Tenants lost their jobs and were unable to pay the monthly rent, forcing Applicant to commence eviction proceedings.²⁷ When the local housing market crashed, some renters simply relocated to better facilities with subsidies under the U.S. Department of Housing and Urban Development (HUD) Housing Choice Voucher Program called Section 8.²⁸ In an effort to mitigate his losses, Applicant advertised his properties, listed the properties with the Section 8 program, and reduced his rental

¹⁷ *Id.* at 35, 37.

¹⁸ *Id.* at 74.

¹⁹ *Id.* at 32, 35.

²⁰ *Id.* at 70.

²¹ *Id.* at 76.

²² *Id.* at 71, 76.

²³ *Id.* at 73.

²⁴ *Id.* at 74.

²⁵ *Id.* at 80.

²⁶ *Id.* at 80-81.

²⁷ *Id.* at 69-71.

²⁸ *Id.* at 71-72.

asking price.²⁹ He continued making his mortgage payments from personal savings.³⁰ He even took credit card cash advances to keep making his payments.³¹ Properties in the neighborhood, including his own, started becoming vacant, and then thieves started stripping the vacant houses by removing air conditioners, hot water heaters, plumbing, etc.³²

To protect his interests, Applicant allowed one family to remain in one of his properties even though they could not pay the rent, because they served as a security against vandalism.³³ He spoke to his realtor about the possibility of selling his properties, but was told there was nothing moving in the area.³⁴ Applicant sought help from his mortgage lenders, advising them of the situation, but they would not offer him any assistance.³⁵ Because his mortgages were linked to investment properties rather than a primary residence, Applicant did not qualify for any of the federal loan modification programs.³⁶ At some point in September 2007, Applicant decided to stop using personal funds and credit cards to pay his investment property taxes, mortgages, and other expenses.³⁷ He was capable of meeting his personal and family financial obligations, but could no longer satisfy his investment obligations.³⁸ As a result, several credit card and mortgage accounts fell into arrears and became delinquent.

The SOR identified 17 purportedly continuing delinquencies, as reflected by credit reports from 2008,³⁹ 2009,⁴⁰ and 2010,⁴¹ totaling approximately \$485,334, in charged-off, past due, tax liens, or foreclosure accounts. Some accounts reflected in the credit reports have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly, in many instances duplicating other accounts listed, either under the same creditor name or under a different creditor name. Some accounts are identified by complete account numbers, while others are identified

²⁹ *Id.* at 73.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 75, 77.

³³ *Id.* at 77.

³⁴ *Id.* at 78.

³⁵ *Id.*

³⁶ *Id.* at 80.

³⁷ Government Exhibit 2 (Personal Subject Interview), *supra* note 7, at 4.

³⁸ *Id.*

³⁹ Government Exhibit 6 (Combined Experian, TransUnion, and Equifax Credit Report, dated July 26, 2008).

⁴⁰ Government Exhibit 5 (Equifax Credit Report, dated September 1, 2009).

⁴¹ Government Exhibit 4 (Equifax Credit Report, dated March 15, 2010).

by partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits. The information reflected is not necessarily accurate or up to date. With the withdrawal of the five allegations by Department Counsel, the SOR, as amended, identifies 12 purportedly continuing delinquencies, totaling approximately \$463,878.

(SOR ¶¶ 1.a. and 1.b.): Withdrawn.

(SOR ¶ 1.c.): Applicant purchased his seventh investment property financed in the approximate amount of \$104,000, in July 2006.⁴² The mortgage lender subsequently foreclosed on the property.⁴³

(SOR ¶ 1.d.): When Applicant acquired his eighth investment property, he financed a second mortgage on the property.⁴⁴ As of the date of the hearing, the account was 120 days or more past due in the approximate amount of \$43,500.⁴⁵ The property is currently rented, and Applicant is attempting to negotiate a loan modification.⁴⁶

(SOR ¶ 1.e.): When Applicant acquired his fifth investment property, he financed the entire purchase with no money down.⁴⁷ The property was refinanced in 2006, in the approximate amount of \$76,000.⁴⁸ The mortgage lender subsequently foreclosed on the property.⁴⁹

(SOR ¶ 1.f.): After Applicant acquired his sixth investment property, he refinanced it in the approximate amount of \$128,000.⁵⁰ The mortgage lender subsequently foreclosed on the property.⁵¹

(SOR ¶ 1.g.): When Applicant acquired his fourth investment property, he financed a second mortgage on the property.⁵² Approximately \$23,444 was charged off

⁴² Tr. at 30-31.

⁴³ *Id.* at 31, 108.

⁴⁴ *Id.* at 66.

⁴⁵ *Id.* at 67.

⁴⁶ *Id.* at 108-109.

⁴⁷ *Id.* at 51.

⁴⁸ Government Exhibit 4, *supra* note 41, at 4.

⁴⁹ Tr. at 53, 108.

⁵⁰ *Id.* at 54.

⁵¹ *Id.* at 53, 108.

⁵² *Id.* at 43.

by the mortgage lender.⁵³ The mortgage lender subsequently foreclosed on the property.⁵⁴ On June 25, 2009, the debt was cancelled by the mortgage lender, and Applicant was issued a Form 1099-C, Cancellation of Debt.⁵⁵

(SOR ¶ 1.h.): Applicant had a credit card, which he opened to pay for business expenses associated with his investment properties.⁵⁶ At some point, \$4,419 was charged off.⁵⁷ With the assistance of Consumer Credit Counseling Service (CCCS), Applicant has been making monthly payments on the account since May 2009.⁵⁸ As of June 24, 2010, Applicant had paid \$3,030.40, leaving an unpaid balance of \$3,818.88.⁵⁹ As of March 22, 2011, the unpaid balance had decreased to \$1,394.81.⁶⁰

(SOR ¶ 1.i.): Applicant had another bank credit card opened for unspecified purposes. As of the date of the SOR, the account was 120 days or more past due in the approximate amount of \$4,826.⁶¹ Applicant attempted to make the repayment of the debt a part of his CCCS program, but the creditor declined, preferring to establish its own plan directly with Applicant.⁶² Although Applicant contended he was making monthly \$130 payments and indicated he would furnish written confirmation of his payments,⁶³ no such documentation was ever furnished.

(SOR ¶ 1.j.): When Applicant acquired his second investment property, he financed both first and second mortgages on the property.⁶⁴ The second mortgage, in the amount of approximately \$48,322, was charged off by the mortgage lender.⁶⁵ The

⁵³ *Id.*

⁵⁴ *Id.* at 43, 108.

⁵⁵ Applicant Exhibit I (Internal Revenue Service (IRS) Wage and Income Transcript, dated October 14, 2010), at 6.

⁵⁶ Tr. at 88.

⁵⁷ Government Exhibit 4, *supra* note 41, at 2.

⁵⁸ Applicant Exhibit E (CCCS report, dated June 24, 2010).

⁵⁹ *Id.*

⁶⁰ Applicant Exhibit G (CCCS report, dated March 22, 2011); Tr. at 88.

⁶¹ Applicant's Answer to the SOR, dated June 25, 2010), at 2.

⁶² Tr. at 89.

⁶³ *Id.*

⁶⁴ *Id.* at 64-65.

⁶⁵ *Id.* at 64; Government Exhibit 4, *supra* note 41, at 5.

property is currently rented, and the rental income is sufficient to cover the payments for the first mortgage.⁶⁶

(SOR ¶ 1.k.): When Applicant purchased the condominium to serve as his primary residence, he financed the purchase with a mortgage on the property.⁶⁷ As of September 1, 2009, the mortgage account, with a total balance of \$191,000, was past due in the approximate amount of \$22,080.⁶⁸ The mortgage lender subsequently foreclosed on the property.⁶⁹ On December 8, 2009, the debt was cancelled by the mortgage lender, and Applicant was issued a Form 1099-A, Acquisition or Abandonment of Secured Property.⁷⁰

(SOR ¶ 1.l.): There is an account with a collection agency in the amount of \$28 listed as unpaid in the credit report in October 2008.⁷¹ Applicant does not recognize the debt and tried to contact the creditor by certified letter, using the address listed on the credit report, but the letter was returned to him as unclaimed.⁷²

(SOR ¶ 1.m.): There is an account in the amount of \$855 listed as unpaid in the credit report in July 2008, and again in September 2009 with a different creditor.⁷³ The account was with a telephone company. Applicant disputed the charges because he never went over the allotted minutes and tried to contact the creditor by certified letter using the address listed on the credit report, but he never received a reply.⁷⁴

(SOR ¶ 1.n.): There is a collection account in the amount of \$7,703 listed in the 2009 credit report.⁷⁵ The unpaid balance increased to \$8,363 in the 2010 credit report.⁷⁶ Other than the first name of the collection agency, and a partial account number, nothing further is known about the account or the original creditor. At some unspecified point, the collection agency filed a complaint against Applicant in an attempt to enforce a contract allegedly signed by Applicant.⁷⁷ Contrary to the state rules of

⁶⁶ Tr. at 107.

⁶⁷ *Id.* at 40-41.

⁶⁸ Government Exhibit 5, *supra* note 40, at 4.

⁶⁹ *Id.* at 41, 106-107.

⁷⁰ Applicant Exhibit I, *supra* note 55, at 2.

⁷¹ Government Exhibit 4, *supra* note 41, at 1.

⁷² Tr. at 90; Applicant Exhibit Z (Certified Mail envelope, dated November 12, 2010, and PS Form 3811, Domestic Return Receipt, dated November 20, 2010).

⁷³ Government Exhibit 5, *supra* note 40, at 1; Government Exhibit 4, *supra* note 41, at 1.

⁷⁴ Tr. at 90; Applicant Exhibit P (Letter to collection agency, dated November 12, 2010).

⁷⁵ Government Exhibit 5, *supra* note 40, at 3.

⁷⁶ Government Exhibit 4, *supra* note 41, at 3.

⁷⁷ Applicant Exhibit V (Motion to Dismiss for Failure to State a Cause of Action, dated July 28, 2010), at 1.

procedure, the complaint did not have a copy of the purported contract attached to it.⁷⁸ The response to Applicant's motion to dismiss was the creditor's voluntary dismissal without prejudice.⁷⁹ It is unclear if there is a valid obligation of Applicant pertaining to this allegation.

(SOR ¶¶ 1.o., 1.p., and 1.q.): Withdrawn.

Applicant submitted a personal budget reflecting a monthly income of \$6,000, and monthly expenses of \$5,683.⁸⁰ Debt repayments were not included in his budget. He estimated he had a monthly remainder of \$317 available for discretionary spending.⁸¹ If his monthly \$775 debt repayments were included in his budget, Applicant had a monthly remainder of \$2 available for discretionary spending.⁸² In April 2011, Applicant had \$76,241.93 in his company 401(k),⁸³ and \$29,208.97 in savings,⁸⁴ as well as \$11,745.41 in other investments, not including his investment properties.⁸⁵

As noted above, in May 2009, Applicant engaged the services of CCCS to assist him in taking control of his finances. He was required to complete a variety of forms, including a money management planner, and to submit copies of his bills to enable him to determine his net worth, set goals, monitor cash flow, and track expenses.⁸⁶ He conferred with representatives by telephone and adjusted his finances to conform to budget guidelines.⁸⁷ He closed open credit card lines.⁸⁸ He addressed credit cards with accumulated current debt as well as the one credit card that was delinquent.⁸⁹ Unfortunately, CCCS did not get involved in mortgage issues.⁹⁰ Of his total of nine properties, eight of which were investment purchases, Applicant still has control of four properties.⁹¹

⁷⁸ *Id.*

⁷⁹ Applicant Exhibit V (Voluntary Dismissal Without Prejudice, dated November 9, 2010).

⁸⁰ Government Exhibit 3 (Personal Budget, dated April 14, 2009), attached to Applicant's Answers to Interrogatories.

⁸¹ *Id.*

⁸² *Id.*

⁸³ Applicant Exhibit J (Savings Plan Account Statement, dated April 5, 2011).

⁸⁴ Applicant Exhibit X (Cash Balance Account, dated April 5, 2011).

⁸⁵ Applicant Exhibit K (Portfolio Holdings, dated April 4, 2011).

⁸⁶ Applicant Exhibit H (CCCS Money Management Planner, undated).

⁸⁷ *Id.*; Tr. at 112-114.

⁸⁸ Tr. at 115.

⁸⁹ *Id.* at 118-120.

⁹⁰ *Id.* at 120.

Personal Conduct

On July 22, 2008, when Applicant completed and submitted his SF 86, he responded to a question set forth in the SF 86. The SOR alleges Applicant deliberately failed to disclose complete information in response to the following financial question: § 28a - (*In the last 7 years, have you been over 180 days delinquent on any debt(s)?*). Appellant answered “yes” to the question, and identified two delinquent credit card accounts.⁹² He did not list any of his delinquent mortgage accounts or other delinquent accounts which came within the scope of the question (SOR ¶¶ 1.e. through 1.h., 1.j., 1.l., and 1.m.). However, in response to another inquiry, Applicant indicated he had “tax liens on investment property due to the downturn in the real estate market,” and “lien for taxes due on investment property.”⁹³ In a separate section, under additional comments, he added:⁹⁴

As a real estate investor, I have experienced some financial problems due to the downturn in the real estate market that have affected my personal credit. Since 2003, I have accumulated several properties that are now difficult to sell and difficult to rent. The downturn has not affected my personal property or personal income from work. I reported this to my Security Officer via email in 2007 when things began to change for me.

Applicant denied intending to convey a false impression and contended he had “inadvertently” failed to specifically list his investment properties and essentially limited his response to his “personal” finances.⁹⁵ It should be noted that the financial questions in the SF 86 do not differentiate between personal and business accounts. At the time he made his responses, Applicant was clearly aware that his investment property delinquencies were well over \$100,000, but he did not consider his real estate to be “personal” property, even though they were all titled in his name and not as a separate corporate entity.⁹⁶ Under those circumstances, Applicant failed to answer the question completely, correctly, and truthfully, and deliberately parsed words in omitting critical facts from his response.

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.”⁹⁷ As Commander in Chief,

⁹¹ *Id.* at 84.

⁹² SF 86, *supra* note 1, at 33-34.

⁹³ *Id.* at 33.

⁹⁴ *Id.* at 36.

⁹⁵ Government Exhibit 2 (Personal Subject Interview), *supra* note 7, at 3; Tr. at 103-104.

⁹⁶ Tr. at 103.

⁹⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”⁹⁸

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”⁹⁹ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.¹⁰⁰

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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

⁹⁸ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁹⁹ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

¹⁰⁰ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”¹⁰¹

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.”¹⁰² Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

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. As noted above, there was nothing unusual about Applicant’s finances until the latter part of 2007 when, due to the downturn in the economy, he started to lose renters in his investment properties. Mortgages and other accounts became delinquent, some were charged off or foreclosed, and some tax liens were levied. AG ¶¶ 19(a) and 19(c) apply.

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.” Also, under AG

¹⁰¹ *Egan*, 484 U.S. at 531

¹⁰² See Exec. Or. 10865 § 7.

¶ 20(b), financial security concerns may be mitigated 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.” 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.”¹⁰³ Also, AG ¶ 20(e) may apply where “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.”

There was nothing unusual about Applicant’s finances until the latter part of 2007 when, because of the historic downturn in the economy in general and the local housing market specifically, he started to lose renters in his investment properties because they lost their jobs and were unable to pay the monthly rent. When the local housing market crashed, some renters simply relocated to better facilities with subsidies under Section 8. Applicant advertised his properties, listed the properties with the Section 8 program, and reduced his rental asking price. He continued making his mortgage payments from personal savings, and he even took credit card cash advances to keep making his payments. Applicant explored the possibility of selling his properties, but was told there was nothing moving in the area. Applicant sought help from his mortgage lenders, but they would not offer him any assistance. At some point in September 2007, Applicant decided to stop using personal funds and credit cards to pay his investment property taxes, mortgages, and other expenses. He was capable of meeting his personal and family financial obligations, but could no longer satisfy his investment obligations. As a result, several accounts fell into arrears and became delinquent. Four of his investment properties were foreclosed upon. Applicant was issued a Form 1099-A, Acquisition or Abandonment of Secured Property or a Form 1099-C, Cancellation of Debt, for several of his foreclosed properties, meaning he no longer has any financial responsibilities for those accounts other than treating the “forgiven” loans as income.

In May 2009, Applicant engaged the services of CCCS to assist him in taking control of his finances. He conferred with representatives by telephone and adjusted his

¹⁰³ The Appeal Board has previously explained what constitutes a “good-faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good-faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good-faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

finances to conform to budget guidelines. He closed open credit card lines and addressed credit cards with accumulated current debt, as well as the one credit card that was delinquent. He attempted to validate or dispute two unknown debts, but one letter was unclaimed and the other unanswered. Of his total of nine properties, eight of which were investment purchases, Applicant still has control of four properties.

Much of what occurred was largely beyond Applicant's control and took place under such circumstances that it is unlikely to recur. Applicant received counseling for his financial problems, and there are clear indications that the problems are now being resolved. Applicant acted responsibly under the circumstances, and his current reliability, trustworthiness, or good judgment, are not in question. AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) apply.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The guideline notes a condition that could raise security concerns. Under AG ¶ 16(a), a "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities," is potentially disqualifying.

Applicant's omission in his response to the one inquiry in the SF 86 of critical information pertaining to financial delinquencies, provides sufficient evidence to examine if his submission was a deliberate falsification, as alleged in the SOR, or was the result of an inadvertent omission or a very limited interpretation of what was required to be reported, as he contends.¹⁰⁴

¹⁰⁴ The Appeal Board has explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

As to the question pertaining to 180 day delinquencies, Applicant answered “yes,” and merely listed two delinquent credit cards, but only referred to his mortgage problems as having difficulty in renting or selling real estate. He never stated that he had mortgage delinquencies or foreclosures, and that was a significant omission, especially since the titles to the investment properties were in his name and not in the name of a separate corporate entity. Under those circumstances, Applicant failed to answer the question completely, correctly, and truthfully. His explanation is unreasonable and leads me to conclude that he deliberately falsified his response. AG ¶ 16(a) has been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. AG ¶ 17(a) may apply if “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” Similarly, if “the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment,” AG ¶ 17(c) may apply. Also, AG ¶ 17(d) may apply if “the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.” Applicant has steadfastly adhered to his brief explanation for his comments in the SF 86. None of the potentially mitigating conditions 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 have evaluated the various aspects of

this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.¹⁰⁵

There is substantial evidence in favor of mitigating Applicant's conduct. In January 2003, he decided to start building wealth and accumulate investment properties. His credit was excellent, and banks and mortgage lenders kept soliciting him to finance new properties or refinance existing ones. He accumulated investment properties and was very successful in purchasing them at reasonable prices, rehabilitating them, and renting them. Unfortunately, because of the unexpected downturn in the economy and the housing market crash, he lost renters when they lost their jobs and were unable to pay the monthly rent. In an effort to mitigate his losses, Applicant advertised his properties, listed the properties with the Section 8 program, and reduced his rental asking price. He continued making his mortgage payments from personal savings. He even took credit card cash advances to keep making his payments. He explored the possibility of selling his properties, but was told there was nothing moving in the area. Applicant sought help from his mortgage lenders, advising them of the situation, but they would not offer him any assistance. Applicant turned to CCCS to assist him in handling his financial affairs, and he established repayment plans to resolve delinquent debts.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:¹⁰⁶

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

¹⁰⁵ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

¹⁰⁶ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

There are some questionable actions by Applicant in handling his delinquent accounts. At some point in September 2007, Applicant decided to stop using personal funds and credit cards to pay his investment property taxes, mortgages, and other expenses. He was capable of meeting his personal and family financial obligations, but could no longer satisfy his investment obligations. As a result, several accounts fell into arrears and became delinquent. Accounts were charged off and properties were foreclosed. This is significant because all of the investment properties and the credit cards were in Applicant's name and not in the name of a separate corporate entity. Also, as of April 2011, Applicant had \$76,241.93 in his company 401(k), \$29,208.97 in savings, as well as \$11,745.41 in other investments, not including his investment properties. Nevertheless, as it pertains to Applicant's financial matters, I conclude that Applicant has established a meaningful track record.

The disqualifying evidence under the whole-person concept is also substantial, but it is primarily related to Applicant's personal conduct in completing his SF 86. As to the question pertaining to 180 day delinquencies, Applicant failed to answer the question completely, correctly, and truthfully. Furthermore, his explanation is unreasonable and leads me to conclude that he deliberately falsified his response. It is undeniable that Applicant experienced severe financial problems as a result of the devastated economy and the housing market crash. His efforts in that regard were notable. However, his lack of candor in explaining his fiscal problems – essentially a cover up – is too significant to overlook. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from his financial considerations, but has failed to mitigate the security concerns arising from his personal conduct.

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
Subparagraph 1.a:	Withdrawn
Subparagraph 1.b:	Withdrawn
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant

