



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 09-01367

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: David I. West, Esquire

March 31, 2010

**Decision**

WHITE, David M., Administrative Judge:

Applicant bought a home in 2004 after retiring from the Navy. He was laid off eight months later, through no fault of his. He had to relocate to find work, and was unable to either sell or rent the home due to the depressed real estate market. His first mortgage debt was fully resolved by foreclosure, he repaid the second loan, and had no other delinquent debts. Based upon a thorough review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Applicant submitted his security clearance application on September 29, 2008. On July 24, 2009, 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 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense (DoD) for SORs issued after September 1,

2006. Applicant acknowledged receipt of the SOR on August 5, 2009. He answered the SOR in writing (AR) on August 19, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 27, 2009, and DOHA assigned the case to me on November 2, 2009.

DOHA issued a Notice of Hearing on December 8, 2009, and I convened the hearing as scheduled on January 5, 2010. Department Counsel offered Government Exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified on his own behalf, and offered Applicant Exhibits (AE) A through C, which were also admitted without objection. Three additional witnesses testified on Applicant's behalf. DOHA received the transcript of the hearing (Tr.) on January 13, 2010.

### **Findings of Fact**

Applicant is a 52-year-old employee of a defense contractor, for whom he has worked since 2005. He retired in 2004 after serving for 20 years in the Navy, with an 8-year break in service. He held a high-level security clearance throughout his naval service without any adverse incidents. He is married with two children, ages 19 and 17. His 17-year-old son has cerebral palsy, with the mental development of a 2-year-old, and recurrent serious respiratory problems. (GE 2 at 6, 12, 18-22, 26-27, 32-33; Tr. at 52-53, 72-74.) In his answer to the SOR, Applicant denied the allegation set forth in ¶ 1.a, and admitted the allegation in ¶ 1.b, with explanations. (AR at 1-2.) His admissions and explanations are incorporated into the following findings of fact.

Applicant's last Navy duty station was in State One, close to where his family and his wife's family reside. He lived in Navy housing there for 11 years, until his retirement from active duty. He was hired by a small local defense contractor and began working immediately after leaving the service. He and his wife bought a home by taking out a \$304,000 first mortgage loan and a \$38,000 home equity line of credit. (GE 4 at 10, 15; GE 3 at 4; Tr. at 55-57, 74-75.)

Eight months later, Applicant's employer lost the contract under which he was working and he was laid off. He unsuccessfully searched for another job in the area for several months. He was finally hired by another company to work in State Two, on the other coast. The area where he started working did not have adequate special education programs to meet his son's needs, so his wife and children remained in their home and he rented a room. He continued to work as a geographic bachelor, and after six months he was hired directly by the major defense contractor for whom his State Two employer performed subcontract work. About a year after he first moved to State Two, his new employer transferred him to work in State Three. This was back on the original coast, and in an area with good special education programs. (GE 2 at 9-10, 12-15; Tr. at 57-59, 75-78.)

Applicant and his wife listed their home for sale once he left State Two, and also attempted to rent it. They were unsuccessful in both efforts. After another year of living apart, the family separation became too difficult to endure. Applicant's wife is unable to

work outside their home due to their son's extensive needs for care and attention. He continued growing bigger and stronger, making it increasingly difficult for her to care for him alone. In March 2007, Applicant's wife and children moved north to join him and they rented a house to live in. (Tr. at 59-62, 78-81.)

Applicant and his wife continued to try to sell their home, but the State One real estate market had become very bad and they were unsuccessful. They remained current on their mortgage payments, and all other debts, throughout this time. From June through August 2007, Applicant communicated the situation to the mortgage lender (the same company held both loans), and sought permission to pursue a "short sale" since the market value had fallen to substantially less than the loan balances. The lender was also put on notice that Applicant's savings would only permit continued payments for several more months at the original rate, but no assistance was offered. In late November 2007, still without success in either selling or renting the house, Applicant notified the lender in writing that he could no longer afford to make payments toward the mortgage loans. Applicant promptly informed his supervisor and his company's security officer about the situation because he knew defaulting on his mortgage could raise security concerns. (GE 4 at 21-30; AE C; Tr. at 82-88.)

During the winter and spring of 2008, Applicant and his wife actively worked with their real estate agency to try to sell the house. The agency communicated several offers to purchase the house in "short sales" to the lender, but received no authority to proceed and each offer was eventually withdrawn. (GE 4 at 34-37.) Finally, the agency assigned a "short sale" specialist to work with Applicant's property. In late July 2008, he received, and forwarded to the lender, a signed offer to purchase the property for \$205,000. The agent attempted to work with the lender to obtain approval for the "short sale" without success until September 2008. The lender, a large national financial institution with very high exposure due to a large portfolio of bad mortgage loans, was taken over by another major financial institution around this time. Applicant received demands for payment in full of his mortgage loans, and the creditor began foreclosure proceedings against the property. (GE 4 at 36-53, 57-58; AE B; Tr. at 81-82.)

On September 29, 2008, Applicant's house was auctioned in a foreclosure sale. The new creditor on his loans submitted the high bid, and bought the property from itself for \$149,000. (GE 4 at 54-55; Tr. at 28-30.) I took administrative notice of the section of State One law known as the Anti-deficiency Act. (See HE II; Tr. at 27-28.) This law eliminates any remaining deficiency debt after a lien holder sells the collateral real property securing the loan. While it remains unresolved whether such a sale would cancel the debt represented by the second mortgage/home equity line of credit, Department Counsel agreed that it clearly applied to the first mortgage, and the sale of the property fully resolved the debt alleged in SOR ¶ 1.b. Applicant's two most recent credit reports reflect a zero balance owed on this debt. (GE 3 at 4; GE 5 at 1; GE 6 at 2; Tr. at 27-30, 114-117.)

Applicant's creditor transferred his home equity loan/second mortgage debt to a collection agency. Applicant consulted with an attorney concerning available options for

resolving this debt during early 2009. The attorney advised him that the debt could be fully discharged through a bankruptcy proceeding, but Applicant wanted to repay as much of this loan as he could rather than avoid it. From March through May 2009, he negotiated with the collection agency. On April 28, 2009, they reached an agreement that he could fully satisfy this debt through a one-time payment of \$23,690. Applicant took \$5,490 from his savings account, obtained a \$9,000 signature loan from his credit union, and took a cash advance of \$8,200 on a credit card to obtain the funds needed to pay this debt. On May 23, 2009, Applicant's credit union paid the agreed amount to the collection agency through wire transfer. (AR at 1-2, 6, 9-14; Tr. at 89-92.)

Applicant submitted budget documents demonstrating that he and his wife are living within their means, and can afford to make the payments on his credit card debt and signature loan while still maintaining a monthly income surplus of more than \$500. Applicant has not incurred any delinquent debt other than the two loans discussed above for the purchase of the home in California. He and his wife have no intention of buying another home. (AR at 15-18; Tr. at 92-104.)

Applicant's two supervisors testified to his excellent work performance, trustworthiness, and reliability. They both have long experience working with classified information, and trust Applicant to safeguard such information and comply fully with security procedures. (Tr. at 31-50.) Applicant's former pastor, who has known him well since 1998, wrote a letter expressing his high opinion of Applicant's honesty, responsibility, commitment and honor. (AE A.) Applicant's testimony and demeanor during the hearing reflected candor and sincerity in his desire and intent to avoid future financial problems and continue serving the interests of national security with integrity.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider and apply the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2, describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and (c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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 in mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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 that 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.

## **Analysis**

### **Guideline F, Financial Considerations**

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended 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.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. Department Counsel argued for the applicability of two of these potentially disqualifying conditions in this case: (a) “inability or unwillingness to satisfy debts;” and (c) “a history of not meeting financial obligations.” (Tr. at 112.)

Applicant purchased a home that he could afford in 2004. However, he was laid off about eight months later through no fault of his own. He worked diligently to find new work, but that required him to relocate to Florida due to a deteriorating job market. After a year, he was transferred to a more permanent position in the Northwest, and he tried to sell or rent his house so his family could join him. Eventually, family separation was no longer tenable and his wife and children moved north to join him, leaving the home vacant. He continued to make payments on both mortgage loans for eight more months, until he could no longer afford to do so in November 2007. At that point, he was unable to satisfy those two debts, raising potential security concerns under AG ¶ 19(a). He was subsequently able to satisfy the first mortgage through the lender's repossession of the property in a foreclosure sale in September 2008. He then negotiated a settlement of the second loan with the collection agency, which he paid in May 2009. He lives easily within his means, paid all of his other debts throughout the time in question, and is no longer unable or unwilling to satisfy any debts.

This 18-month period when Applicant's mortgage loans were in default constitutes a relatively brief, and minor, history of not meeting financial obligations. The circumstances under which it arose were not his fault, and neither support concerns about poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, nor raise questions about his reliability, trustworthiness, and ability to protect classified information. AG ¶ 19(c) was minimally established in this case.

AG ¶ 20 provides conditions that could mitigate security concerns arising from the foregoing financial considerations. Potentially applicable mitigating conditions are:

- (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 established mitigation under AG ¶ 20(a) because his inability to sell or rent his home in a depressed real estate market, combined with the necessity to move for employment and to reunite the family to care for their special-needs son, were one-time events. He has stable, long-term employment and no intention to buy another house. He responded to these challenges in a most responsible manner, and kept his creditor informed and involved in his attempts to resolve the debts. The problems he confronted and resolved were not attributable to his conduct, and do not cast any doubt on his current reliability, trustworthiness, or good judgment.

Mitigation under AG ¶ 20(b) was also clearly established. Applicant left Navy housing when he retired, and bought a home he could afford. He was laid off when the company he joined lost the contract under which he worked, and he could find no other local employment at the beginning of the big economic downturn. The real estate market subsequently and unexpectedly crashed, making his home impossible to sell or rent despite vigorous efforts to do so by Applicant and his wife. As noted above, he kept his lender, his supervisor, and his security manager informed of the pending inability to continue paying the mortgage loans, and acted as responsibly as possible under the circumstances.

Applicant engaged both real estate specialists and an attorney to counsel him on options to best resolve his mortgage debt problems. The creditor chose to disregard the “short sale” offer arranged by Applicant and his real estate agent that would have paid them \$205,000. Instead, the creditor bought the property from itself as the high bidder in a foreclosure auction for \$149,000. By this foreclosure action, the creditor knowingly voided any remaining deficiency debt, and has since reported a zero balance due on the loan to the credit bureaus. Applicant rejected the bankruptcy option suggested by his attorney because he wanted to pay his creditors as best he could. He actively negotiated a mutually agreeable payment with the collection agency to which his second loan had been transferred, and paid it in full. Thus, both debts that initially gave rise to some security concerns have been fully resolved, and Applicant has no other delinquent debt. He is also living within his means and is highly unlikely to incur new delinquencies. Any remaining security concerns are thus fully mitigated under AG ¶¶ 20(c) and (d). Applicant did not dispute either of his former delinquencies under AG ¶ 20(e), and in fact admitted that they were valid debts.

### **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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the pertinent facts and circumstances surrounding this case. Applicant's conduct of security concern was falling behind on two mortgage loans for reasons largely beyond his control, and to which he responded in an engaged and responsible manner. Both debts are now fully resolved, and new delinquencies are highly unlikely. Applicant is a mature and responsible individual, with a long track record of excellent performance while holding a very high level security clearance. He is now free of home ownership and mortgage obligations, and intends to remain that way. Any potential for pressure, coercion, exploitation, or duress has been fully alleviated by his resolution of the former debts.

Applicant fully mitigated security concerns arising from his brief history of failing to meet financial obligations, and his temporary inability to pay his delinquent mortgage debts. The record generates significant confidence, and no doubts, as to his present eligibility and suitability for a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

DAVID M. WHITE  
Administrative Judge