



DOHA issued a notice of hearing on October 9, 2009, and the hearing was convened as scheduled on November 5, 2009. The government offered Exhibits (GE) 1 through 10, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AE) A through D, which were received without objection. I granted Applicant's request to keep the record open to submit additional information. Applicant submitted a series of documents, which were marked AE E through K and admitted without objection. Department Counsel's memo is marked Hearing Exhibit (HE) I. DOHA received the transcript of the hearing (Tr.) on November 16, 2009.

### **Findings of Fact**

Applicant is a 35-year-old engineer for a defense contractor. He is seeking to retain his security clearance. He enlisted in the United States Army in 1992. He was commissioned in 1997, and served on active duty from 2001 through 2003. He was honorably discharged as a first lieutenant because of a disability for which he received severance pay and continues to receive disability benefits. He has worked for his current employer since 2003. He has a bachelor's degree. He was married from 1996 until his divorce in December 2008. He has three children, ages ten, nine, and seven. He has joint legal custody of the children. His ex-wife has primary residential custody. He is current on his child support payments of \$1,225 per month.<sup>1</sup>

The SOR alleges 12 delinquent debts, with balances totaling \$47,783, and first and second mortgages in foreclosure, with balances of \$216,000 and \$49,880. Applicant admitted owing all the debts alleged in the SOR.

Applicant's finances were in order prior to his marital separation in January 2008. He submitted a Questionnaire for Sensitive Positions (SF 86) in August 2007, which did not list any delinquent debts. A credit report obtained in August 2007 did not list any past-due or derogatory accounts. Applicant attempted to make the separation as amicable as possible. He remained in their home and assumed responsibility for the first and second mortgages. His former wife was not working at the time. He gave her their joint savings of about \$6,000 to \$7,000 to set up a new household for her and the children. He withdrew \$10,000 from his 401(k) retirement plan and gave it to her for furniture and other expenses. She believed she deserved half of the amount of the credit limit that was available on a credit card. He took cash advances from the credit card and gave the money to her. His children had medical problems that were at least partially related to the separation and divorce, which resulted in bills for co-payments and prescriptions. There were legal bills related to the divorce, which combined with the sudden costs of maintaining two households, placed an economic strain on his finances. He could not afford his first and second mortgage payments, and his house went into foreclosure. Applicant reported to his security officer in September 2008, that he was \$4,277 delinquent on his first mortgage and \$443 delinquent on his second mortgage. His security officer notified the DoD via the Joint Personnel Adjudication System (JPAS).<sup>2</sup>

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<sup>1</sup> Tr. at 17, 20-25, 28-29; GE 1, 3; AE A.

<sup>2</sup> Tr. at 16-18, 26-39, 43-44; Applicant's response to SOR; GE 1, 3-6; AE A.

Applicant stopped paying his mortgages in August 2008. He contacted the mortgagor and attempted to negotiate a lower payment. He was told that he had to pay the amounts due. He continued paying his other debts. The house was lost to foreclosure in the spring of 2009. His divorce attorney provided him some advice but it was outside her area of expertise. He believed his only recourse was to file bankruptcy. Applicant stopped paying his unsecured debts in about December 2008. He decided that he would save for a bankruptcy attorney, and then address all his debts in a Chapter 13 petition. He contacted his creditors and informed them that their debts would be included in a Chapter 13 bankruptcy plan. He contracted with a bankruptcy attorney in September 2009, and paid the attorney \$4,000 for his services. Applicant plans on a Chapter 13 “wage earners” plan. The bankruptcy has not yet been filed. He admitted that if he lost his clearance and job that the bankruptcy might have to be filed as a Chapter 7. He stated that he would self-report if he missed any payments to the bankruptcy.<sup>3</sup>

Applicant has not received counseling, but he has educated himself by reading financial materials and books. He will have to attend counseling at some point as part of the bankruptcy process. He has adjusted to the divorce, having to pay child support, and living on less money. He rents an apartment that he shares with a roommate. He is not accruing new delinquent debt and is living within his means.<sup>4</sup>

Applicant submitted a number of letters on his behalf. His job performance has been outstanding. He is praised for being honest, direct, trustworthy, forthright, conscientious, and reliable. His performance appraisals reflected that he has exceeded his employer’s expectations. His security manager certified that Applicant has not received any security violations.<sup>5</sup>

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all

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<sup>3</sup> Tr. at 18-21, 34-40, 43, 46-49; Applicant’s response to SOR; GE 3, 4; AE C, D, K.

<sup>4</sup> Tr. at 33-34, 40-41, 45, 49-53.

<sup>5</sup> AE E-J.

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.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion as to obtaining 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 as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period. The evidence is sufficient to raise the above disqualifying conditions.

Four Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant still owes the debts alleged in the SOR. His financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

Applicant attributed his financial problems to the costs incident to his separation and divorce. He gave his wife his savings and took out a loan from his 401(k) to establish her in a new household with their children. The children had medical problems and expenses that were related to the divorce. There were legal expenses plus the added costs of paying child support and maintaining separate households. These qualify as conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant paid his debts as best he could, but was unable to maintain the two mortgages. He reported to his security officer in September 2008, that he was behind on his mortgages. He eventually lost his house to foreclosure. Applicant felt the best recourse would be to file Chapter 13 bankruptcy, which is a legal means of addressing one's burdensome debt, and have the trustee and court agree on a plan to pay his debts. He informed his creditors that their debts would be included in a Chapter 13 bankruptcy plan. He paid

his bankruptcy attorney, but has not yet filed with the court. There are indications that the problem is being resolved. He has not received formal financial counseling. Applicant receives partial consideration under AG ¶¶ 20(b) and 20(c). His actions do not qualify as a good-faith effort to repay overdue creditors or otherwise resolve debts.<sup>6</sup> AG ¶ 20(d) is not applicable.

### **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 some warrant additional comment. I considered Applicant's honorable military service and his steady employment record. His finances were in order prior to his marital separation in January 2008, as verified by a 2007 credit report. Applicant has retained an attorney to file Chapter 13 bankruptcy. He informed his

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<sup>6</sup> 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 Financial Considerations Mitigating Condition 6, 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) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

(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. Jun. 4, 2001)).

creditors that their debts would be included in his bankruptcy plan. His finances have stabilized, and he is not incurring new delinquent debt. He stated that he would report to his security manager if he did not comply with the terms of his bankruptcy plan. That statement is credible since he self-reported when he was behind on his mortgages.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated Financial Considerations security concerns.

### **Formal Findings**

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

Paragraph 1, Guideline F: For APPLICANT

Subparagraphs 1.a-1.n: 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge