



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-02084
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Fahryn Hoffman, Esq., Department Counsel  
For Applicant: *Pro Se*

November 17, 2009

**Decision**

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MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed a security clearance application (SF-86) on December 1, 2008. On June 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising 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, which are effective for SORs issued after September 1, 2006.

In a response dated July 12, 2009, Applicant admitted the two allegations set forth in the SOR and requested a hearing on the record. DOHA assigned the case to me on October 7, 2009. The parties agreed to a hearing date of October 23, 2009. A notice of hearing was issued to that effect on October 7, 2009. The hearing was convened as scheduled. Department Counsel introduced five documents accepted into the record without objection as exhibits (Exs.) 1-5. Applicant chose to represent himself, gave testimony, and was examined by Department Counsel. Applicant offered 13 documents which were accepted into the record without objection as Exs. A-O. The

transcript (Tr.) of the proceeding was received on October 29, 2009. Applicant was given until November 9, 2009, to submit any additional documents. Five documents were timely submitted and accepted into the record as Exs. P-T without objection. The record was closed on November 13, 2009. Based on a review of the testimony, submissions, and exhibits, I find Applicant met his burden regarding the financial considerations security concerns raised. Security clearance is granted.

### **Findings of Fact**

Applicant is a 59-year-old forensic photographer working for a defense contractor. He has worked for the same employer for one year. Prior to his current position, he worked for a sheriff's department's crime team unit as its supervisor. In total, Applicant has over 30 years of law enforcement experience. Applicant has completed some college-level course work. He is married and has three grown children.

In early 2006, Applicant suffered from a back injury incurred on the job.<sup>1</sup> He suffered from two other injuries shortly thereafter.<sup>2</sup> Despite medical attention received between 2006 and 2008, which also included two shoulder surgeries, Applicant was left in a weakened condition.<sup>3</sup> Lumbar problems affected his ability to "get up and go to work."<sup>4</sup> Because of his physical problems and a developing friction with his new supervisor, he decided to retire in November 2007. He accepted a lump sum retirement payment.<sup>5</sup> Having started work on a sideline job involving the sale of subscriptions for pre-paid legal services, Applicant decided he would devote his energies to that enterprise from home. The downturn in the economy, however, forced him to reconsider his decision. After discussing the matter with a financial advisor, he returned to the work force in November 2008 in a position located in another part of the country. In the interim, Applicant and his wife relied on the proceeds of a medical retirement fund for which he was eligible due to a previous work-related injury incurred during a 1988 shooting.<sup>6</sup> They also relied on his wife's income as a surgical assistant. Additionally, they supported themselves on their credit cards, some of which eventually reached their maximum limits.

In August 2008, Applicant contacted his mortgagor. He asked for a home loan modification because he did not want his worsening economic status to adversely

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<sup>1</sup> Tr. 17-18.

<sup>2</sup> Tr. 64-65.

<sup>3</sup> Tr. 18, 67.

<sup>4</sup> Tr. 67.

<sup>5</sup> Tr. 65-66. Applicant still suffers from recurring knee and back problems. Tr. 68, 80.

<sup>6</sup> After being shot in the line of duty in 1988 and receiving extensive medical treatment, Applicant retired from this job in November 1991. Tr. 35.

impact either his credit or the home loan.<sup>7</sup> On September 10, 2008, he wrote to his lender explaining his circumstances and asking for a reduction in his monthly payment, but he received no response.<sup>8</sup> A similar letter was sent on November 4, 2008.<sup>9</sup> Because he had never been delinquent in the past, the mortgagor declined to work with him. In the interim, a past due balance of approximately \$19,718 accrued when Applicant could not make his monthly payments in October, November, and December of 2008.<sup>10</sup>

In October or November 2008, Applicant requested his attorney to intercede on his behalf with the home loan's servicing company. Applicant returned to work in November 2008, adjusting to his transcontinental commute and its expense. By January 2009, an agreement was arranged by his attorney with his home loan lender. Applicant made payments in February, March, and April 2009, at which time they began a loan modification program. In June or July of 2009, the lender advised Applicant his payments would be deferred thereafter until the end of the loan modification.<sup>11</sup> Heightened payments of approximately \$4,000 a month resumed in September, October, and November 2009, at which point Applicant's payments will again be deferred. Thus far, the lender has amended his loan terms, nullified a prior demand for a balloon payment, continued the loan on a 25-year repayment term, and reduced his interest rate from 6.7% to 5%.<sup>12</sup> If accepted into a new federal government program, for which Applicant has been told he qualifies, that percentage rate may be further reduced to 2%.<sup>13</sup> At the time of the hearing, Applicant's loan was temporarily in forbearance as part of the restructuring plan.<sup>14</sup> He is currently in compliance with his lender's terms and is in "constant contact" with the lender.<sup>15</sup>

During this same time period, Applicant became \$322 past due on a credit card.<sup>16</sup> When informed he had a balance on the account at issue, he asked his wife about it. She informed him that the card noted in the SOR was her card. He told her, "whatever it is just take it and pay it off, and she did just that."<sup>17</sup> The account was shown

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<sup>7</sup> Tr. 60-61.

<sup>8</sup> Tr. 61-62.

<sup>9</sup> Tr. 62.

<sup>10</sup> SOR allegation ¶ 1.a; Tr. 20.

<sup>11</sup> During the periods of deferral, Applicant was "given a little breathing room," but not "absolved" of making monthly payments. Tr. 73.

<sup>12</sup> Tr. 21, 75.

<sup>13</sup> *Id.*, Tr. 74.

<sup>14</sup> Tr. 38.

<sup>15</sup> Exs. C-I (Correspondence regarding home loan); Tr. 26-27, 30-32, 75.

<sup>16</sup> SOR allegation ¶ 1.b; Tr. 22.

<sup>17</sup> Tr. 22.

to be currently up-to-date and is no longer past due.<sup>18</sup> Payments on the remaining balance exceed the minimum payment due.<sup>19</sup> Consequently, he has addressed both the accounts at issue in the SOR.<sup>20</sup>

Although Applicant has not received formal financial counseling in a structured classroom setting, Applicant has a financial advisor, whom he has consulted regarding his finances.<sup>21</sup> He currently earns a net salary of approximately \$2,600 every two weeks.<sup>22</sup> He is paid approximately \$1,928 each month in the form of a tax-free disability payment from the state related to his shooting.<sup>23</sup> His wife currently earns a net salary of about \$1,500 every two weeks.<sup>24</sup> In addition, Applicant's pre-paid legal services work currently generates an extra sum of approximately \$220 per month.<sup>25</sup> All together, Applicant and his wife have net monthly income amounting to a sum of approximately \$10,500 per month.<sup>26</sup>

Applicant's home valuation recently suffered as a result of a real estate market downturn. His home is located in a part of the country known for high real estate values. It suffered a considerable drop in values. Once appraised at approximately \$875,000, his home is now assessed at \$541,00 with a fair market value of \$395,000.<sup>27</sup>

Applicant and his wife have approximately 16 credit cards or accounts. They were acquired when their credit was in very good shape and his finances were current, prior to his retirement and the economic downturn.<sup>28</sup> Some of those cards reflect the higher interest rates recently raised by many credit card companies.<sup>29</sup> Applicant's wife has worked on negotiating with some of their creditors to have their interest rates

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<sup>18</sup> Exs. A (Letter dated Mar. 12, 2009), B (Statement of Jul 2009), and R (Statements from Apr. through Oct. 2009); Tr 23-24.

<sup>19</sup> Tr. 56.

<sup>20</sup> Tr. 25.

<sup>21</sup> Ex. Q (Financial advisor statement); Tr. 117-118.

<sup>22</sup> Ex. J (Earnings Statement); Tr. 35, 78.

<sup>23</sup> Tr. 35.

<sup>24</sup> Tr. 27.

<sup>25</sup> Tr. 119.

<sup>26</sup> Tr. 54. It is unclear whether this sum includes the income generated by Applicant's sideline business.

<sup>27</sup> Tr. 71.

<sup>28</sup> Applicant described his past financial condition as: "Yes, we had very good credit, we had excellent credit." Tr. 59.

<sup>29</sup> Tr. 55-56.

lowered.<sup>30</sup> Applicant is current in his payments on these accounts, the combined balances of which are slightly over \$100,000.<sup>31</sup> Regarding these credit card accounts, Applicant's "minimum payments add up to somewhere in the neighborhood of 2,500 dollars a month."<sup>32</sup> Payment is also made on student loans for one child.<sup>33</sup> At least some of the credit card payments exceed the required monthly minimum payment.<sup>34</sup> He maintains three savings accounts, with a modest total sum balance. He also has a current 401k account worth approximately \$3,600; Applicant's wife has a 401k with an balance of about \$25,000.<sup>35</sup> At the end of the month, after payment for monthly expenses, incidentals, commuting costs, mortgage payments, and bill payments, Applicant has a net remainder of about \$1,000 per month.<sup>36</sup> He declined to pursue bankruptcy because he has the ability to honor his debts.<sup>37</sup>

Applicant's current position is in a different part of the country than his family home. He commutes between coasts and shares an apartment near his work place when away from home.<sup>38</sup> His wife budgets and manages their bills.<sup>39</sup> Therefore, he does not have an in-depth knowledge of all his accounts.<sup>40</sup> His name is on all their accounts, but he only makes payments on an account created for a computer purchase.

## **Policies**

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a

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<sup>30</sup> Tr. 55.

<sup>31</sup> See, e.g., Tr. 92-103, 108.

<sup>32</sup> Tr. 103.

<sup>33</sup> Tr. 111.

<sup>34</sup> See, e.g., Tr. 20, 54.

<sup>35</sup> Tr. 105.

<sup>36</sup> Tr. 106-107, 109, 120. Applicant estimated his net remainder as being closer to \$1,600. Department Counsel estimated it was about \$750. It appears to be closer to about \$1,000 a month. Tr. 120.

<sup>37</sup> Tr. 109.

<sup>38</sup> Tr. 50.

<sup>39</sup> Ex. T (Budget); Tr. 54.

<sup>40</sup> Tr. 57.

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.

The government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”<sup>41</sup> The burden of proof is something less than a preponderance of evidence.<sup>42</sup> The ultimate burden of persuasion is on the applicant.<sup>43</sup>

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 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.

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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>44</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>45</sup>

Based upon consideration of the evidence, Guideline F (Financial Considerations) is the most pertinent to this case. Conditions pertaining to this

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<sup>41</sup> See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>42</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>43</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

### **Analysis**

Under Guideline F, “failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or an 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.”<sup>46</sup> The Directive sets out several potentially disqualifying conditions under this guideline. Here, Applicant and his wife relied on credit cards to supplement their income when their expenses grew unwieldy after his 2007 retirement. As a result, he became approximately \$19,718 past due on his home loan and about \$322 past due on a credit card. Therefore, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and FC DC AG ¶ 9(c) (“a history of not meeting financial obligations”) apply. With such conditions raised, the burden shifts to Applicant to overcome the case against him and mitigate security concerns.

Applicant retired around November 2007 and returned to work about a year later. During that period and a period of adjustment adapting to his lengthy commute, he became past due on his home loan and on one credit card. He also relied on other credit cards to afford his family’s lifestyle during a period of economic downturn. This situation occurred recently. The downturn was widespread and has yet to be clearly resolved. FC MC AG ¶ 20(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”) does not apply.

Moreover, while Applicant made the decision to retire on his own volition, partly in response to friction with a new supervisor, his decision was also based on physical injuries which made it difficult for him to meet his job requirements. That difficulty and the recent economic downturn, which adversely affected his home’s value and increased interest rates, were outside of his control. Instead of blithely ignoring his financial situation, he consulted his financial advisor, repeatedly requested assistance from his home lender, and kept current on his credit card payments. Given these facts, FC MC AG ¶ 20(b) (“the conditions that resulted in the behavior were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation) and the individual acted responsibly under the circumstances”) applies.

Applicant received financial counseling through his financial advisor. He diligently worked with his home lender with regard to his past due balance and the restructuring of the loan on his home, which had suffered a drastic decline in its value. He also became current on the past due credit card at issue. In addition, he is current on his

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<sup>46</sup> AG ¶ 18, which also notes, “An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”

other credit cards and generates sufficient income to meet all of his monthly obligations. Consequently, FC MC ¶ 20(c) (“the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control”) and FC MC ¶ 20(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”) apply.

In presenting his case, Applicant established that the two accounts noted in the SOR as being past due were successfully addressed. As a result, he mitigated the security concerns regarding the two SOR allegations. Moreover, he showed that he and his wife generate more than the income needed to meet their monthly expenses and keep their credit accounts current. Indeed, they retain about \$1,000 a month after all monthly obligations have been met. He also presented evidence and gave testimony that his wife often pays more than the minimum balance owed on at least some of the credit card accounts not at issue in this case.

### **Whole Person Concept**

Under the whole person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of an applicant’s conduct and all the circumstances. An 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 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, as well as the “whole person” factors. Applicant’s testimony was both highly credible and direct. With regard to the “whole person,” many factors speak in his favor. Applicant is a mature man who has raised and educated three children. He served for 30 years in law enforcement and was shot in the line of duty. An on-the-job injury to his back was quickly followed by other injuries both on-the-job and at home. As a result, he still has recurring back and other physical problems.

Applicant’s decision to retire in 2007 proved to be ill-timed, given the economic climate. Foreseeing the downward economic trend, he tried to work with his home loan servicing agent before his financial difficulties affected his ability to make timely payments. He continued those efforts after he was no longer able to make those



payments, ultimately requesting his attorney to intercede on his behalf. Meanwhile, his wife worked with their credit card companies to try to halt or reverse rising interest rates. To generate his current income, he now commutes back and forth across the country. With the lucrative salary generated by his present position, Applicant has been able to address the past due accounts noted in the SOR and live within his means.

While not at issue in the SOR, *per se*, consideration must be given to Applicant's current finances. He has credit card debt amounting to an approximate total sum of slightly over \$100,000. While the SOR allegations failed to cite this debt or enumerate the accounts which comprise it, the amount is considerable. Also considerable, however, is his personal diligence and his household's net income. Applicant and his wife generate a net monthly income of about \$10,500. From this income, they meet their monthly expenses and credit card obligations. Payments in excess of the monthly amount due are paid on at least some of the accounts. A monthly net sum of about \$1,000 remains after all payments are made.

Applicant successfully showed he has addressed the two accounts at issue in the SOR. Moreover, there is no evidence Applicant is delinquent or past due on any accounts. Given his income and the sum needed to meet his monthly obligations, there is no evidence he is unable to live within his means, satisfy debts, or meet his financial obligations under AG ¶ 18. Similarly, there is no evidence he is financially overextended or at risk of having to engage in illegal acts to generate funds. Applicant and his wife use a financial advisor and have demonstrated diligence and good judgment in addressing their accounts. In light of their efforts and in view of Applicant's ability to meet his obligations with his present income, he 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
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 national security to grant Applicant a security clearance. Clearance is granted.

ARTHUR E. MARSHALL, JR.  
Administrative Judge

