



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



In the matter of: )  
)  
) ISCR Case No. 09-03814  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Francisco Mendez, Esquire, Department Counsel  
For Applicant: *Pro se*

May 10, 2010

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

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

On October 28, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on December 21, 2009, and requested a hearing before an administrative judge. The case was assigned to me on March 12, 2010. DOHA issued a Notice of Hearing on March 26, 2010. I convened the hearing as scheduled on April 20, 2010. The Government offered Exhibits (GE) 1 through 6. Applicant did not object and they were admitted. Applicant testified and offered Exhibits

(AE) A through Q, which were admitted without objection. DOHA received the hearing transcript (Tr.) on April 23, 2010.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 35 years old. He is a high school graduate and served four years in the Navy before being honorably discharged in 1998. He married in 2006 and has a two and a half-year-old son. In 2003, Applicant began working as a real estate appraiser. His wife is a real estate agent.<sup>1</sup>

In 1999, Applicant purchased condominium #1 in State A. He sold it in 2003 and made a profit of \$160,000. He used the profit to purchase condominium #2 in State A. He sold it in 2007 and made a profit of approximately \$110,000 to \$120,000. He put this money in a bank account.<sup>2</sup>

In 2006, Applicant moved to State B. He purchased a home in July 2006, and this was his primary residence for a period of time. He secured a loan from the creditor in SOR ¶ 1.e for approximately \$174,955. He paid about a \$5,000 down payment on the property.<sup>3</sup>

In April 2007, Applicant purchased another home in State B, but in a different city. He obtained two loans for his mortgage. One was for 80% of the purchase price, \$374,666, (SOR ¶ 1.d) and the other was for the remaining 20%, \$91,888 (SOR ¶ 1.c). He paid approximately \$5,000 for a down payment. He and his wife moved into this house. He kept the other house and used it as a home office and allowed his brother to live in it. His brother did not pay rent. Applicant and his wife were earning enough income to pay for both houses. They never refinanced the two houses to take equity out.<sup>4</sup>

In late 2007, the real estate market was beginning to plummet. Applicant and his wife's income were dependent upon the real estate market. In September 2007, Applicant's son was born. In November 2007, Applicant's source of income did not exist because there were very few real estate transactions occurring. He and his wife began using the profit from the condominium sale and savings to pay their mortgages and bills. Applicant contacted the mortgage lenders and told them his circumstances, but they did not want to discuss the loans because Applicant was still current on them. In June 2008,

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<sup>1</sup> Tr. 9, 86-87.

<sup>2</sup> Tr.24-31, 85.

<sup>3</sup> Tr. 24.

<sup>4</sup> Tr. 22-24, 33.

Applicant and his wife realized they could no longer afford the two properties. He contacted the lenders and advised them. He stopped paying the loans in June 2008. He did not make any other payments on either house after June 2008. The house in SOR ¶ 1.e was foreclosed and sold in early 2009. The house in SOR ¶¶ 1.c and 1.d sold around the same time. Under State B law, Applicant is not obligated for any deficiency amount on the foreclosed properties.<sup>5</sup> The debts in SOR ¶¶ 1.c, 1.d and 1.e were resolved by legitimate legal means and Applicant does not owe any amounts on the debts.<sup>6</sup>

Applicant and his wife realized they could not be totally dependent on the real estate market for their income. They moved to State C in July 2008, and Applicant changed professions. His wife remained a real estate agent. They lived with his wife's parents until October 2009. Applicant remained unemployed until December 2008. His wife did not work after the birth of their son until about February 2009. She transferred her license to State C and is again selling real estate. The market is slowly rebounding and she has been able to earn an income. She is presently working with a real estate broker and earned \$90,000 in 2009.<sup>7</sup> Applicant estimates he earns about \$60,000.<sup>8</sup>

The debt in SOR ¶ 1.a (\$99) was for a bill from Applicant's residence in State B. He was unaware he owed the debt after he moved. He provided a forwarding address to the creditor, but he never received the bill. The bill is paid.<sup>9</sup>

Applicant paid the debt in SOR ¶ 1.b (\$142), but did not believe it was his debt. After researching the debt, he learned it was for a different address than where he lived. He believed somehow there was a mix-up when a previous tenant requested the utility services be transferred. He stated in his answer to the SOR: "After countless hours of discussion and finding no resolve, I have paid this bill." He provided proof of payment.<sup>10</sup>

Applicant's vehicles are paid. He pays the complete balance on his credit card each month. He and his wife have savings in retirement accounts. He participates in his employer's retirement program. They have substantial liquid capital to pay all of their monthly bills on time. They are being fiscally conservative and decided to rent a home instead of buying at this time. He has a budget that he maintains, which includes savings.<sup>11</sup>

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<sup>5</sup> AE C.

<sup>6</sup> Tr. 22-24, 37-53.

<sup>7</sup> Tr. 53-56; AE G.

<sup>8</sup> Tr. 19.

<sup>9</sup> Answer to SOR, Exhibit A; AE N.

<sup>10</sup> *Id.*

<sup>11</sup> Tr. 60-75, 88; AE D, E, F, J, K, L.

Applicant readily admits he made a conscious decision not to take a loan or withdraw the proceeds from his retirement accounts to pay the mortgages on the houses or any deficiency amount. He was aware that State B's law protected him from having to pay the deficiency, and he determined it was the best plan because he and his wife were not earning incomes due to the real estate and economic crisis in the United States. He did not think it made good business sense to pay the mortgages on the depreciating property when he needed the money to provide for his family.<sup>12</sup>

Applicant credibly testified that he was living within his means, but due to the real estate and economic crisis he was unable to work and pay his debts. He continues to live within his means and meet his obligations.<sup>13</sup>

Applicant provided character letters. The writers consider Applicant a trustworthy person. He exercises self-control and is conscientious in abiding by the rules. He is considered an honest man, with integrity who exercises good judgment. He is a hard worker.<sup>14</sup>

## **Policies**

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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<sup>12</sup> Tr.19-21, 72-82.

<sup>13</sup> Tr. 77-82.

<sup>14</sup> AE Q.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect 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).

## **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. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

(a) inability or unwillingness to satisfy debts;

Applicant was unable to meet his financial obligations when the nation's real estate market and economy plummeted. I find there is sufficient evidence to raise the above disqualifying condition.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;
- (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's does not have any unpaid delinquent debts. His financial problems occurred under unique circumstances that affected the real estate market and the national economy. Applicant attempted to pay his mortgage payments for as long as possible, but when it became evident he could not pay them and support his family, he contacted his mortgage lenders. They were not willing to negotiate with him because he was not at the time delinquent on his loans. When he could no longer afford to pay the mortgages he stopped, but continued to pay his bills with his savings to provide for his family. He used the legal rules in State B that were available to him to minimize his debt. Under State B's laws, he was not responsible for the deficiency on his foreclosed property. He and his wife decided it was too risky for both of them to continue to have jobs in the real estate industry. Applicant changed professions so he could have a more reliable income source, even if the real estate market was in a slump. This minimized their exposure to a turbulent real estate market and would prevent a repeat of the past. Applicant has a new job that does not rely on the real estate market. The conditions that caused the real estate market to collapse and affected their ability to earn the level of income they had in the past, was beyond Applicant's control. Under the circumstances, he acted responsibly. He did not accumulate additional delinquent debts; he attempted to negotiate with the mortgage lenders, but was unsuccessful. He moved to a new state for different opportunities. He moved in with his in-laws to save money. He and his wife pay all of their expenses each month and they continue to live within their means. They both contribute regularly to retirement savings. Applicant paid the small debts that were included on his SOR, one which he disputed and the other that was never forwarded to him. The circumstances that caused Applicant's financial problems are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, or good judgment. He acted responsibly when his financial problems became an issue. The problem is

resolved and there are clear indications that Applicant's finances are stable. I find AG ¶¶ 20(a), 20(b), and 20(c) apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant served in the Navy and was honorably discharged. After he and his wife had success in the real estate market, the national economy and real estate market began to plummet. Applicant found he could not afford the mortgages on the property he owned. He acted responsibly by contacting the mortgage lenders, who were unwilling to renegotiate the loans. Applicant chose to allow the properties to foreclose and use the legal procedures afforded by the state. Applicant changed professions so he would have a stable income in the event of a recurrence of a down market. He and his wife moved in with her parents so they could save money. They are both working and are being fiscally conservative. They pay their bills each month and have chosen to rent a home at this juncture. The record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant successfully mitigated the security concerns arising under the guideline for Financial Considerations.

### **Formal Findings**

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

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a-1.e: For Applicant

## **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge