



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



In the matter of: )  
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 ----- ) ISCR Case No. 09-04511  
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 Applicant for Security Clearance )

**Appearances**

For Government:  
Jeff A. Nagel, Esq., Department Counsel

For Applicant:  
*Pro se*

January 14, 2011

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing on August 20, 2008. (Government Exhibit 1.) On January 25, 2010, the Defense Office of Hearings and Appeals (DOHA) issued 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 (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on February 10, 2010, and requested a hearing before an administrative judge (Answer). Department Counsel was prepared to proceed on January 5, 2010. This case was assigned to me on March 22, 2010. DOHA issued a notice of hearing on March 29, 2010. I convened the hearing as scheduled on

April 22, 2010. The Government offered Government Exhibits 1 through 9, which were received without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through G, which were also received without objection. Applicant asked that the record remain open for the receipt of additional documents. Applicant submitted Applicant Exhibit H on May 5, 2010, and it was admitted without objection. DOHA received the transcript of the hearing on May 4, 2010. The record closed on May 5, 2010. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

Applicant is 32, married, and has one child. He is employed by a defense contractor and seeks to retain a security clearance in connection with his employment.

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

The Government alleges that Applicant is ineligible for clearance because he is financially overextended and, therefore, at risk of having to engage in illegal acts to generate funds. Applicant admitted both of the factual allegations in the SOR. The admissions are deemed findings of fact. He also submitted additional information to support his request for a security clearance.

The two allegations in the SOR concern the first and second mortgages on a house the Applicant owned in a large city in the Midwestern part of the country. (House One.) The total indebtedness for the mortgages is \$214,064.

Applicant moved to the Midwest in 2004 from the Southwest part of the United States. He went there because of a job that offered him more money and a chance for advancement. He and his wife purchased House One with the first mortgage, and acquired the second mortgage in 2006. The second mortgage was acquired, in part, to help with medical bills related to knee surgery on the Applicant's wife. In addition to her medical problems, Applicant's daughter is an asthma sufferer, which is exacerbated by the humidity and cold weather in the Midwest. (Tr. 42-43, 58.)

Two events happened in 2008. First, the national economic downturn occurred, which wiped out any equity Applicant had in House One and left him underwater on the mortgages. Second, a company in the city where the Applicant lived before 2004 offered him a job, for more money and the opportunity to move back to the Southwest. (Tr. 58-59.)

Applicant talked to several real estate agents about the feasibility of selling House One. He was told that, because of the depressed housing market, he was too far underwater to be successful. If the Applicant took the new job, he knew that it would be impossible to make payments on two houses.

Applicant fully informed his prospective employer of his housing situation and that the odds were he would have to let House One go to foreclosure in order to take the new job and move back to the Southwest. (Applicant Exhibit C.) With that knowledge, Applicant was hired, moved to the Southwest, and bought a new house.

Once he had relocated in August 2008, Applicant informed his mortgage company that he would no longer be able to make payments on House One and he wanted to sign a deed in lieu of foreclosure to the mortgage company. The mortgage company refused and said that Applicant had to not pay his mortgage for three months before they would talk to him. After three months he again contacted the mortgage company and was told that he would have to put the house up for sale for three months before they would accept a deed in lieu. The house was underwater, so Applicant elected to wait for foreclosure. In February 2009, Applicant informed his company, and it informed the Government, that a foreclosure was imminent. (Tr. 53-54; Applicant Exhibit A.) In March 2009 the bank which had taken over the mortgage company's assets filed suit to foreclose. Applicant responded to the suit and stated he was willing to waive his right to reinstatement if the bank gave up the right to a deficiency judgment. (Applicant Exhibit B.) Applicant subsequently talked to the law firm representing the bank and told them he wished to expedite the process and complete the foreclosure. Instead of expediting the process, his request has slowed the process down and the court date had been continued several times while the bank tries to find a way to work with the Applicant. As stated earlier, Applicant cannot afford two mortgages and wants to conclude the process. He has contacted the bank and law firm over the telephone and in writing, but has not received a response. As of the time the record closed the Applicant did not know whether the foreclosure process had been completed. (Tr. 30-35, 47-50, 56-57, 61; Government Exhibit 4; Applicant Exhibits D, E and F.)<sup>1</sup>

The evidence shows that Applicant is able to maintain his regular mortgage payment on his house in the Southwest, and pay all of his regular debts. (Tr. 44-47; Government Exhibit 9.)<sup>2</sup>

## **Mitigation**

Applicant's current supervisor submitted a letter. He states, "His [Applicant's] character, work ethics, integrity and teamwork attitude are beyond reproach." (Applicant Exhibit H at 3.)

Applicant was a highly successful and decorated active duty member of the United States Coast Guard from 1997 to 2002. (Applicant Exhibit H at 4-18.)

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<sup>1</sup>Applicant has stated that, if there is a deficiency judgment after the foreclosure is completed, he will pay it. (Tr. 50-53.)

<sup>2</sup>Applicant showed that a \$94 delinquency to a creditor shown on Government Exhibit 10 was the result of a continuing mistake by the creditor. (Tr. 64-69; Applicant Exhibit G.)

## Policies

Security clearance decisions are not made in a vacuum. 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 list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned 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 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. Security clearance 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order . . . 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.” 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 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. Applicant, by his own admission, and supported by the documentary evidence, has failed to pay his two mortgages on House One. The evidence is sufficient to raise these potentially disqualifying conditions.

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.” In addition, AG ¶ 20(b) states that the disqualifying conditions 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.”

This is a somewhat unusual situation. Applicant was faced with a choice of staying in a job in a city where the weather was having a continuing impact on his family’s health, however, he did have the ability to pay his mortgage. Or he could accept the job with his current employer, move back to the Southwest, buy a home and let House One go into foreclosure, or file a deed in lieu. This decision was not made lightly by the Applicant, but in his opinion it was in his family’s best interest. The downturn in the economy made it virtually impossible to sell House One, the mortgage company was taken over by a bank, which caused additional turmoil, and he has received virtually no correspondence from the bank or their law firm in over a year.

The Applicant has acted in a way that shows good judgment, making the best he could out of a difficult situation. The housing downturn is obviously a situation out of the Applicant’s control and he did act responsibly under his particular circumstances. Both

of these mitigating conditions apply to the facts of this case. (See ISCR Case No. 09-08533 (App. Bd. Oct. 6, 2010.)

Applicant has not received financial counselling. However, as found above, his current financial situation is stable. I find 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,” as required by AG ¶ 20(c).

### **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 relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. Applicant made a difficult choice, which resulted in House One being foreclosed on. His decision was not made lightly, nor did it show poor judgment on his part. Applicant made his decision, which was reasonable under the circumstances of this case, with full knowledge of the potential impact, including on his security clearance. (See Tr. 49.) Under AG ¶ 2(a)(2), I have considered the facts of the Applicant’s debt history. As stated at length above, much of this was brought about because of the economic downturn. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is no likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial situation. On balance, I conclude that Applicant has successfully overcome the Government’s case opposing his request for a security clearance. Accordingly, the evidence supports granting his request 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, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS  
Administrative Judge