



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 09-05161

**Appearances**

For Government: Daniel Crowley, Esquire, Department Counsel  
For Applicant: *Pro se*

March 9, 2011

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied

**Statement of Case**

On June 9, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and DOHA recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 (AGs) implemented by the Department of Defense on September 1, 2006.

Applicant responded to the SOR on July 1, 2010, and requested a hearing. The case was assigned to me on September 27, 2010, and was scheduled for hearing on October 28, 2010. The hearing was convened on that date. At hearing, the Government's case consisted of eight exhibits (GEs 1-8). Applicant relied on one witness (himself) and seven exhibits (AEs A-G). The transcript (R.T.) was received on November 5, 2010.

### **Procedural Rulings**

Before the close of the hearing, Appellant requested leave to supplement the record with documented details of the foreclosure of his personal residence and payment arrangements. For good cause shown, Applicant was granted 30 days to supplement the record. Department Counsel was afforded seven days to respond. Within the time permitted, Applicant supplemented the record with an e-mail confirmation of his state's absence of an anti-deficiency statute and a controlling statute of limitations, and a public record covering his former residence. Applicant's submissions were admitted as AEs H and I.

### **Summary of Pleadings**

Under Guideline F, Applicant is alleged to have accumulated two mortgage-related debts: one a charged-off debt in the amount of \$29,610 and the other a mortgage account that went to foreclosure and bears a deficiency balance of \$70,866. In his response to the SOR, Applicant admitted each of the allegations. He claimed that he lives within his means and has a proven history of loyalty to his country. And he claimed to have an excellent credit score.

### **Findings of Fact**

Applicant is a 34-year-old country operations officer of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Applicant enlisted in the Army out of high school in October 1994 and joined his command's explosive ordnance group in August 1999. (Tr. 53-54) He suffered injuries from a combat-related accident in September 2002, and received a medical discharge in February 2004. (Tr. 56-58) He married in June 2006 and has three stepchildren from this marriage. (GE 1; Tr. 37-38)

In August 2004, Applicant purchased a home for \$357,318 and no down payment of his own. (Tr. 64) He financed his purchase with a first mortgage covering 80 per cent of the purchase price (*i.e.*, \$286,452) and a second mortgage covering 20 per cent of the home's cost (*i.e.*, \$70,866). See GEs 3, 7, and 8 and AE A; Tr. 28, 64. At the time, Applicant had only recently separated from the Army, had obtained a good-paying

technical position with a defense contractor (making about \$83,400 a year), and was anticipating marriage. (GE 1 and 5; Tr 28-29, 49, 59)

Applicant admits to doing very little due diligence before buying the home. This was his first home purchase, and he initiated virtually no research into the real estate market and the affordability of the home before completing the purchase. (Tr. 45-47, 50) Under the terms of his two mortgages, Applicant agreed to pay between \$1,800 and \$2,000 a month. (GE 4) The monthly payments he made under the terms of his two mortgages were around \$2,200 a month and represented almost 40 per cent of his monthly take-home pay. (Tr. 45-46, 50)

When he purchased his home in 2004, Applicant had very good credit. But he soon found that he could not keep up with the high mortgage payments he obligated himself to make. (GE 4; Tr. 49-50) The nature of his job at the time permitted him to work only when the weather was warmer and on clear days. Because of his pay limits and financial pressures, the slow winters and resulting work stoppages severely affected his finances. (Tr. 30) Still, he managed to stay current with his mortgage payments and other bills for about two years.

To finance home improvements mandated by his homeowners' association, Applicant took out a third mortgage on his home in October 2005 with creditor 1.a for \$24,467. See GEs 3, 7, and 8; Tr. 33-34. He used the proceeds on various upgrades.

Applicant experienced several financial set-backs throughout 2006 and early 2007. (Tr. 30). In January 2007, his wife lost her job. (Tr. 30, 70). This limited his ability to meet his mortgage obligations. And Applicant continued to experience work stoppages due to weather-induced adverse conditions on the ground. (Tr. 30)

Faced with a weakening real estate economy in 2006 and early 2007 (Tr. 48), Applicant made concerted efforts to enlist his lender's support for a short sale of his home, but to no avail. (Tr. 34) Contemporaneous with his short sale efforts, he listed his home for sale with a local broker in August 2006 for \$408,000. (AE C) However, because of the glut of homes for sale in his housing development at the time, and a generally falling real estate market in his region, he was unable to sell his home. (Tr. 34-35)

To increase his income to replace his wife's loss of income and his own weather-related work slow-downs, Applicant quit his own job in February 2007 and joined a private security group in March 2007. (Tr. 70) Soon thereafter, he deployed to a war zone. (Tr. 70-71) While on his assignment mission, he experienced two improvised explosive device (IED)-related accidents. (Tr. 61-62) Applicant joined his current contractor in August 2008 and manages operations for 13 separate contracts that employ 10,000 employees. (Tr. 63)

Unable to sell his home, Applicant and his wife moved out of their house in March 2007 and ceased making payments. The first mortgagee foreclosed non-judicially on the residence in March 2007 and sold the property to a third party at the scheduled

foreclosure sale in April 2007 for \$301,156. (AE I) Records show that the property was redeemed by the lender in July 2007 for \$306,708 and resold to another party at a foreclosure sale in July 2007 for \$308,000. (AE B; Tr. 33-34, 71-72) The sale proceeds were sufficient to cover the mortgage debt of the foreclosing first trustee deed holder, but not the deeds of the second and third mortgage deed holders. (AEs B and I; Tr. 73) The second and third mortgages belong to creditors 1.a and 1.b, who were essentially sold out of their security by the foreclosing first mortgagee and consigned to deficiency enforcement remedies.

Applicant understands that both creditor 1.a and creditor 1,b were left unprotected by the foreclosure sale and were entitled to compensation to cover their deficiency balances. (Tr. 73) He acknowledges that his purchase of the home without the necessary resources to maintain the residence and satisfy the three mortgages every was a very big mistake, and he has learned valuable lessons from this experience. (Tr. 51-52, 75) His mistake will affect his financial ability to cover his children's college pursuits. (Tr. 37-38, 75)

Despite the high dollar amounts of his outstanding second and third mortgages, Applicant expects to be able to arrange payments with the two creditors should either or both ever determine to enforce their deficiency rights. (Tr. 36-37) To date, though, Applicant has not made any contact with creditors 1.a and 1.b, initiated any visible effort to seek financial counseling, established any escrow accounts, or attempted to make payment arrangements with either creditor. (Tr. 41-42)

Based on the pay statement he furnished (AE E), Applicant nets \$4,150 bi-weekly. This annualizes to \$83,445 a year. (AE E) In his personal family budget, he reports \$8,300 of net monthly income for himself and \$3,291 of net monthly expenses. (AE D) He includes rent, utilities, trash, and vehicles among his monthly expenses, but includes no set aside funds for addressing his mortgage deficiencies. Applicant reports a net monthly net remainder of over \$4,000 a month. (AEs D and E). He is timely with all of his current creditors and has an improving credit score. (Tr.43-44, 73-74) And Applicant assures he has enough funds to complete repayment plans with his two mortgage creditors should either make payment demands upon him. (Tr. 37-40)

Applicant is well-regarded by his supervisors and colleagues as a top country operations officer. (AE G; Tr. 40-41) Country managers who work with Applicant in Iraq characterize him as highly trustworthy and involved in all facets of their operations. They describe him as a key person in making personnel decision for their operations and a valued country team member (AE G) Fellow-members of his ordnance unit describe Applicant as highly dependable and trustworthy. (AE G)

## **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations

that could affect the individual's reliability, trustworthiness, and ability to protect classified information.

These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." They must be considered before deciding whether or not a security clearance should be granted, continued, revoked, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c)

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

### **Financial Considerations**

*The Concern:* "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. 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." Adjudication Guidelines, ¶ 18.

### **Burden of Proof**

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted facts alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

### **Analysis**

Applicant is a well-regarded country operations officer for a defense contractor who financed his home purchase in 2004 with the aid of two mortgages and added a third mortgage in 2005 to finance upgrades in his home. Faced with reductions in their family income and a deteriorating real estate market in his community, Applicant tried unsuccessfully to enlist his lender to agree to a short sale, and placed his property on the market for sale in August of 2006. Unable to sell his home, Applicant and his wife vacated their home in March 2007, and ceased making payments on their mortgages.

By defaulting in their joint mortgages, Applicant and his wife exposed themselves to non-judicial foreclosure and ensuing deficiency claims by the junior lien holders. Without resolution these two major debts create the potential for deficiency liability and raise security concerns over the potential of future enforcement actions by the junior mortgage holders, or their assignees.

In July 2007, the first mortgagee foreclosed on its first mortgage and sold the property at the scheduled foreclosure sale for \$301,000. After redeeming the property, the first mortgagee resold the property to a private buyer for around \$308,000. The bid price was enough to cover the loan balance on the first mortgage, but not the second and third mortgages. As a consequence, the second and third mortgagees were left with

no security in the property and became legally-characterized sold-out junior lien holders with potential deficiency claims against Applicant.

Security concerns are raised under the financial considerations guideline of the AGs where the individual applicant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can raise questions about the individual's reliability, trustworthiness, and ability to protect classified information, and place the person at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of delinquent debts and his past inability to pay these debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines¶ DC 19(a), inability or unwillingness to satisfy debts, and ¶19(c) "a history of not meeting financial obligations."

Applicant's debts are attributable in part to his wife's losing her job in early 2007 and a major downturn in real estate market conditions in his region the previous year, and continuing throughout 2007 and beyond. Economic conditions in his community severely impaired his ability to sell his property, and ultimately prevented him from selling the property in the Summer of 2006 to cover his three mortgages.

Because Applicant's state does not have an anti-deficiency statute, both junior mortgagees (*i.e.*, creditors 1.a and 1.b) are entitled to pursue deficiency claims against Applicant, provided they do so within the time allowances covered by the state's relevant statute of limitations for written contracts and claims involving real estate. In Applicant's state, the pertinent statute of limitations is six years (C Rev. Stat. ¶ 13-80-102, *et seq.*) Between them, these two sold-out junior mortgagees hold deficiency claims that have over two years to run and encompass claims exceeding \$100,000 in the aggregate.

Once the foreclosed property at issue in a particular case is sold at public auction for less than the value necessary to cover the claims of the junior mortgage holders, the creditors may seek deficiency relief through independent court actions. Creditors 1.a and 1.b in this case still have over two years to file deficiency claims in independent actions. Whether they will or not is still uncertain at this time. But the stakes and risks associated with each junior mortgagee seeking judgment relief against Applicant are still considerable and cannot be discounted under current market conditions in Applicant's local region and state.

Based on his evidentiary showing, extenuating circumstances certainly contributed to Applicant's inability to resolve his mortgage obligations in his community. A confluence of heavy mortgage debts on the property, overextended personal finances falling prices, and insufficient resources to survive depressed real estate conditions in his region, hampered his ability to carry the property or dispose of it in an orderly way. Available to Applicant is ¶ MC 20(b) of the financial considerations guideline, "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." While some judgment problems persist over Applicant's taking on so much debt with his purchase of the home

at the outset, his actions are considerably extenuated by unforeseen economic conditions and his inability to dispose of the property during the housing downturn that extended throughout 2006 and 2007.

In recognition of the modest constructive efforts Applicant made to resolve his mortgage debts in 2006 through a short sale of his residence, some mitigation credit is available to him. Age of the two still unresolved debts (creditors 1.a and 1.b) is covered by two of the mitigating conditions for financial considerations: ¶ MC 20(a), “the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment,” and ¶ MC 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Neither mitigating condition is dispositive, but do have some applicability to Applicant’ situation.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases (as here).

Consideration of Applicant’s background and circumstances surrounding his situation permits extenuation and some mitigation of his accumulated delinquent mortgage debts. Extenuating conditions associated with his taking on too much debt in connection with his home purchase and subsequent home improvements and overall depressed market conditions in his region temporarily impaired his ability to meet his financial obligations with his lenders. However, to date, he has not taken any concrete steps to address his two major deficiency debts. The debts owed to creditors 1.a and 1.b reflect monies advanced to Applicant to purchase and improve his home, and remain outstanding obligations.

Judgment lapses and economic choices do play some role in Applicant’s situation. By Applicant’s own acknowledgments, he assumed more debt on his home purchase and ensuing improvements than he could safely manage. He can also be faulted for not making more aggressive efforts to resolve the deficiency claims of his two major creditors with lump sums or other forms of payment measures. With his available resources, several options were potentially available to him. Individually negotiated payment plans, debt consolidation, and Chapter 13 bankruptcy relief comprise just a few examples of possible resolution measures open to him. With over \$4,000 in residual funds available to him every month, he was well positioned to address the deficiency claims of creditors 1.a and 1.b.

To be sure, Applicant is aware of the time limits of his state’s statute of limitations (six years), and the substantial possibilities that neither creditor will pursue him to enforce their deficiency entitlements. By recommitting to paying them, he would validate their claims and toll the statute’s potential bar to collection. Standing pat and letting the statute of limitations run on two claims that approach \$100,000 in overall debt makes



some economic sense. But reliance on such an enforcement bar, while available to Applicant, is not a substitute for good-faith efforts to address outstanding debts.

Statutes of limitation, while considered important policy tools for discouraging plaintiffs from pursuing stale claims and promoting finality in litigation, have never been equated by the Appeal Board with good-faith efforts to repay overdue creditors. See, e.g., ISCR Case No. 02-30304 at 3 (App. Bd. April 2004)(quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 2001)). What constitutes a “good-faith” effort to repay overdue creditors requires a showing that “a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation” See *id.* Summarized, an applicant must establish some kind of concrete plan for repaying the debt in issue besides relying on a legally permissible option like filing for Chapter 7 bankruptcy or taking advantage of a statute of limitations.

When addressing repayment efforts generally, the Appeal Board has not required an applicant to establish “that he has paid off each and every debt listed in the SOR.” See ISCR Case no. 07-06482 at 2-3 (App. Bd. May 21, 2008)(internal citations omitted). All that the Board has required is that the “applicant demonstrate he has a plan to resolve his financial problems and has taken significant actions to implement that plan.” See *id.* In Applicant’s case, it was incumbent upon him to demonstrate some tangible steps to satisfy his two lending creditors with the resources he has available every month. This he has not done to date, and, as a result, he is not able to satisfy any of the pertinent mitigating conditions.

From a whole-person standpoint, there is certainly no evidence presented that Applicant is currently living beyond his means in his present circumstances. He and his wife utilize a conservative budget, and Applicant has been able to generate a very good credit score. He provides highly valued services in the defense of the U.S. in Iraq and exhibits strong parenting responsibilities with his three stepchildren.

What security risks exist on this record and have not been satisfactorily resolved to date pertain to his high exposure to major deficiency enforcement claims by both of his listed creditors (creditor 1.a and creditor 1.b). Additionally, his receipt of almost \$100,000 from his two lenders, and his failure to comply with the terms of his lending agreements with the creditors reflect some lack of judgment on his part. These judgment concerns are not fully mitigated either at this time.

Taking into account all of the extenuating facts and circumstances surrounding Applicant’s two mortgage debt obligations and the risks of deficiency liability that are still extant, he fails to mitigate judgment, reliability and trustworthiness concerns related to his debts. Unfavorable conclusions warrant with respect to the allegations covered by the financial considerations guideline. In the event that Applicant is able to find a way to settle the two debts, and establish a payment plan, he could at some future date demonstrate good faith and stronger mitigation of the only security concerns at issue.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F: (FINANCIAL CONSIDERATIONS):      AGAINST APPLICANT

Subparagraphs. 1.a and 1.b:                              Against Applicant

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge