



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 09-05313
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

September 15, 2010

**Decision**

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COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 24, 2010<sup>1</sup>, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. DOHA acted under Executive Order (EO) 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).

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<sup>1</sup> The SOR was undated, but the notice sent by DOHA to Applicant accompanying the SOR was dated March 24, 2010.

Applicant answered the SOR on April 10, 2010, and requested an administrative determination. On April 27, 2010, department counsel requested a hearing before an administrative judge. The case was assigned to me on May 17, 2010. Department counsel amended the SOR on April 29, 2010, and the Applicant answered the amended SOR on May 10, 2010. DOHA issued a notice of hearing on May 19, 2010, and the hearing was convened as scheduled on June 15, 2010. The Government offered Exhibits (GE) 1 through 5, which were received without objection. Applicant testified and submitted Exhibits (AE) A through G. DOHA received the hearing transcript (Tr.) on June 23, 2010.

### **Findings of Fact**

Applicant is a 63-year-old government employee. He has worked for his government employer since March 1983. He is seeking a security clearance because of consulting work he does for a defense contractor. He received a PhD in 1975. He has been married for 40 years. He has three children whose ages range from 22 to 25.<sup>2</sup>

The SOR alleges three delinquent real estate debts. The debts were listed on credit reports obtained on April 11, 2009 and April 29, 2009. Applicant denied the debts alleged in SOR ¶¶ 1.a - 1.c, because all three have been resolved either through short sales (for two properties) or through Applicant's giving the lender a deed in lieu of foreclosure (one property).

In 2005, Applicant decided to purchase seven vacation condominiums (condos) in an eastern shore resort community as a real estate investment. The plan was to hold on to the properties for a period of time, renting them out when he could, then sell them when the real estate market rose. Besides the seven condos, Applicant also owns his residence and a second home. Applicant paid monthly mortgages on all nine of the properties. The mortgage on his residence is approximately \$85,000 and the mortgage on his second home is approximately \$190,000. Both are current.<sup>3</sup>

Six of the seven condos were financed (one is mortgage-free) with 20% down payments and with mortgages totaling over \$1,200,000.<sup>4</sup> Applicant was aware when he purchased the condos that there would be a negative cash flow based upon the rental income they would generate versus the mortgage payments he was making. He and his wife were making up the difference with their incomes (his: \$153,000 annually; hers: \$106,000 annually) and their savings. Because these investment properties were depleting his financial resources and they were losing market value because of the state of the economy, Applicant came up with a plan to extricate himself from this situation. He stopped paying on the three mortgages listed in the SOR knowing that the lender would take some action at that point. At the time, the respective mortgage obligations

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<sup>2</sup> Tr. at 18, GE 1.

<sup>3</sup> Tr. at 18, 32-34.

<sup>4</sup> Tr. at 34; Applicant's Answer to SOR (Answer).

on the debts listed in the SOR were: ¶ 1.a: \$187,000; ¶ 1.b: \$183,000; ¶ 1.c: \$199,000. Consequently the properties listed at SOR ¶¶ 1.a and 1.b were sold through short sales. In each case, Applicant received debt forgiveness of about \$100,000. Concerning the debt listed at SOR ¶ 1.c, Applicant executed over to the lender a deed in lieu of foreclosure and his debt on that mortgage note was also forgiven. All these transactions occurred between September 2009 and January 2010.<sup>5</sup>

Applicant's current condo holdings require him to inject between \$30,000 and \$35,000 per year from his own funds to overcome the negative cash flow from the rental condos. As a result, two more of the condo units face either a short sale or a deed in lieu of foreclosure transaction in the near future. Applicant has already engaged the lender about proceeding along these lines on the two condo units.<sup>6</sup>

Except for the condo issues, Applicant has never defaulted on any other debt obligations. He is current on all other debts. Both he and his wife have IRA accounts with a combined value of about \$210,000, but no other savings. Applicant is highly valued by his employer. He is a recipient of agency awards for his technical achievements. He is universally recognized as a highly productive technician and leader within his agency.<sup>7</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 list potentially disqualifying conditions and mitigating conditions that 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 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

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<sup>5</sup> Tr. at 37-44, 52; Answer; AE A-C.

<sup>6</sup> Tr. at 52-54.

<sup>7</sup> Tr. at 48-49; AE D-G.

decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 to obtain a favorable 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 about 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 for Financial Considerations is set out in AG ¶ 18, as follows:

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 purchased multiple condos for investment purposes. Because of the negative cash flow resulting from these condos, Applicant defaulted on his mortgage payments and three properties were sold or turned over to the lender. The evidence is sufficient to raise the above disqualifying conditions.

Several 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's actions in defaulting on three mortgages and the resulting short sales/deed turnover occurred within the last year and are therefore multiple and recent. Additionally, testimony revealed that Applicant was about to default on two more condo mortgages. His financial issues are current and ongoing. AG ¶ 20(a) is not applicable.

Applicant's financial difficulties resulted because of his own deliberate real estate investment strategy. Certainly, market factors played a role in depressing the real estate sellers market, however, Applicant knew at the time he purchased all the condos that he would be operating those condos from a negative cash flow perspective. He made a deliberate choice to assume that investment risk. Under these circumstances, these conditions were not outside his control. AG ¶ 20(b) does not apply.

There is no evidence in the record that Applicant received any financial counseling. Although three of the mortgage-deficiency debts were forgiven, Applicant is in the process of defaulting on two more mortgages. At this point, his finances are not being resolved and are not under control. AG ¶¶ 20(c) and 20(d) are not applicable. Applicant's finances remain a concern.

### **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 relevant 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 relevant 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 outstanding work performance and favorable character evidence. I also found Applicant to be honest and candid about his finances. I believe he is sincere about getting his finances in order. However, he is still encumbered by his real estate investment choices and is currently operating at a negative cash flow of approximately \$30,000 per year on his remaining holdings.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the 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:	AGAINST APPLICANT
Subparagraph 1.a-1.c:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge