



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-05607
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: D. Michael Lyles, Esquire, Department Counsel  
For Applicant: *Pro Se*

March 18, 2011

**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On July 20, 2010, the Defense Office of Hearings and Appeals (DOHA) issued 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 (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

In an undated response, Applicant answered the SOR, and requested a hearing before an administrative judge. The SOR was amended on January 3, 2011, and Applicant responded to it on January 21, 2011. The case was assigned to me on January 13, 2011. DOHA issued a Notice of Hearing on January 31, 2011. I convened

the hearing as scheduled on February 24, 2011. The Government offered Exhibits (GE) 1 through 16. Applicant did not object and they were admitted into evidence. Applicant testified on his own behalf. He did not offer any exhibits. DOHA received the hearing transcript (Tr.) on March 3, 2011.

### **Findings of Fact**

Applicant admitted all the SOR allegations except ¶¶ 1.b, 1.e, and 1.n. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 42 years old. He is not married and does not have children. He graduated from high school in 1988. He has worked for successive federal contractors since 1996, and has held a Secret security clearance since 1999.<sup>1</sup>

In 1995, Applicant completed the requirements for, and obtained, a real estate license. He understood the risks and rewards of the real estate industry. Applicant and his sister purchased a house together the same year. They used their combined incomes to qualify for a loan. They were both employed. Applicant's sister has two children that she was supporting. In approximately 1997, Applicant's sister was diagnosed with a heart condition, and was unable to work and earn an income. Applicant was unable to maintain the mortgage payments on the house based on his income. He attempted to keep the house by paying his other bills using credit cards and selling things he owned. He was supporting his sister's children during this time. He could no longer maintain the payments, and he filed for bankruptcy under Chapter 13. He completed the bankruptcy payments and his remaining debts were discharged in August 2001. He estimated he paid about \$13,000 through the repayment plan and about \$17,000 was discharged. His sister was able to resume working around the end of 1998. Another relative moved into the house and paid rent, which also helped pay the bills. He paid his other bills on time.<sup>2</sup>

In 2007, Applicant decided to invest in real estate with his cousin. His plan was to buy houses as an investment and then sell them for a profit. He stated that he and his cousin were going to "flip houses." His annual salary, including income from his part-time job was about \$55,000. In 2007, he estimated he had about \$3,000 to \$5,000 in savings and his credit was good. He obtained a loan for \$494,000, in his name alone, to purchase a duplex, Property A. His cousin used \$10,000 in money orders as the down payment. Applicant explained that his cousin had recently made a profit from a real estate transaction he completed. His cousin was in the real estate business. His cousin was to pay the \$3,000 monthly mortgage payment until the property was sold. The property needed about \$10,000 of repairs that his cousin was going to pay. Applicant's role was to help fix-up the property. Applicant used credit cards to finance the repairs and upgrades that needed to be done. He had to buy all new appliances for the

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<sup>1</sup> Tr. 115-119.

<sup>2</sup> Tr. 31-36, 55-63, 85-87.

property. Applicant estimated he charged about \$30,000 to \$35,000 on his credit cards for the house upgrades and repairs. He stated he was making the credit card payments for a period of time.<sup>3</sup>

Around six months after Applicant purchased Property A with his cousin, they purchased Property B, a two unit apartment building. They were still renovating and completing repairs on Property A at the time. Applicant purchased this property in his name only. The loan was for \$500,000. He stated his cousin used \$10,000 as a down payment. The monthly mortgage payments were between \$3,000 and \$3,500. The apartment also needed repairs and upgrades because they were attempting to convert it to a condominium. They realized after the purchase that they would not be able to rent the premise as apartments because they could not rent it for enough to cover their mortgage. They estimated the work would cost about \$25,000. The plan was for Applicant to pay for some of the repairs using his credit cards, and his cousin would pay for some of the larger items.<sup>4</sup>

Applicant stated that his cousin paid both of the mortgages and other expenses in the beginning. However, sometime in 2008, less than a year after Applicant purchased the property, his cousin had financial problems and was unable to make payments.<sup>5</sup>

Applicant refinanced his personal home in 2008 and obtained a \$50,000 home equity loan. He used it to pay the mortgages on both proposed rental properties. He continued to use his credit cards until he could no longer do so. He stated he worked extra jobs to help pay the bills. He was hoping someone would purchase the property, but no one did, and the repairs were never completed. Applicant did not think it would take long to sell the properties. They never rented either property. Both properties were foreclosed in 2009. Applicant no longer associates with his cousin.<sup>6</sup>

Applicant filed for bankruptcy under Chapter 7 in August 2010, and \$323,000 in debt was discharged on November 9, 2010.<sup>7</sup> The judgment in SOR ¶ 1.b (\$4,382) is not included in the bankruptcy. It was filed in July 2009. Applicant disputes the debt, but did not provide documents to support his dispute. It is listed on a 2009 and 2010 credit

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<sup>3</sup> Tr. 35-44; 63-80, 101.

<sup>4</sup> Tr. 80-97.

<sup>5</sup> Tr. 83-85, 97.

<sup>6</sup> Tr. 35, 77-80, 88, 97-100.

<sup>7</sup> GE 6.

report.<sup>8</sup> He believes this debt was to be paid by insurance. He thought it was included in his bankruptcy.<sup>9</sup>

The debts in SOR ¶ 1.c through ¶ 1.q total approximately \$721,600. They were all included in Applicant's bankruptcy discharge. SOR ¶ 1.o (\$92,250) is for the deficiency owed after Property A was foreclosed. The debt in SOR ¶ 1.p (\$118,000) is the second mortgage on Property A. The debt in SOR ¶ 1.q (\$472,000) is the debt that was owed on Property B. The other debts are for credit cards expenditures, a medical bill, a dental bill, cable expenses, and a signature loan Applicant obtained. Applicant stated that he attempted to sell the properties through word of mouth, but did not use a realtor because he could not afford the fees. He attempted to transfer the deed, but was unsuccessful.<sup>10</sup>

In 2008, Applicant sought assistance from a credit counseling service. He contracted with them and paid their fees for six months. He stopped making the payments to the service when he realized the money was not being used to settle his debts, but rather were the fees.<sup>11</sup>

Since his debts were discharged in bankruptcy, Applicant has been able to pay his expenses. He stated he does not live beyond his means. He attributes his financial problems to a downturn in the economy, something he could not control. He admitted he understood the risks associated with real estate investments.<sup>12</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, which are 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, 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,

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<sup>8</sup> GE 10, 16.

<sup>9</sup> Tr. 45-52.

<sup>10</sup> Tr. 52-55, 101-114.

<sup>11</sup> Tr. 124-126.

<sup>12</sup> Tr. 114-115.

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.

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 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 conclude the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has had debts discharged in bankruptcy in 2001 and 2010. He accumulated debts for mortgages, credit cards, and loans when he purchased two rental properties. I find there is sufficient evidence to raise these disqualifying conditions.

The guideline also includes 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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant admitted he is responsible for all but one of the debts alleged in the SOR. He disputed the judgment in SOR ¶ 1.b that was filed against him in 2009. He did not provide evidence to support his dispute and it was not part of his bankruptcy discharge. Applicant wanted to buy real estate and "flip" houses for profit. He secured two large mortgages in his name. He has a real estate license. His investments did not work out when his cousin reneged on his promise to make the mortgage payments. Applicant later was unable to sell the houses because of the declining market. He

continued to make charges to his credit cards in an attempt to repair the properties, but was unable to pay them. Excluding the mortgage debts, he had \$43,683 of delinquent debts. Applicant's debts were discharged in November 2010, less than four months ago. AG ¶ 20(a) partially applies because at this time he is unlikely to be involved in new real estate transactions. However, Applicant's past behavior casts doubt on his reliability and good judgment. He obtained loans and used credit cards that he was unable to pay. He was overextended financially. He purchased a second property before he had reaped any profit from the first property.

Applicant had his debts discharged in bankruptcy after completing a Chapter 13 repayment plan in 2001. He and his sister owned a house and when she became sick, he had difficulty maintaining the mortgage and providing for her and her children. The circumstances that resulted in his 2001 bankruptcy were beyond his control and he acted responsibly at the time. In 2007, Applicant earned a modest income and agreed to take out two mortgages worth more than \$900,000. He hoped to "flip" the houses and earn a profit. He used credit cards to pay for materials needed to repair the houses. When Applicant's cousin reneged in paying the mortgages, Applicant could not pay the bills. Applicant's cousin failed to abide by their agreement. This was beyond Applicant's control. I find AG ¶ 20(b) partially applies in that Applicant did not anticipate his cousin reneging on the agreement. However, Applicant was making risky decisions in the hope that he would make a lot of money, without adequate financial resources to protect him in case the real estate market had a downturn. Although Applicant may not have foreseen an economic downturn, he should have been prepared for the cyclical nature of the real estate market. Applicant was overextended and was making poor financial decisions. He understood his name was on the contract and he was responsible for the mortgages. He chose to obtain large loans in his name and assumed all of the risk. I find Applicant did not act responsibly under the circumstances.

All the delinquent debts have been discharged in bankruptcy, except one judgment. Applicant is now living within his means. There is some evidence he received financial counseling as required when filing bankruptcy and because of the bankruptcy his finances are now under control. Therefore, AG ¶ 20(c) partially applies. Although having one's debts discharged in bankruptcy is a legitimate legal means to resolve financial problems, it is not considered a "good-faith" effort to repay overdue creditors. All of Applicant's debts were resolved in bankruptcy, except one judgment. I find AG ¶ 20(d) partially applies. Applicant failed to provide documented proof that he is not liable for the judgment in SOR ¶ 1.b. Therefore, AG ¶ 20(e) does not 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 had his delinquent debts discharged in bankruptcy after completing a Chapter 13 repayment plan in 2001. In 2007, he accumulated large mortgage debts and credit cards debts in the hopes he would make a large profit in the real estate market. He agreed to assume all the risk by obtaining the loans in his name only. All of these debts, except one judgment, were discharged in bankruptcy under Chapter 7. He did not take action on resolving or disputing the remaining judgment. I have considered the mitigating factors that were raised when analyzing the whole-person and conclude they do not outweigh Applicant's poor judgment and unreliability. He has a real estate license so was aware of the pitfalls of the real estate market. He took financial risks because he thought he could make a large profit. Although the bankruptcy resolved most of his delinquent debts, it does not mitigate the security concerns raised by his poor judgment and unreliability. 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 failed to mitigate 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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.r:	Against Applicant



## **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge