



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 09-07819
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nichole Noel, Esquire, Department Counsel  
For Applicant: *Pro se*

January 13, 2011

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

On June 25, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations). DOHA took action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In a July 23, 2010, response, Applicant admitted the four allegations raised under Guideline F and requested a hearing before a DOHA administrative judge. DOHA assigned the case to me on October 8, 2010. The parties proposed a hearing date of December 13, 2010. A notice setting that date for the hearing was issued on November 5, 2010. I convened the hearing as scheduled.

Applicant testified and offered six documents, which were accepted into the record without objection as exhibits (Exs.) A-F. The Government introduced four documents, which were accepted into the record without objection as Exs. 1-4. Applicant was given until December 27, 2010, to submit any additional documents for

consideration. The transcript (Tr.) of the proceeding was received on December 21, 2010. On December 22, 2010, Applicant forwarded two additional documents, which were forwarded to me by Department Counsel on December 29, 2010, without objection. They were accepted into the record as Exs. G-H and the record was closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant met his burden of mitigating security concerns related to financial considerations. Clearance is granted.

### **Findings of Fact**

Applicant is a 48-year-old canine handler who has worked for the same government contractor since 1989. He has two master's degrees, in criminal justice and in psychology. He is married.

The real estate properties at issue are in a major metropolitan area, notable as an attractive vacation and investment venue. Over the years, Applicant developed experience in purchasing local properties for rehabilitation or rental and resale. He also had a superior credit score of approximately 830 and no debts.<sup>1</sup> In early 2006, he sold three rental units which he had purchased between 2001 and 2003. Throughout his ownership of those units, Applicant maintained timely mortgage payments and had reliable tenants.<sup>2</sup>

In about September 2006, he applied about \$40,000 of those profits toward the down payment for a condominium (Property 1, noted in SOR allegations ¶¶ 1.a and 1.d), shortly after expending about \$33,000 of his personal savings toward the down payment of a smaller property in the same development (Property II, noted in SOR allegations ¶¶ 1.b and 1.c).<sup>3</sup> At the time, the development was successfully converting from apartments to condominium units. As a buying incentive, the development covered the mortgage payments for the units for the first year under a lease-back agreement. This offer was ideal for Applicant since he planned on quickly "flipping" his units once all the conversions were sold and the base prices had risen.

Shortly thereafter, sales of the conversion units began to slow down. About 10 months after he bought the units, Applicant discovered that the development had stopped paying the mortgage payments and that he was expected to find renters.<sup>4</sup> The conversion was still incomplete, so Applicant quickly found renters to offset his mortgage payments. The rents he could charge, however, did not cover the monthly mortgage amounts, necessitating him to use personal savings to cover his mortgage obligations. Then one renter vacated a property before the lease had expired and the

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<sup>1</sup> Tr. 31.

<sup>2</sup> Tr. 44.

<sup>3</sup> Tr. 23-24. The allegations at issue are: ¶ 1.a (property-related collection account for approximately \$2,714), ¶ 1.b (property-related account for approximately \$1,793), ¶ 1.c (\$13,189 past due on a mortgage balance of approximately \$126,000) and ¶ 1.d (\$17,042 past due on a mortgage balance of approximately \$157,000).

<sup>4</sup> Tr. 46, 49.

other renter became unreliable.<sup>5</sup> Consequently, Applicant continued to pour more of his personal income into the investments to stay current on his obligations.

As Applicant waited for a suitable time to sell the units in late 2007, the local real estate market collapsed.<sup>6</sup> By the end of 2007, Applicant was forced to borrow from his home equity line of credit to make mortgage payments on the investment properties while he searched for new tenants. At that point, however, the condo rental market was flooded and Applicant could not find any prospective renters.<sup>7</sup> Matters worsened when Applicant required knee surgery. While he received workers compensation during his six months off the job, the compensation rate was lower than his average earnings and he was unable to perform his usual, and highly lucrative, overtime hours.<sup>8</sup> After his six-month recuperation, Applicant returned to work, but then was hospitalized for a blood clot.<sup>9</sup>

Within about a year, Applicant had depleted the home equity line of credit on his primary residence. In sum, he had expended about \$100,000 from his line of credit toward the two properties.<sup>10</sup> At that point, he could no longer stay current on the mortgages for the two investment properties and his home. By about March or April 2009, he was in arrears on his investment property mortgages.<sup>11</sup>

In late 2009, after receiving letters concerning the mounting arrearages and the threat of foreclosure, Applicant consulted an attorney to explore his options, but their discussion was unproductive.<sup>12</sup> He then met unsuccessfully with the lender before consulting a bankruptcy attorney in case “this thing goes for the worst.”<sup>13</sup> Applicant then returned to trying to work things out with the lender while he started working with a realtor to sell the properties. His continued efforts with the lender were stalled by inaction by the lender. In the interim, Applicant was again out of work for knee-related issues from April through June 2010. In July 2010, the lender sent him a package to apply for a loan modification under the Home Affordable Mortgage Program, but

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<sup>5</sup> Tr. 52. Applicant did not pursue legal action against the former tenant because she was “in financial distress” and soon moved to an unknown location. Instead, Applicant kept her deposit and applied it to the following month’s rent.

<sup>6</sup> Tr. 26.

<sup>7</sup> Tr. 27.

<sup>8</sup> Tr. 65.

<sup>9</sup> *Id.*

<sup>10</sup> Tr. 71.

<sup>11</sup> Tr. 28.

<sup>12</sup> Tr. 54. Applicant noted that the attorney did not mention pursuing a deed-in-lieu-of foreclosure as an option, stating that he would have pursued that course had he known about it.

<sup>13</sup> Tr. 29.

Applicant discovered that the program does not apply to properties that are not primary homesteads.<sup>14</sup> In August 2010, Applicant's realtor found a potential buyer for the units.

Applicant directly sent the lender a copy of a short-sale proposal that was negotiated, but the lender reneged on the time frame originally allotted for disposing of the properties.<sup>15</sup> Applicant was then informed that the two properties would be auctioned in late September 2010 and late October 2010, respectively, and the properties went into foreclosure. Applicant consulted his attorney to better understand his status, but it appeared he was in limbo.<sup>16</sup>

At the time of the December 13, 2010, hearing, Applicant assumed the properties had sold at auction and he was waiting for IRS 1099 forms regarding the sale.<sup>17</sup> To provide DOHA with a better idea of his post-auction liability, if any, on the properties, he researched their sale. He then learned that the properties had not been auctioned. On December 21, 2010, Applicant wrote the primary lender, expressing that he had recently learned the properties had not sold. He then asked, "would you allow us to try to sell the properties or possibly do a deed in lieu of? Our last attempt to sell the properties resulted in [you] advising us that unfortunately you would not be able to grant [us permission to sell the properties within] the original time frame...."<sup>18</sup> In concluding his request, he noted, "I am trying to resolve this issue positively for both parties involved. Therefore, if either one of the above mentioned choices is a viable option could you please advise us of any possible resolution to this matter."<sup>19</sup> Since the lender has yet to dispose of the properties, Applicant's resultant liability is unclear. Applicant admits that any liability related to these investments is properly his, but stresses that he is currently unable to resolve the matter or confirm the amount of his debt.<sup>20</sup>

Other than the mortgages at issue, Applicant lives well within his means. He pays off any credit card balances each month in a timely manner. He has no significant debt.<sup>21</sup> He has no automobile loans. His primary mortgage is current. His income varies due to overtime demands. In 2009, he earned about \$94,000. Applicant maintains a savings account, a 401k account, and currently has a balance of about \$3,000 in his checking account. His wife is a secretary, earning about \$33,000 a year. He continues to work diligently in resolving the situation involving the two condominiums. At work, he

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<sup>14</sup> Tr. 39-40, 56.

<sup>15</sup> Tr. 30, 34; Ex. C (Lender correspondence, dated Aug. 23, 2010).

<sup>16</sup> Tr. 59.

<sup>17</sup> Tr. 35.

<sup>18</sup> Ex. H (Letter to Lender, dated Dec. 21, 2010).

<sup>19</sup> *Id.*

<sup>20</sup> Tr. 31.

<sup>21</sup> See, e.g., Tr. 72-74. As noted by Department Counsel, the four debts noted in the SOR "are the only negative blemishes on an otherwise very stellar credit bureau report."

is a highly valued and trusted employee, noted for his professionalism and ethics.<sup>22</sup> He fully disclosed the financial issues noted in the SOR in his September 2009 security clearance application.

## Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." <sup>23</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.<sup>24</sup>

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 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

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<sup>22</sup> Ex. F (Reference, dated Dec. 9, 2010).

<sup>23</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>24</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>25</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>26</sup>

Based upon consideration of the evidence, Guideline F (Financial Considerations) is the most pertinent to this case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

## Analysis

### Guideline F - Financial Considerations

In this case, Guideline F is the appropriate guideline for consideration. Under that guideline, “failure or an 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.”<sup>27</sup> It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”<sup>28</sup> Here, Applicant admitted the four allegations raised under this guideline. Specifically, he admitted liability for about \$4,500 in delinquent investment property-related debts and that he is past due for approximately \$30,000 on foreclosed mortgages worth about \$283,000. Although Applicant’s ultimate fiscal responsibility for the mortgage-related debts at issue is unclear, pending disposition of the properties at issue, such admissions are sufficient to raise Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The real estate-related obligations at issue were incurred in 2006, with the aim of “flipping” the properties during the first-year lease-back agreement. A soured real estate market and adverse circumstances complicated Applicant’s plans and jeopardized his finances. To date, Applicant is liable for the obligations. Financial Considerations Mitigating Condition (FC MC) 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) does not apply.

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> AG ¶ 18.

<sup>28</sup> *Id.*

Applicant had experience in the buying and selling of real estate properties in his locality. He purchased the properties at issue with a well-thought plan to dispose of them within a year, while a lease-back agreement was in place. The developers, however, reneged on their arrangement to cover his mortgages for one year. To off-set his financial obligations, he found renters, but the rents were low and his renters were unexpectedly unreliable. In the interim, the national real estate downturn affected his locality severely, flooding the local market with condominiums, and Applicant missed six months of work recuperating from a needed surgery. Despite his best efforts, his lender then tarried in working with him, causing him to lose an opportunity to dispose of the properties. In light of these circumstances, Financial Considerations Mitigating Condition AG ¶ 20(b) (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 under the circumstances) applies.

Inasmuch as Applicant maintained solid credit in the past and has no other financial issues, he has not recently sought financial counseling. He did, however, seek the advice and counsel of an attorney, a bankruptcy attorney, and a seasoned realtor to explore options regarding the two properties. Such efforts, however, have yet to yield tangible results, obviating application of FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control).

Applicant diligently tried to work with his lender. When he found a potential buyer for the properties, the lender refused to work him in the contemplated time frame to formalize and complete the transaction. In light of these efforts, FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. None of the other FC MCs apply.

The burden for mitigation in these proceedings is placed squarely on Applicant. Applicant failed to present evidence that the debts at issue have been resolved. However, he has presented sufficient facts and evidence to show that he entered into his 2006 investment with a reasonable plan and with an understanding of the risks of real estate investment. He also showed that he responded to adverse circumstances with good judgment and a clear willingness to follow the rules. When his financial resources were exhausted, he became actively involved in trying to negotiate alternatives to foreclosure, such as short sale. He has been diligent throughout. In light of these factors, as well as the whole-person analysis below, I find that financial considerations security concerns are mitigated.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2 (a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall

commonsense judgment based on 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, as well as the “whole-person” factors. Applicant is a 48-year-old canine handler. He is a trusted employee who has worked for the same employer for over two decades. He is well educated, committed to his work, and willing to work considerable overtime hours. Until he recently encountered financial difficulty with two real estate investments, he maintained exemplary credit. He lives within his means and pays his bills and primary mortgage in a timely fashion.

Applicant acquired the two properties at issue with practical experience in local real estate investment. He entered into his 2006 venture under an attractive lease-back agreement. Given the terms, the local market, and his experience, the venture appeared to be a low-risk investment. Then the lease-back provision was terminated prematurely and the real estate market collapsed.

Of security significance is what Applicant did in the face of these adverse situations. When the lease-back agreement was abruptly terminated prematurely, Applicant immediately found renters to help subsidize his monthly mortgage obligations. He took out a home equity line of credit on his residence to cover the mortgage payments on the properties, ultimately expending about \$100,000 to keep his mortgages timely paid. Faced with unreliable tenants and a depleted line of credit, he sought advice from an attorney, a bankruptcy attorney, and a realtor. Applicant persevered to retain control or dispose of the properties despite six months of recuperation, during which he only received workers compensation benefits. He listed the properties for sale with the realtor. He presented a tentative short-sale arrangement to his lender. That offer was ignored in favor of foreclosure proceedings. Until late December 2010, Applicant was under the impression that the properties had been auctioned and transferred by late October 2010. Since learning that the bank failed to proceed to auction or failed to successfully auction the properties, he has reinitiated contact with the lenders in an attempt to again seek permission to pursue a short sale or arrange a deed-in-lieu-of-foreclosure in order to dispose of the properties. He has been diligent and forthright throughout.

But for the real estate debts at issue, Applicant has a long-standing record of good credit and timely bill payment. He has no other debts of interest. The four debts at issue are the “only negative blemishes on an otherwise very stellar credit bureau report.”<sup>29</sup> Aside from his decision not to pursue legal action against one tenant who vacated a unit prematurely, Applicant has demonstrated sound judgment, self-control, and a clear willingness to abide by the rules. He credibly asserted his commitment to continue his efforts to resolve the situation regarding these two properties. Given all these considerations, there is sufficient evidence to mitigate Guideline F security concerns. Clearance is granted.

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<sup>29</sup> Tr. 73.



### **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.d: For Applicant

### **Conclusion**

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

ARTHUR E. MARSHALL, JR.  
Administrative Judge