



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



In the matter of: )  
)  
) ISCR Case No. 09-08507  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Fahryn Hoffman, Esquire, Department Counsel  
For Applicant: Leslie McAdoo Gordon, Esquire

December 12, 2011

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant mitigated the financial considerations security concerns generated by his delinquent debt. Clearance is granted.

**Statement of the Case**

On June 16, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. 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) implemented by the Department of Defense on December 1, 2006.

Applicant answered the SOR on July 14, 2011, admitting all of the allegations and requesting a hearing. The case was assigned to me on September 9, 2011. I scheduled the case for October 27, 2011. On October 17, 2011, Applicant's counsel

entered her appearance and requested a continuance to November 2, 2011. Department Counsel did not object, and I granted the motion.

I held the hearing as rescheduled, receiving five Government exhibits, marked as Government Exhibits (GE) 1-5, and ten Applicant exhibits, marked as Applicant Exhibits (AE) A-J. Also, I took administrative notice of relevant state law governing foreclosures (Hearing Exhibit I) and considered Applicant's testimony. DOHA received the transcript on November 10, 2011.

### **Findings of Fact**

Applicant is a 38-year-old married man with three children, ages nine (twins) and seven. In 1995, he graduated from college, double majoring in computer science and mathematics. (Tr. 23) He has taken some graduate courses in computer science.

Since finishing college, Applicant has worked for various information technology companies. Currently, he works for a DoD subcontractor. (Tr. 24)

In the summer of 2006, Applicant and his wife purchased a rental property (Property No. 1). The purchase price totalled \$300,000. Applicant and his wife financed the purchase with a three percent down payment. Their joint income at the time was approximately \$210,000. (Tr. 34, 78-83)

In October 2006, Applicant began working at a new job. His income increased by \$10,000. In June 2007, Applicant and his wife purchased a second rental property (Property No. 2). The purchase price totalled \$340,000. Applicant and his wife made a down payment totalling 1.5 percent of the purchase price. Applicant's rental properties, when occupied, generated approximately \$150 of monthly positive cash flow. (Tr. 88-89)

In March 2008, the Property No. 1 tenant moved. Despite advertising the property, Applicant was unable to find a new tenant. (Tr. 33) In June 2008, the Property No. 2 tenant vacated the premises before the lease's expiration without prior notice. That same month, Applicant lost his job, and he was subsequently unemployed for five months before his current employer hired him.

While unemployed, Applicant continued to attempt to find tenants to live in his investment properties, but was unsuccessful. The mortgage payments on these properties in addition to several credit cards gradually became delinquent. (Tr. 36)

August 2008, the mortgagee of Property No. 1 initiated foreclosure proceedings. (Answer to SOR subparagraph 1.e; AE E at 5) By July 13, 2010, the property had been foreclosed and sold to a buyer for \$451,500, approximately \$7,000 more than Applicant owed the mortgagee. (AE E at 2) Applicant has not yet filed a claim to receive the surplus. (Tr. 61)

Property No. 2 went into foreclosure in December 2009. (Answer to SOR subparagraph 1.f; AE F) Applicant owed \$411,562. On February 25, 2010, the mortgagee sold the property to another buyer for \$259,155, leaving a deficiency of approximately \$152,400. (AE F at 3) The lender has not yet taken action against Applicant to recover the deficiency.

By the time Applicant's current employer hired him in November 2008, after his five-month unemployment, Applicant had also accrued approximately \$27,000 of delinquent credit card debt, as listed in subparagraphs 1.a through 1.d. Applicant contacted these creditors but they refused to negotiate with him because he "was too much behind." (Tr. 37)

In the summer of 2009, Applicant retained a credit management firm to help him negotiate settlements and satisfy his debts. (Tr. 38) According to the credit management firm's director of client relations, it has developed a payment plan for Applicant. Four SOR creditors (subparagraphs 1.a through 1.d) and two unlisted creditors are included in the plan. (AE A; AE D; Tr. 41)

Applicant has been making monthly payments to the plan since June 2009, beginning with \$34 for the first three months, and gradually increasing to \$735, the amount he has been paying since September 2011. (AE A at 1)

The debts listed in subparagraphs 1.a and 1.c are owed to the same creditor. The debt listed in subparagraph 1.c totals \$9,124. In August 2011, Applicant's credit management company negotiated a reduced balance of \$5,703. (AE C) Since then, Applicant has been making payments, as agreed. This account will be satisfied by March 2012. (AE A at 1) Per the plan, Applicant will begin satisfying subparagraph 1.a after he satisfies 1.c. (AE A)

As for subparagraph 1.b, totalling \$8,612, Applicant's credit management firm contacted the collection agent and negotiated a settlement for \$6,275. (AE B at 3) Applicant satisfied this debt through the plan in three monthly payments between December 2010 and February 2011. (AE B at 6-8; AE H at 14)

The two unlisted delinquencies included in the credit management plan total approximately \$7,500. Applicant satisfied these delinquencies through the plan. (AE A)

Subparagraph 1.d totals approximately \$3,494. In June 2011, Applicant's credit management company negotiated a reduced balance of \$1,350 to be paid in two installments beginning with a \$1,115 payment that month and ending with a \$235 payment for July 2011. (AE D at 2) Applicant satisfied the debt as agreed. (AE D)

Currently, Applicant's net annual income, combined with his wife's, is \$140,000 per year. They have approximately \$1,700 of after-expense monthly income and \$39,000 in savings, retirement, and investment accounts. (AE G; Tr. 72 ) Also, Applicant and his wife have \$120,000 of equity in their home. If the lender of the deficiency listed

in SOR subparagraph 1.f were to file a deficiency judgment against Applicant for him to satisfy the deficiency, Applicant would negotiate an “agreement and pay some money down to reduce it,” with the goal of reaching an agreeable “manageable monthly payment.” (Tr. 72)

### **Ruling of Procedure**

During cross-examination, Department Counsel moved to amend the SOR to include allegations under the foreign influence security concern based upon Applicant’s contact with family and friends living in Nigeria. (Tr. 94-98) Applicant’s counsel objected.

Applicant disclosed his family members who are Nigerian citizens on his security clearance application. Also, he disclosed that he once possessed a Nigerian passport, which he returned to the Nigerian embassy in 2009, and he disclosed several trips to Nigeria taken between 2005 and 2008, ranging from 12 to 42 days in length. (GE 1 at 36-53) In September 2010, Applicant answered a Government Interrogatory regarding his Nigerian contacts. (GE 2 at 3) I sustained Applicant’s counsel’s objection and denied the motion to amend the SOR.

### **Policies**

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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.”

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 for obtaining a favorable security decision.

### **Analysis**

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

Under this guideline, “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" (AG ¶ 18). Applicant's financial struggles trigger the application of AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

The following 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 did not experience financial problems until he began having difficulties keeping tenants in his rental properties and he lost his job. Department Counsel contends this has minimal probative value, arguing that Applicant irresponsibly overextended himself when he purchased the properties, and his ability to pay the mortgages was totally dependent on his rental income. In support of this contention, Department Counsel cites ISCR Case No. 09-0395, (App. Bd. June 8, 2009), a case in which the Appeal Board upheld a decision denying a security clearance to an applicant who was an unsuccessful real estate investor.

Although both this case and the case that Department Counsel cites involved failed real estate investments, they differ significantly. Specifically, the applicant in the cited case purchased four properties in one year, including his primary residence, financing 100 percent of their purchase prices. Conversely, Applicant purchased his investment properties, in part, with down payments. Also, the investment properties in the case cited by Department Counsel were all undeveloped lots, and the applicant in the cited case did not testify credibly. Applicant's investment properties, when rented, generated modest positive cash flow. Also, contrary to the case referenced by Department Counsel, Applicant testified credibly.

Applicant's decision to invest in real estate was risky, but not unsound. His business venture failed only after he lost both tenants *and* his job. Once employed again, Applicant began satisfying his debts, consulting a credit management company

and negotiating settlements. He has been paying his creditors through his payment plan for more than two years, and has reduced his indebtedness by approximately \$15,000, satisfying two SOR delinquencies in the process.

The deficiency remaining from the foreclosure listed in subparagraph 1.f remains outstanding. If the lender files a deficiency judgment against him, Applicant plans to negotiate a settlement. Typically, such future plans have minimal probative value. However, in this case, Applicant, over the past two years, has demonstrated a strong record of financial reform, and he has ample discretionary income and reserve assets to satisfy the foreclosure deficiency. Under these circumstances, Applicant's liability for this deficiency does not generate a security concern. I conclude that all of the mitigating conditions, as listed above, 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.

Applicant's financial problems were caused by circumstances beyond his control. Since regaining a job in November 2008, Applicant has steadily rehabilitated his finances, methodically contacting creditors and negotiating payment plans with which he has complied. He has ample discretionary income and reserve assets, rendering the likelihood of recurrence of his financial problems minimal, and minimizing the vulnerability to coercion for the outstanding deficiency. Upon considering this case in the context of the whole-person concept, I conclude Applicant has mitigated the 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:	FOR APPLICANT
Subparagraphs 1.a - 1.f:	For Applicant

## **Conclusion**

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

MARC E. CURRY  
Administrative Judge