



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-00108
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: William T. O’Neil, Esq., Department Counsel  
 John Bayard Glendon, Esq., Deputy Chief Department Counsel  
 For Applicant: *Pro se*

October 28, 2011

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant has mitigated financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On May 25, 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 (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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on June 17, 2011, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s written case on June 29, 2011. A complete copy of the file

of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on July 13, 2011. As of September 21, 2011, he had not responded. The case was assigned to me on October 5, 2011. On October 12, 2011, Department Counsel, Applicant, and I had a telephone conference, during which I reopened the record until October 24, 2011, for Applicant to submit additional documentary evidence. The e-mail memorializing the conference is marked Hearing Exhibit (HE) I. Applicant timely submitted documents that were marked Applicant Exhibits (AE) A through C and admitted without objection. Department Counsel's e-mail is marked HE II. The Government exhibits included in the FORM are also admitted.

### **Findings of Fact**

Applicant is a 33-year-old employee of a defense contractor. He is applying for a security clearance for the first time. His Questionnaire for National Security Positions (SF 86), submitted in June 2009, listed that he has worked for his current employer since May 2009, he has certificates of completion from a number of technical schools, he has never been married, and he does not have children.<sup>1</sup>

The SOR alleges ten delinquent unsecured debts totaling about \$85,000 and that Applicant is \$71,000 past-due on a mortgage that is in foreclosure, with a balance of \$227,000. Applicant admitted owing all the unsecured debt, but he stated that the debts were being addressed through a debt-settlement plan. He admitted that the mortgage went to foreclosure, but he stated that the mortgage company issued an Internal Revenue Service (IRS) form 1099-C (Cancellation of Debt). He also provided information in support of his request for a security clearance.<sup>2</sup>

Applicant and his mother owned seven investment rental properties. His mother served as the property manager, and Applicant's role was to maintain, support, and repair the properties. In late 2006, the properties started decreasing in value due to the collapse of the real estate market. Applicant was unable to maintain tenants in the properties, and he could not pay his debts. The properties went into foreclosure, and a number of debts became delinquent.<sup>3</sup>

Applicant attempted to address his delinquent debts. He and his mother attended credit counseling in early 2007, but they found they were paying a lot of money to the counseling company and receiving little in return. In about May 2007, they consulted with an attorney, who advised them to hire a real estate company to sell or "short sell" the properties, or arrive at some other mutually agreed upon resolution.<sup>4</sup>

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<sup>1</sup> Item 5.

<sup>2</sup> Item 4.

<sup>3</sup> Item 4-9.

<sup>4</sup> Item 6.

Applicant's attorney advised him to address his debts through a Chapter 13 "wage earner's" bankruptcy, in which his debts would be paid under the control of the bankruptcy court. In June 2010, the attorney informed Applicant that he was not eligible for a Chapter 13 bankruptcy, and he advised Applicant to consult with an attorney who could assist him in a Chapter 11 bankruptcy.<sup>5</sup>

After researching Chapter 11 bankruptcies, Applicant decided to address his debts outside bankruptcy. He entered into a loan-modification agreement with the mortgage company holding the mortgage on his home. The lower monthly payments freed up funds that Applicant was able to use to address his delinquent debts.<sup>6</sup>

In July 2010, Applicant contracted with a law firm to assist him in resolving his debts. The contract called for Applicant to pay \$1,156 per month, starting August 2010. The law firm would negotiate settlements with his creditors and pay the settlement out of the funds that accrued after the firm took their fees. Applicant has established that he has paid the law firm \$1,156 every month from August 2010 through September 2011. The law firm reported the balance on the account was \$9,626 as of October 19, 2011. The law firm indicated they were working on settling Applicant's three largest unsecured debts first, which are all owed to the same credit card company (SOR ¶ 1.d - \$16,000; SOR ¶ 1.f - \$20,000; and SOR ¶ 1.g - \$14,000). The law firm stated they "expect to resolve at least two of these three accounts within the next month or two." Applicant stated that he plans on resolving all his delinquent debts through the law firm.<sup>7</sup>

Applicant submitted documentation surrounding the resolution of most of his foreclosed mortgages in his response to DOHA interrogatories. There is only one foreclosed mortgage alleged in the SOR. Freddie Mac issued an IRS form 1099-C cancelling Applicant's debt for the mortgage alleged in SOR ¶ 1.i.<sup>8</sup>

Applicant has been steadily employed throughout his adult life. His real estate ventures were in addition to his full-time job. He also worked part-time when he could to provide additional income. His finances have stabilized. He is able to pay his mortgage and the monthly payments to the law firm, and he has a positive cash flow that can be used for savings and emergencies.<sup>9</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

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<sup>5</sup> Item 5, 6.

<sup>6</sup> Item 4, 6.

<sup>7</sup> Item 4; AE A-C.

<sup>8</sup> Items 4, 6.

<sup>9</sup> Items 4-6.

disqualifying conditions and mitigating conditions, which 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 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 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 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* 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 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 accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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.

A security clearance adjudication is not a debt collection procedure. It is a process designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant's financial problems were mainly related to his real estate investments. The housing market collapsed, and he was unable to maintain renters in his properties. The collapse of the real estate market was outside his control. However, all investments carry risk, some more so than others. Housing markets have soared in the past and collapsed, and they will likely do so again. I find the conditions that resulted in Applicant's financial problems were not largely beyond his control. AG ¶ 20(b) is not applicable.

Applicant has received some financial counseling. His mortgaged properties have been addressed through sales, short sales, or an IRS form 1099-C. He has consistently paid \$1,156 per month to a law firm to assist him in settling his debts. He had a \$9,626 balance with the law firm as of October 19, 2011, which the law firm planned to use to start settling his debts. I find that Applicant has made a good-faith effort to pay his unsecured debts. AG ¶ 20(d) is applicable to his unsecured debts. He does not receive full mitigation under AG ¶ 20(d) because he did not pay his mortgage debt, it was cancelled. A creditor's decision to cancel a debt does not equate to a good-faith effort on Applicant's part to pay or otherwise resolve any deficiency owed on his foreclosed mortgage.<sup>10</sup> Applicant's financial situation is far from perfect because he still has a large amount of debt. However, he has sufficiently managed his finances to convince me that there are clear indications that his financial problems are being resolved and are under control. They occurred under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(c) are applicable.

### **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

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<sup>10</sup> The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [good-faith mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [good-faith mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

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. 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.

Applicant has been honest and candid about his finances. I believe he is sincere about resolving his remaining financial issues. As indicated above, an applicant is not required to establish that he has paid every debt listed in the SOR. All that is required is that an applicant establish a plan to resolve the financial problems and take significant actions to implement the plan. I find that Applicant has established a plan to resolve his financial problems and has taken significant action to implement that plan. His current financial situation does not constitute a security concern.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated 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:	FOR APPLICANT
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Subparagraphs 1.a-1.k:	For Applicant
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### **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.

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Edward W. Loughran  
Administrative Judge