



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-01271
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

March 7, 2011

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant was granted a bankruptcy discharge in July 2001 during the breakup of his first marriage. As of September 2009, Applicant and his current spouse owed a \$160,259 mortgage debt for a home in foreclosure, and they were 180 days past due on a \$6,082 installment loan debt that they had taken out in January 2009. On August 13, 2010, he paid \$1,006 on the installment loan to bring it current, but he does not intend to make payments on the defaulted mortgage for his previous residence. Clearance denied.

**Statement of the Case**

On August 3, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F, Financial Considerations, which provided the basis for its preliminary decision to deny him a security clearance. DOHA acted 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 on September 1, 2006.

Applicant acknowledged receipt of the SOR on August 10, 2010. He answered the SOR on August 19, 2010, and requested a decision without a hearing. On October 19, 2010, the Government submitted a File of Relevant Material (FORM) consisting of eight exhibits (Items 1-8). DOHA forwarded a copy of the FORM to Applicant and instructed him to respond within 30 days of receipt. No response was received by the November 26, 2010, due date. On December 13, 2010, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

### **Findings of Fact**

The SOR (Item 2) alleged under Guideline F, Financial Considerations, that subsequent to a July 2001 bankruptcy discharge (SOR 1.a), Applicant was seriously delinquent on two accounts. As of August 2010, he was 120 days or more past due on a \$6,092 installment loan (SOR 1.b), and his mortgage was foreclosed with a loan balance around \$160,000 (SOR 1.c). In his Answer (Item 4), Applicant did not dispute the bankruptcy or the debts, but he maintained there were extenuating circumstances and the loan in SOR 1.b was now current. After considering the Government's FORM, including Applicant's documentation submitted with his Answer, I make the following findings of fact.

Applicant is a 50-year-old engineering technician, who has worked for his current employer since September 2009. He retired from the United States Navy after serving 20 years on active duty. (Item 1, 6.) He has held several different jobs since leaving active duty, including as a mechanic, a kitchen manager, a pest control technician, a team leader, and a pipe shop supervisor, before his present employment. (Item 1.)

Applicant was married to his first wife from April 1982 to March 2003. When they separated around April 2001, they owed substantial debt, including a mortgage on their home that neither he nor his spouse could afford to pay. In order to keep the home until their divorce could be finalized, Applicant and his first wife filed for Chapter 7 bankruptcy in April 2001. They were granted a bankruptcy discharge in July 2001. (Item 4, 7, 8.) On their divorce in March 2003, Applicant's ex-wife was given \$36,000 of his retirement pay, payable to her at \$300 per month for ten years. (Item 4.)

In September 2006, Applicant married his current spouse. (Item 1.) In March 2007, he and his spouse took out a mortgage loan of \$163,000. (Item 7.) When they bought their home, Applicant had a roof inspector certify that the roof could withstand weather damage, and they insured the property. (Ex. 4, 5.) They were current in their mortgage payments through February 2008, but fell behind around 90 days as of May 2008 due to his spouse's unemployment.<sup>1</sup> Their financial pressures were alleviated when Applicant's spouse began working, and they brought the mortgage current. Around August 2008, the house sustained interior damage through the roof caused by heavy rains during a tropical storm. They filed a claim against their homeowner's insurance, which apparently covered damages to the

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<sup>1</sup>Applicant indicated in his Answer that his spouse was unemployed from April 2007 to September 2007 and from November 2007 to March 2008. (Item 4.) However, Applicant's October 2009 credit report (Item 7) indicates that they were delinquent in their mortgage from March through May 2008, and that they brought it current until December 2008.

interior but not the roof. On August 28, 2008, the insurance company asked them to obtain an evaluation of their roof from a roofing contractor, and at their expense, have the roofer repair any deficiencies found during the inspection. The evaluation and repairs were required to be completed within 90 days to continue their insurance coverage. The insurance underwriter also informed Applicant that if the conditions were attributable to hurricane damage, he should contact his agent. To prevent further damage to the property, they solicited bids for permanent repair of the roof. Because the design was no longer in accord with the state building codes, the roofing contractors recommended that the roof be replaced at a cost of \$10,000 to \$12,000. Applicant and his spouse did not have the funds, and he claims he had no collateral with which to secure a loan. (Item 4, 5.)

They notified their mortgage lender that they wanted to vacate the premises, and they stopped making their loan payments around December 2008. In January 2009, Applicant's spouse lost her job. They notified their mortgage lender that they wanted out of the residence as they could not afford the mortgage payments, which were around \$1,513. (Item 7.) They took out a joint installment loan of \$6,082 in January 2009, to be repaid at \$49 per month. (Item 7, 8.) Applicant told a Government investigator on December 3, 2009, that they opened the loan to help with the mortgage payments. (Item 5.) Yet his credit reports do not corroborate that he used any of the loan to make payments on his mortgage loan. (Item 7, 8.) In March 2009, Applicant and his spouse vacated the house because they could not afford to insure it and they were again behind in their mortgage payments. (Item 1, 4.) As of September 2009, the mortgage lender had initiated foreclosure proceedings. Their mortgage loan was \$15,130 past due on a balance of \$160,259. Also, they were \$393 past due on the installment loan. (Item 8.)

Applicant listed the defaulted mortgage on an Electronic Questionnaire for Investigations Processing (e-QIP) certified on October 6, 2009. He indicated that his previous residence could well be in foreclosure, although neither he nor his spouse had been formally notified that foreclosure had begun. (Item 1.) On December 3, 2009, Applicant was interviewed about the mortgage debt. He indicated that he and his spouse had tried to give the residence to their lender, who would not reclaim it. They decided that their only option was to walk away from the home. Applicant maintained that he was financially stable other than losing his home due to damage sustained during the tropical storm that was not covered by insurance. (Item 5.)

In response to DOHA inquiries about any efforts to resolve the delinquent mortgage and newer installment loans, Applicant indicated on April 14, 2010, that he and his spouse had no intent to reassume the mortgage due to the condition of the roof and their financial inability to replace it. He denied that he had received any invoices for the installment loan debt that was reportedly 180 days past due. Applicant provided DOHA with a personal financial statement reporting monthly income from his employment and retirement of \$4,279.54, and monthly expenses of \$2,459.80. He listed no debt payments, and only one asset, a car worth \$8,000. (Item 6.) Available credit records show that Applicant took out an automobile loan of \$9,804 in April 2007. He has been late in his payment seven times since he took out the loan. (Item 7.)

As of April 2010, Applicant was current in his car loan, which had a balance of \$5,286. He was \$639 behind in the installment loan, and \$24,209 past due on the mortgage loan for his previous residence. He was making \$68 monthly payments on time on his student loan balance of \$4,340. He had no other outstanding debts on his credit record. A couple of unsecured loans taken out in 2007, for \$6,000 and \$3,500, were paid off. (Item 7.) In July 2010, Applicant's spouse began receiving disability pay (Item 4.), although there is no evidence as to the amount. On August 13, 2010, Applicant paid \$1,006 on the installment loan debt in SOR 1.b. He indicated that it was not until he received the SOR that they were able to contact the creditor and arrange for payment. They had been operating under the impression that the mortgage lender had rolled the installment loan into the mortgage as part of their mortgage saver program. (Item 4.) On August 19, 2010, he indicated that he had set up monthly payments to address the remaining balance (Item 4.), but he provided no specifics and no corroborating documentation.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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, 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 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 that

the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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, 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 and his first wife filed for bankruptcy in April 2001 because they could not separately manage to pay their combined debt, including their mortgage. AG ¶ 19(a) and ¶ 19(c) are clearly implicated by the need to file for bankruptcy to save their home for their divorce settlement, and by Applicant’s recent defaults of the mortgage and personal installment loans opened with his current wife.

Applicant’s decision to walk away from his house and mortgage obligation is difficult to mitigate 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.” While he and his spouse faced financial pressures because of circumstances beyond their control (see AG ¶ 20(b), *infra*), his disregard of this legal obligation casts doubts on his financial judgment. Furthermore, Applicant demonstrated recent irresponsibility by failing to address the installment loan in SOR 1.b until after the SOR was issued. And while it had been nine years since his bankruptcy, it cannot be assessed in isolation from his more recent financial difficulties.

AG ¶ 20(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,” applies in part. Marital separation was a factor in Applicant’s 2001 bankruptcy. Yet without evidence about his income, and other indebtedness at the time, I am unable to fully apply AG ¶ 20(b) to mitigate the bankruptcy. Concerning his recent mortgage default, Applicant’s un rebutted explanation is that a roofing inspector certified the roof when they bought the property in March 2007. And the damage to their roof and interior were caused by a tropical storm in August 2008, which was beyond their control, even if Applicant can be imputed to have known that his homeowner’s policy did not cover the roof. However, Applicant did not fully establish a nexus between his financial problems and the storm damage. His homeowner’s insurance covered interior repairs. And he presented no evidence of any payments that he made to repair the roof. Despite his full-time employment as a pipe shop foreman, his military retirement pay, and the fact that his spouse had been working since March 2008, they were unable to borrow the funds to replace the roof because they had no collateral. Applicant also has a history of late payments on his car loan. So there is some indication of financial instability unrelated to the storm damage. And notwithstanding his expressed concerns about his and his spouse’s health and safety due to the “increasing damage to the interior of the house making it unlivable,” Applicant and his spouse remained in the home for another six months after the storm. They continued to make their mortgage payments until December 2008.

Rather, it appears that the loss of his spouse’s employment in January 2009 had a more significant impact on their finances. Unemployment is a factor that implicates AG ¶ 20(b), and it explains their delinquency on the loan in 2009. Applicant acted responsibly in notifying his mortgage lender that they could no longer afford his monthly mortgage payment. According to Applicant, he was told by his lender that no action would be taken until they were 90 days in default. But he presented no evidence from the lender showing that they would be offered a loan modification program, and the lender initiated foreclosure on the property. Applicant’s decision to default is difficult to justify without assurances from the creditor that it will accept the property in full settlement of the mortgage balance. And there are no such assurances in the record. Furthermore, there are no circumstances of record that mitigate his delinquency on the installment loan in SOR 1.b. Available information indicates that the loan was taken out in January 2009, with repayment at a minimal \$49 per month. When he was asked about that loan in December 2009, Applicant stated that it was a loan to help with the mortgage payments on his residence. (Item 5.) In April 2010, he told DOHA that the loan was an attempt by his mortgage lender to prevent foreclosure and that he had not received any invoices from the creditor. (Item 6.) In answer to the SOR, Applicant explained that the loan was established by their mortgage lender as part of its mortgage saver program for him and his spouse to repay the four-month shortfall due to his spouse’s unemployment in 2008. Applicant maintained that he and his spouse were operating under the assumption that their mortgage lender had rolled the loan into their mortgage. (Item 4.) Irrespective of whether the loan was opened to address their mortgage delinquency in 2008 or instead in 2009 (as shown in his credit reports), there is no record of any payments on the loan before August 2010. If the debt was incurred in a mortgage saver’s program, he failed to inquire about his payment responsibilities. As of April 2010, he reported monthly discretionary funds in excess of \$1,000, so he had the means to address the debt. AG ¶ 20(b) does not apply to the loan in SOR 1.b.

Despite Applicant's August 2010 payment of \$1,006 on the installment loan identified in SOR 1.b, it would be premature to apply either AG ¶ 20(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," or AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant has not been in contact with his mortgage lender about the status of his loan. The debt remains on his credit records with an outstanding balance of \$160,259. His payment of \$1,006 on the installment loan is viewed favorably, but it appears to have been prompted solely by the SOR. Applicant maintains that it was not until he received the SOR that he was able to contact the creditor and obtain an account number. However, the evidence shows Applicant was on notice as of DOHA's interrogatories in April 2010, if not during his interview in December 2009, that the Government was concerned about the debt. Assuming that Applicant has arranged to pay that debt, the financial issues would still not be fully mitigated because of the sizeable mortgage debt.

### **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 his conduct and all relevant circumstances in light of 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 took advantage of a financial fresh start afforded by a Chapter 7 bankruptcy discharge in July 2001. He managed his finances responsibly until 2008, when his spouse's unemployment caused them to fall behind in their mortgage. There were extenuating circumstances that led to the mortgage delinquency, and Applicant is justifiably proud of his years of dedicated service in the United States military and as a defense contractor employee. But Applicant's choice to walk away from this obligation, without taking steps to negotiate repayment arrangements or creditor abrogation of his liability, is inconsistent with the good judgment that must be demanded of those persons with access to classified information. Based on the information reviewed, I am unable to conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance at this time.

### **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:                            Against Applicant

Subparagraph 1.b:                            Against Applicant

Subparagraph 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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Elizabeth M. Matchinski  
Administrative Judge