



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



In the matter of: )  
)  
) ISCR Case No. 10-01769  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: Christopher Graham, Esq.

December 30, 2011

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated foreign influence security concerns, but he has not mitigated financial considerations concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 19, 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) and Guideline B (foreign influence). 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 on September 16, 2011, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on October 6, 2011. DOHA issued a notice of hearing on October 19, 2011, scheduling

the hearing for November 18, 2011. The case was reassigned to me on November 18, 2011. The hearing was convened as scheduled. The case was continued until December 20, 2011. DOHA received the hearing transcript of the first session (Tr.1) on November 29, 2011. The transcript of the second session (Tr.2) was received on December 28, 2011.

## **Procedural and Evidentiary Rulings**

### **Evidence**

The Government offered Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified and offered Exhibits (AE) 1 through 11, which were admitted without objection.

### **Motion to Amend SOR**

Upon my own motion, I amended the SOR by adding allegations under Guideline F, as follows:

1.e. You have failed to file your state and federal income tax returns, as required, for tax years 2009 and 2010.

1.f. You owe the Internal Revenue Service for delinquent income taxes in excess of \$11,000.

Department Counsel did not object to the amendments. Applicant's objection to the addition of SOR ¶ 1.e was overruled. Applicant did not object to the addition of SOR ¶ 1.f. The hearing was continued until December 20, 2011, to provide Applicant the opportunity to address the amended allegations.

## **Findings of Fact**

Applicant is a 48-year-old employee of a defense contractor. He has worked continuously for defense contractors for more than 20 years. He is applying to retain his security clearance, which he has held since at least 1989. He has a bachelor's degree. He has never been married and has no children.<sup>1</sup>

Despite steady employment and earning a good salary, Applicant has had financial problems for several years. Applicant attributed his financial problems to helping his sick mother. His mother was diagnosed with cancer in 2008. She passed away in 2009. There were expenses related to her funeral and her estate. He also provided financial support to a Brazilian citizen, who was his fiancée at the time. Applicant made 16 trips to Brazil between 2003 and 2011. Applicant and the Brazilian woman have since separated, and they are no longer engaged.<sup>2</sup>

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<sup>1</sup> Tr.1 at 18-21, 51; GE 1.

<sup>2</sup> Tr.1 at 22, 25-30, 36-38, 49-50; Tr.2 at 15; Applicant's response to SOR; GE 1, 2; AE 8-11.

The SOR, as amended, alleges a delinquent debt with a balance of \$5,194, past-due first and second mortgages, \$4,608 in delinquent property taxes, delinquent federal income taxes in excess of \$11,000, and that Applicant failed to file his 2009 and 2010 state and federal income tax returns.

Applicant purchased a home in 1997 for about \$168,000. He refinanced the mortgage more than once and took out a home equity loan. He refinanced the mortgage for about \$350,000 in 2006. He took out about \$54,000 in a home equity loan in 2007. He stopped paying the mortgage and the home equity loan in 2009. Both loans are owned by the same lender. The home equity loan was charged off for \$62,322. Applicant admitted that the mortgage was \$78,670 past due, with a balance of \$403,000. The most recent credit report indicated the balance on the mortgage had increased to more than \$419,000. The property had been appraised, before the decline in the real estate market, at \$450,000. It was recently appraised at \$358,000. The lender's attempt to foreclose on the property in 2009 was stopped by legal action taken by Applicant's real estate attorney. Applicant's attempts to resolve the loans through a short sale were unsuccessful. He submitted a deed in lieu of foreclosure request to the lender. The lender acknowledged the request on September 7, 2011. The lender requested that Applicant provide it with his two most recent income tax returns by September 19, 2011. Applicant stated he has been in frequent contact with the lender. There was a problem with the title to the home that should have been discovered before he bought the property. He stated the title problems held up the approval of the deed in lieu of foreclosure, but the title issues have been resolved. He is waiting for the bank's answer to the deed in lieu of foreclosure request.<sup>3</sup>

Applicant's delinquent property taxes are alleged in SOR ¶ 1.d. He has brought his property taxes current. He stated that he has a \$250 per month payment plan for the \$5,194 delinquent debt alleged in SOR ¶ 1.a. He recently made a payment toward the debt, leaving a balance of \$4,628.<sup>4</sup>

Applicant withdrew funds from his 401(k) retirement account in 2007 through 2009, which generated tax consequences. He has been paying his 2006 through 2008 federal income taxes through an installment agreement. He apparently satisfied his income tax debt for 2006. He did not file his state tax returns for 2008 through 2010 until December 7, 2011. He also filed his 2009 and 2010 federal income tax returns on December 7, 2011. His 2009 federal tax return showed he owed an additional \$9,024. His 2010 federal tax return showed he owed an additional \$7,437. Applicant did not pay his 2009 and 2010 federal taxes when he filed the returns. He submitted an installment agreement request to the IRS, in which he stated that he owed \$27,811 for tax years 2007 through 2010. He offered to pay \$464 per month. It does not appear that Applicant owes the state any additional money.<sup>5</sup>

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<sup>3</sup> Tr.1 at 22-25, 31-32, 44-47, 53; Tr.2 at 9-12; Applicant's response to SOR; GE 1-4; AE 2, 6.

<sup>4</sup> Tr.1 at 21-22, 25; Applicant's response to SOR; GE 2-4; AE 3, 5, 6.

<sup>5</sup> Tr.1 at 32-35, 39-43, 47-48; Tr.2 at 5-8, 12-15; GE 2; AE 7-10.

Applicant admitted that he “made some poor financial choices.” He stated that he “decided to turn [his] life around and really focus on [his] finances.” He received financial counseling. He stated his finances are in much better shape. He has cut down on his spending. He is no longer supporting the woman in Brazil. He moved to an area with a lower cost of living. He stated that he intends to pay his debts, including his income taxes. He will receive a raise and a bonus, and he stated that the extra income will be used to pay his debts.<sup>6</sup>

Applicant submitted a number of awards and letters attesting to his excellent job performance, intelligence, work ethic, professionalism, security awareness, judgment, responsibility, and integrity. The authors of the letters recommend that Applicant retain his security clearance.<sup>7</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 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.

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<sup>6</sup> Tr.1 at 40-43; Tr.2 at 8-9; AE 9.

<sup>7</sup> AE 1, 4, 11.

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. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local tax returns as required or the fraudulent filing of the same.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. He did not file his state and federal tax returns as required. 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.

Applicant's support for his sick mother, and his payment of expenses related to her funeral and her estate, constitute conditions that were beyond his control. AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant's financial problems went far beyond those generated by his care for his mother. He admitted that he "made some poor financial choices." He went to Brazil 16 times between 2003 and 2011. He failed to pay his income taxes, and he did not file his income tax returns.

Applicant has brought his property taxes current. He has a \$250 per month payment plan for the \$5,194 delinquent debt alleged in SOR ¶ 1.a. He recently made a payment toward the debt, leaving a balance of \$4,628. He received financial counseling; he separated from his Brazilian fiancée; and he moved to an area with a lower cost of living. He is attempting to resolve his mortgages with a deed in lieu of foreclosure. He recently filed his state and federal income tax returns. He stated that he has been paying his federal income taxes through an installment agreement. These are all positive steps. However, he estimates that he still owes the IRS more than \$27,000, and the mortgages at this time are still unresolved.

I find that AG ¶ 20(d) is applicable to the paid property taxes and the bank debt with the payment plan, as alleged in SOR ¶¶ 1.a and 1.d. AG ¶ 20(c) is applicable because Applicant has received financial counseling. It is also applicable to the income tax returns that have been filed. There is insufficient evidence for a determination that Applicant acted responsibly and made a good-faith effort to repay or otherwise resolve his other delinquent debts. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶ 20(b) is partially applicable. There are no other mitigating conditions applicable to his other unpaid debts. I find that financial concerns remain despite the presence of some mitigation.

## **Guideline B, Foreign Influence**

The security concern for foreign influence is set out in AG ¶ 7 as follows:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and

Applicant is no longer engaged to a foreign citizen. Any foreign influence security concerns raised by that connection no longer exist. SOR ¶¶ 2.a through 2.c are concluded for Applicant.

## **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 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 Guidelines F and B in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's favorable character evidence. He is taking some positive steps toward resolving his financial problems, but he owes the IRS more than \$27,000, and he has delinquent mortgages that have yet to be resolved.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated foreign influence security concerns, but he has not mitigated financial considerations 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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.c:	Against Applicant
Subparagraphs 1.d-1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a-2.c:	For 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge