



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



In the matter of:	)	
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	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline H. Jeffreys, Esquire, Department Counsel  
For Applicant: *Pro se*

May 11, 2011

**Decision**

CURRY, Marc E., Administrative Judge:

As of January 2010, Applicant’s home mortgage was delinquent, in addition to the mortgages on three investment properties. These problems were caused when his wife lost her job, causing them to deplete cash reserves that they had earmarked for unanticipated real estate expenses. Applicant has successfully modified his home loan and negotiated short sales on two of the investment properties. Although the third investment property was foreclosed, he is not liable for the deficiency. Applicant has mitigated the financial considerations security concern. Clearance is granted.

**Statement of the Case**

On July 21, 2010, 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 September 9, 2010, admitting all of the allegations. He requested a hearing, and the case was assigned to me on November 5, 2010. On December 1, 2010, a notice of hearing was issued scheduling the case for December 13, 2010. The hearing was conducted as scheduled. I received six Government exhibits, marked Government Exhibits (GE) 1 through 6, and nineteen Applicant exhibits, marked Applicant's Exhibits (AE) A through S. Applicant and his wife testified. At the close of the hearing, I left the record open to allow Applicant to submit additional documents. Within the time allotted, he submitted two exhibits received as AE T and U. DOHA received the transcript (Tr.) via e-mail on December 21, 2010.

### **Findings of Fact**

Applicant is a 65-year-old married man with one adult child. He has a high school education and has taken some college courses. Applicant is a network engineer. (Tr. 90) For the past 13 years, he has worked for a defense contractor. He worked for his previous employer for 20 years, before retiring. (Tr. 90)

Applicant is well-respected on the job. According to his supervisor, he "responds quickly to customer requests . . . staying ahead of requirements in the office," and generally performing in a "noteworthy" manner. (AE Q, Attachment 4 at 4)

In approximately 2006, Applicant and his wife decided to invest in real estate, with the goal of supplementing their retirement income. (AE U at 2; Tr. 28) Over the next two years, they purchased four rental properties. (AE U at 2)

The first investment property Applicant and his wife purchased is not listed in the SOR because they sold it in March 2007 and made a \$39,000 profit. (AE U at 2) The exact purchase date is unknown from the record. Applicant and his wife purchased their second investment property (SOR subparagraph 1.c), in June 2006 for \$107,000. (*Id.*) They paid 20 percent of the purchase price at closing, and financed the remainder with an interest-only loan. (Tr. 50)

Applicant and his wife purchased a third property, which is not alleged in the SOR, in December 2006 for \$238,000, and their fourth property (SOR subparagraph 1.b) for \$520,000. (*Id.*) They applied the profit from the sale of their first investment property toward the down payments on their subsequent real estate purchases. (Tr. 93)

Applicant and his wife consulted a financial planner before deciding to invest in real estate. Based upon his advice, they opened a savings account with cash in reserve totalling approximately 8 percent of their overhead. (Tr. 56) At the time they purchased the properties, the combined salaries of Applicant and his wife were \$142,000 per year. (Tr. 55)

In September 2008, Applicant's wife experienced severe knee problems that ultimately required multiple surgeries, including a partial knee replacement procedure. (Tr. 23, 27) While she was struggling with these problems, her employer laid her off. She has been unable to obtain a job since then.<sup>1</sup> (Tr. 23)

Limited to one income, Applicant and his wife were unable to manage their real estate expenses. Consequently, when problems typical to rental property management arose (i.e., expensive repairs and high tenant turnover), they gradually depleted their cash reserves and began struggling to pay their home mortgage. (Tr. 53) At or about the time Applicant and his wife were having these problems, the real estate market collapsed causing the value of their investment properties to depreciate, and impeding their efforts at selling them. (Tr. 22, 73)

By the end of 2008, Applicant and his wife consulted an attorney to help them save their investment properties from foreclosure. (AE Q, Attachment 1, Letter from Attorney) Initially, their attorney attempted to obtain loan modifications of their rental property mortgages. (Tr. 24) The banks rejected these requests. (Tr. 24) Soon, "it got down to the point that [Applicant and his wife] were just trying to save their primary home." (Tr. 24 - Testimony of Applicant's Wife)

Applicant and his spouse then pursued a modification of the loan on their primary residence. The lender told them that it would not consider a loan modification "unless [they] were delinquent in payments." (Tr. 32) Consequently, in order to qualify for the loan modification, Applicant and his wife made no payments on their primary home mortgage for the next three months. (Tr. 33)

The lender approved Applicant's loan modification request on his primary home in August 2010. (Tr. 84; AE U at 3) The lender reduced the loan's interest rate to a fixed rate of 3.15 percent to be satisfied over 30 years. (Tr. 84-85) The delinquency amount plus interest was rolled into the new loan. (Tr. 27) Applicant and his wife have been making mortgage payments without interruption since the loan modification. (Tr. 64)

On September 8, 2010, the short sale of the property listed in SOR subparagraph 1.b was approved by the bank. (AE T at 2) Per the terms of the short sale agreement, the property sold for less than the purchase price, and the lender agreed to release Applicant and his wife from any obligations on the deficiency. (*Id.*)

Applicant and his wife's efforts at selling the investment property listed in SOR subparagraph 1.c. were unsuccessful. Ultimately, the lender foreclosed the property in July 2010 (Tr. 56) Applicant retained an attorney to ascertain whether he owed a deficiency. Through Applicant's attorney, he confirmed that he owes no deficiency

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<sup>1</sup>Among other things, Applicant's wife has taught school and worked in retail. Both positions require frequent standing that she was unable to do because of her knee problems. (Tr. 32) Also, she has been unsuccessful gaining an administrative assistant position similar to the one she lost.

because the lender did not file for a deficiency judgment within the time as mandated by state law. (AE I)

Applicant short sold the property that was not alleged in the SOR in August 2010. (AE T at 5) Per the settlement agreement, the lender considers Applicant's mortgage to be "paid in full." (AE T at 6)

Applicant and his wife maintain a budget. They have approximately \$1,700 of monthly after-expense income.<sup>2</sup> (Tr. 63) Also, Applicant has \$6,000 in a savings account, owns \$2,000 of stocks in the company from which he retired, and has approximately \$237,000 of combined total assets from his 401k account and his annuity. (GE 2 at 10)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to introductory explanations for each guideline, 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, these guidelines 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.

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<sup>2</sup>Although Applicant's wife remains unemployed, she receives approximately \$1,460 of monthly unemployment compensation.

## 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).

Between 2008 and 2010, the mortgages on Applicant’s primary property and his investment properties became delinquent. Applicant’s inability to pay the mortgage on one of his investment properties resulted in a foreclosure. AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations,” apply.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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 begin to struggle financially until his wife suffered a disability that led to the loss of her job. Needing both incomes to manage their properties, they depleted their property management cash reserve, and subsequently became unable to pay any of their mortgages.

Applicant dealt with this problem proactively, retaining an attorney within two months of when his wife lost her job, and attempting to negotiate a loan modification on his home mortgage. Also, he attempted to sell his investment properties, a process hindered by the severe real estate market collapse. By September 2010, Applicant had successfully modified his primary home loan, and short sold three of his investment properties, including one not alleged in the SOR. Although his efforts at short selling one of his properties was unsuccessful, and the bank foreclosed it, Applicant confirmed through another attorney whom he retained that he was not responsible for any deficiency.

Currently, Applicant has no delinquent debt, has more than \$1,500 of after-expense monthly income, and more than \$200,000 in savings and investments. He is

having no problems managing his finances. I conclude all of the mitigating conditions 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 not caused by extravagant spending. Instead, they were the result of his wife's job loss rendering them unable to manage their investment properties. As soon as Applicant realized he was going to have a problem managing his expenses, he took several proactive steps, as discussed above, to resolve his mortgage liabilities. Considering Applicant's steps to rehabilitate his finances, his current financial stability, and the multiple positive character references, I conclude Applicant has mitigated the security concern.

### **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.c:	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

