



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 10-03420
	)	
Applicant for Security Clearance	)	

**Appearances**

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

July 21, 2011

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant obtained eight mortgages totaling in excess of \$780,000 for four investment properties as part of a fraudulent investment opportunity. The mortgages were foreclosed, but mortgage delinquencies totaling approximately \$711,892 are still attributable to the Applicant. Even though state law may preclude enforcement of those debts, Applicant’s participation in the investment opportunity and his failure to try to pay or otherwise resolve his debts in the past five years reflect an unacceptable degree of poor judgment. Based upon a review of the pleadings, exhibits, and transcript, Applicant’s request for a security clearance is denied.

**Statement of the Case**

On May 12, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his job with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA)

issued to Applicant interrogatories<sup>1</sup> to clarify or augment information obtained in his background investigation. Based on the results of the background investigation and Applicant's responses to the interrogatories, DOHA adjudicators could not make a preliminary affirmative finding<sup>2</sup> that it is clearly consistent with the national interest to continue Applicant's access to classified information. On November 30, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise security concerns addressed in the adjudicative guidelines (AG)<sup>3</sup> for financial considerations (Guideline F).

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on February 11, 2011. Pursuant to a Notice of Hearing issued on March 16, 2011, I convened a hearing in this matter on April 6, 2011. The parties appeared as scheduled. DOHA received a transcript (Tr.) of the hearing on April 14, 2011. The Government presented five exhibits identified as Government Exhibits (Gx.) 1 - 5, all of which were admitted into the record.<sup>4</sup> Applicant testified and submitted one exhibit that was admitted without objection as Applicant Exhibit (Ax.) A.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owed \$711,892 for five unpaid mortgages (SOR 1.a - 1.e). In response, Applicant denied all of the SOR allegations (Answer). Attached to his Answer were a three-page explanatory statement by the Applicant and four other pages of related information. All of his attachments were included in the record without objection. (Tr. 10) Having reviewed Applicant's response to the SOR, the transcript, and exhibits, I make the following findings of relevant fact.

Applicant is 36 years old and is employed by a defense contractor in an information systems technology (IT) position that requires him to have a security clearance. He has worked for his current employer since April 2009. Since May 2000, he has worked in IT for various employers, including state and county government agencies. Applicant graduated from college in 1997 with a bachelor's degree in electronics and computer technology. When Applicant was in high school, he joined the U.S. Army Reserve as a way to pay his college tuition. He served in the Army Reserve from December 1991 until December 2000. (Answer; Gx. 1)

Applicant and his wife were married in June 2000. They have two children, ages six and four. (Gx. 1) Applicant's wife runs a medical supply company they opened in

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<sup>1</sup> Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

<sup>2</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

<sup>3</sup> The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006). Pending official revision of the Directive, they take precedence over the guidelines listed in Enclosure 2 to the Directive.

<sup>4</sup> I overruled Applicant's objection to the admission of Gx. 3. (Tr. 22 - 27)

2010. The company realized about \$17,000 in profits last year, but no income was taken from the business. (Tr. 34, 64, 68 - 69)

From 1998 until 2002, Applicant was a client of a financial planner (Ms. A) who he knew as a fellow alum of the university he attended. Applicant was happy with the services she provided and did well financially during their business relationship. (Answer; Gx. 2; Tr. 33 - 34) In 2005, Ms. A approached Applicant with a real estate investment proposal in which Applicant was asked to obtain mortgages for the purchase of four investment properties. Ms. A could not obtain the mortgages herself as she already owned as many as 12 such properties and her credit was "maxed out." (Answer; Gx. 2; Tr. 35)

In exchange for the use of Applicant's then-excellent credit, and for his agreement not to sell the properties for one year, Applicant and his wife would receive \$5,000 from the sale of each property for a total return of \$20,000. Applicant also averred that they wanted to get into the real estate investment business. Ms. A agreed that if they entered into this venture with her, she would teach them what they needed to know so they could get rich. (*Id.*)

To purchase the properties, Applicant obtained eight mortgages – a first and second mortgage on each – totaling in excess of \$780,000. When they applied for these loans, they overstated their income, but the record does not show by how much. (Gx. 2; Tr. 79 - 82) In September 2005, less than a month after applying for financing, Applicant and his wife closed on all four properties in one day. At the closing, Applicant signed all of the papers that Ms. A and the title company representative presented, even though there was information missing. (Tr. 36, 41 - 46) Applicant and his wife were not on the title to any of the properties. Ms. A's name was not on any of the promissory notes for the eight mortgages. Applicant knew that he and his wife had "no legal claim" to any of the properties, which they have never seen. (Answer; Gx. 2) Applicant thought that Ms. A would make the payments on the promissory notes from funds received from rental income, and that she would sell them a year later.

About 30 days after closing on the properties, Applicant began receiving calls from the lenders seeking payments on the mortgages. Applicant tried working with Ms. A to determine why the payments had not been made, but it soon became apparent to him that Ms. A had duped Applicant and left him as the sole party responsible for paying eight mortgages. (Answer; Gx. 2; Tr. 51 - 52) Applicant's income has never been enough for him to make any of the required payments. The eight mortgages in Applicant's name have since been foreclosed, and five of those delinquencies (SOR 1.a - 1.e) are listed on Applicant's credit history. Applicant also disclosed those delinquencies on his e-QIP. (Gx. 1; Gx. 3; Gx. 4; Gx. 5)

At the time of her dealings with Applicant, Ms. A held state and national certifications from the Certified Financial Planners Board. However, after a disciplinary and ethics hearing in March 2008, her certifications were revoked because she advised a client (not the Applicant) to invest his 401(k) retirement account in her company's real estate investment interests without disclosing the risks involved or her own conflict of interest in the transaction. (Attachment to Applicant's Answer)

Applicant has not paid or otherwise attempted to resolve his mortgage obligations. He and his wife called the FBI to report the fraud perpetrated by Ms. A, but they were advised that nothing could be done because the evidence consisted of loan applications signed only by Applicant and his wife. They inquired of private attorneys about suing Ms. A, but were told that it would cost about \$30,000 to pursue legal action with a low probability of success. (Answer to SOR; Tr. 53, 58 - 61) Applicant and his wife were also the victims of identification theft around the time of their dealings with Ms. A. They reported that matter to the local police, but there was no further action taken. (Tr. 61 - 63)

After the SOR was issued, Applicant sought legal advice in the state where these transactions occurred and where the properties are located. His attorney opined that the applicable statute of limitations for commencing a civil action to enforce Applicant's debts has expired. (Tr. 39 - 40; Ax. A) My review of the state statute cited by Applicant's attorney supports that opinion and shows that Applicant may not be legally obligated to pay the mortgage debts cited in the SOR.

In 2003, Applicant and his wife bought their own home for about \$180,000. Applicant acknowledged at the hearing that the loan application and purchase closing process they experienced when they closed on the four investment properties was significantly different than what they experienced with their own home mortgage. Applicant also acknowledged that he understood the lending process and the importance of protecting one's personal credit. (Tr. 43 - 44) The process through which he bought his own home took several months for financing approval, inspections, and preparation of the title and financing documents. Also, Applicant did not overstate his income when he applied for his home mortgage. (Tr. 50 - 52)

Applicant and his wife sold their home at a loss and, in August 2007, he moved his family in with his in-laws, with whom they lived until about May 2008. At that time, they moved into their current residence. When Applicant was interviewed in July 2009 by a Government investigator, Applicant and his wife made about \$6,800 each month. After expenses, they still had about \$3,700 remaining each month. (Gx. 2)

Applicant currently earns about \$2,400 monthly, which is the sole income for his family while they grow their medical supply business. Applicant and his wife decided to change locations and jobs to have more time with their children. (Tr. 63 - 69) Applicant and his wife are meeting their current obligations, and they have incurred no new unpayable debts. They have very little money remaining each month. Applicant had no significant unpaid debt or other financial problems before he embarked on his real estate investment scheme in 2005 and 2006.

## Policies

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>5</sup> for an applicant to either receive or continue to have access to classified information. Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>6</sup> and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

The Government bears the initial burden of producing admissible information on which it based its preliminary decision to deny or revoke an applicant's security clearance. Additionally, the Government must be able to prove controverted facts alleged in the SOR.<sup>7</sup> If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.<sup>8</sup> A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.<sup>9</sup>

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<sup>5</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>6</sup> Directive. 6.3.

<sup>7</sup> Directive, E3.1.14

<sup>8</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>9</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

## Analysis

### Financial

The security concern about Applicant's finances, as stated in AG ¶ 18, is that:

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.

Applicant's denials required the Government to present substantial admissible evidence to prove the SOR allegations as controverted issues of fact. The Government's information was sufficient to do so. The facts established showed that Applicant obligated himself to pay about \$780,000 in mortgage loans for four properties. He did not do so, and it is not controverted that the mortgages became delinquent and were foreclosed in 2005 or 2006. In the ensuing five years, Applicant did not act to pay or otherwise resolve his mortgage obligations. The debts alleged in the SOR are still attributable to the Applicant in his credit reports, and they most likely represent remainders due after the properties were resold. Thus, available information requires application of the disqualifying conditions listed at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*), and AG ¶ 19(c) (*a history of not meeting financial obligations*).

By contrast, none of the AG ¶ 20 mitigating conditions apply. In what was essentially an affirmative defense to the Government's information, Applicant relied on his assertion that he was deceived by Ms. A, on his claim that the mortgages on the four properties were not his obligation, and on his claim that the statute of limitations has relieved him of these obligations. However, available information shows that Ms. A convinced Applicant to obtain mortgages far in excess of what he could afford; that he knowingly misrepresented his income to obtain the mortgages; that he did not exercise any due diligence in assessing the properties or reviewing the papers he signed; that he did not insist on any collateral for the use of his good credit; and that Ms. A was not obligated to repay the loans or to give anything in return to the Applicant.

Given the disciplinary actions against her, it appears likely that Ms. A deceived Applicant. However, Applicant did not present any information to show that Ms. A received any money or other benefit from their relationship. Further, Applicant presented nothing to support his claim that the mortgages were not his obligation. At the same time, he admitted that only he and his wife signed the promissory notes but were not named in the titles. None of these circumstances presented here were beyond Applicant's control, as it was his own bad judgment that caused him to enter into this arrangement. Thus, the mitigating condition at 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*) does not apply.

I have also considered the mitigating condition at 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 it is not likely that Applicant will venture into such an arrangement in the future, the adverse impact on his judgment and reliability continues through his failure to try to resolve these financial problems sooner, and by his reliance on the statute of limitations to avoid his obligations. Accordingly, AG ¶ 20(a), as well as the mitigating conditions at 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*) and AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) do not apply.

Applicant also did not support his claim that the debts alleged are not his. Thus, the mitigating condition at AG ¶ 20(e) (*the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue*) does not apply.

Applicant is likely no longer obligated to repay the debts alleged. Thus, his current finances do not put him at risk of engaging in illegal or other inappropriate conduct to resolve his past-due delinquencies. However, poor judgment that leads to financial problems may also indicate defective judgment and reliability in other facets of one's suitability for access to classified information. That is the case here. Applicant engaged in reckless decision making when he ignored overt warning signs about the legitimacy of his agreement with Ms. A. He has not presented sufficient information to mitigate the security concerns raised by his conduct in this regard.

### **Whole-Person Concept**

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines F. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a).

Applicant is 36 years old and has been steadily employed in the IT industry since at least May 2000. He also served in the Army Reserve between 1991 and 2000. Applicant is also a dedicated husband and father who provides for his family. All of this information suggests that Applicant is a mature adult living a steady and responsible lifestyle. Available information also showed, however, that his attempt to make money through real estate investing was born of carelessness and a willingness to take shortcuts. The totality of the information bearing on what happened suggests that Appellant was deceived by Ms. A, and he claims that he should not be held accountable for her actions. But the same information also shows that Applicant knew or should have known that what he was agreeing to was a poorly-considered venture. Applicant was either exceedingly naive, or he tried and failed to make a fast dollar through his own improper conduct. Either interpretation raises a security concern Applicant was required to mitigate. He did not do so and significant doubts remain about his judgment

and reliability. Because protection of the national interest is the principal aim of security clearance decisions, those doubts must be resolved against the Applicant.

### **Formal Findings**

Formal findings 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
Subparagraphs 1.a - 1.e:	Against Applicant

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Request for security clearance is denied.

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MATTHEW E. MALONE  
Administrative Judge