



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



In the matter of: )  
)  
) ISCR Case No. 10-05738  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: Sarah Kneisel, Esq.

March 9, 2012

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

In January 2010 Applicant filed for Chapter 11 bankruptcy, listing \$73,000 in creditors holding unsecured priority claims; \$544,558 in unsecured nonpriority claims; and \$5,905,968 in secured liabilities. The SOR alleged that he has an additional \$3,095,379 in debts that were not included in the Chapter 11 filing. The bankruptcy is pending and the bankruptcy judge has not yet approved either the Disclosure Statement and/or the proposed Plan of Reorganization. Applicant failed to mitigate the Financial Considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 14, 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) effective after September 1, 2006.

Applicant answered the SOR on September 16, 2011, and requested a hearing before an administrative judge. The case was assigned to me on November 2, 2011. DOHA issued a notice of hearing on November 3, 2011, scheduling the hearing for November 22, 2011. Applicant requested a continuance and the hearing was rescheduled to December 1, 2011. On December 1, 2011, the hearing was continued again, based upon a request by Applicant. It was scheduled for December 20, 2011, and convened as scheduled. The Government offered Exhibits (GE) 1 through 8, which were admitted without objection. The Applicant offered Exhibits (AE) A through F, and testified on his own behalf. The record was held open for Applicant to submit additional information until close of business December 28, 2011. Applicant submitted one packet of post-hearing exhibits, identified as AE A and AE O (AE A through F are duplicates of the exhibits identified as AE A through AE F, admitted at the hearing), which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on December 30, 2011.

### **Findings of Fact**

The SOR alleged under Guideline F, Financial Considerations, that Applicant has liabilities totaling \$6,523,526, as listed in his January 11, 2010 Chapter 11 bankruptcy petition (including the debts listed in SOR 1.a.i-1.a.xxiii.). Additionally, it is alleged that he has an additional \$3,095,379 in delinquent debts (as listed in SOR 1.b through 1.r) as identified in credit reports dated October 9, 2009; November 6, 2009; and May 24, 2011. Applicant denied all of the allegations in his Answer. He asserted that he filed for Chapter 11 bankruptcy and had changed his spending habits. After considering the pleadings, exhibits, and testimony I make the following factual findings. (SOR; Answer; AE H; GE 5.)

Applicant is a 49-year-old employee of a defense contractor. He served in the Navy from 1980 to 2003. He achieved the rank of Lieutenant Commander. He held a clearance while in the Navy, without incident. From 2003 to at least 2008, he was employed as a lecturer at a post-graduate school. He has worked for a government contractor for the past three years. He has been married since 1986 and has four children, ages 16, 21, 22, and 23. (GE 1; AE B; Tr. 27-29, 65-66.)

During Applicant's military service, he started accruing real estate holdings and other property. He made his first real estate purchase in 1997. As his family expanded, he bought a second home for his family and rented the first property out. He then moved to another state, and acquired a third property in the new state. His family continued to live in the second property. He also purchased a "super yacht" and lived on it for an undisclosed amount of time, while living in the second state. By the time he left active duty in 2003, he held these three properties. (GE 5; Tr. 66-71, 95-98, 142, 153.)

From 2003 to approximately 2007, Applicant acquired approximately seven additional properties, in addition to the three he already owned. However, he did not

own all these properties at the same time. He sold three to purchase a larger, more expensive home. He lived in approximately five of the homes for more than one year, each. He bought at least four homes as investment properties. He testified that he purchased the majority of the properties with 20% down payments and 30-year fixed interest rates, although he admitted that two of the purchases had non-traditional mortgages. Each property was purchased with the help of a broker. Applicant also utilized a real estate attorney and a certified public accountant to assist him in his real estate investments. He acknowledged that he “does not have a financial mind.” (GE 6; Tr. 47-53, 65-71, 78-81.)

In addition to the mortgages Applicant held, he also had consumer debt. Applicant and his wife were issued multiple credit cards with limits of up to \$50,000. He also gave a \$300,000 loan to a family member. (GE 6; Tr. 55, 133.)

In 2007, Applicant had a bank account at a credit union with a balance of several hundred thousand dollars. This account was Applicant’s reserve that he had set aside in case of financial difficulties. He also had a line of credit with the same credit union. In November of 2007, the credit union transferred the amount in Applicant’s bank account out of his account, and used it to repay the line of credit. As a result, Applicant found he was unable to meet his monthly mortgage obligations on all of his properties. Applicant requested the credit union return his funds, but his request was denied. He found himself unable to afford the payments on his properties without access to this money and he was not able to make his mortgage payments. At that time, Applicant estimated that he and his wife earned between \$200,000 to \$250,000 annually. (GE 6; AE J; AE L; Tr. 49-51, 134-136.)

He attempted to sell his rental properties. He successfully sold five of the properties for a profit, but as the economy worsened, he was unable to sell the remaining properties for more than the mortgage values on each property. He presented documentation establishing that he attempted to engage in short sales, and found four buyers for his four remaining properties. However, the bank did not accept the offers. He also attempted to get loan modifications, but was only successfully able to modify one mortgage. Applicant testified that he had between seven and eight properties foreclosed upon. (AE I; Tr. 43-45, 53-55, 129-133; 135-137.)

On January 11, 2010, Applicant filed for Chapter 11 bankruptcy, listing \$73,000 in creditors holding unsecured priority claims; \$544,558 in unsecured nonpriority claims; and \$5,905,968 in secured liabilities. The unsecured priority claims were composed of an unpaid \$72,000 property tax bill and an additional \$1,000 property tax liability owed to a county tax assessor and the state tax board, respectively. On November 15, 2011, Applicant submitted a reorganization plan to the bankruptcy court. Applicant files monthly disclosure statements with the bankruptcy court. As part of Applicant’s bankruptcy filing, he completed credit counseling on November 9, 2009. Applicant’s “Disclosure Statement” was set for hearing on February 3, 2012. (AE F; AE G; AE H.)

Applicant's bankruptcy attorney indicated in a December 28, 2011 letter:

The essence of the Chapter 11 Plan provides for restructuring of certain of the secured debt, to include a request that the second mortgages on the real properties be "stripped." The meaning of "lien stripping" is that [the attorney is] asking the judge to void the second liens and that they be classified as unsecured debt rather than secured debt.

There is no certainty the bankruptcy judge will approve either the Disclosure Statement and/or the proposed Plan of Reorganization. In the event that the Court does not approve the Disclosure Statement and/or the proposed Plan of Reorganization, it is possible that the case may be converted to a Chapter 7 bankruptcy case. (AE N.)

Applicant introduced documentation explaining both Chapter 11 bankruptcy and the process of lien stripping. It explains that the bankruptcy creates tiers of creditors. Secured creditors are on the top tier and possibly receive payment in full, while unsecured creditors may only get a small percentage of the monies owed. In lien stripping, "The unsecured portion of the lien is 'stripped' from the collateral and the deficiency between the total debt owed and the collateral's present value becomes an unsecured claim." (AE I; AE O.)

Applicant testified that he currently owns three properties, which are all included in the bankruptcy filing. He estimates his personal residence is valued at between \$1.5 million to \$1.9 million, but Applicant owes \$3.36 million on the mortgage. He also currently owns a Piper Airplane, a super yacht (referenced above), two luxury cars, and a third vehicle. Applicant owes more on his loans he acquired for the purchases of the airplane, yacht, and luxury vehicles than each are worth. He has had two other luxury vehicles repossessed. Applicant also has a \$193,139 income tax liability for December 31, 2005, through December 31, 2009, owed to the IRS that he has listed in his Chapter 11 filing. Applicant testified that he is disputing some of his tax obligations with the IRS. (GE 5; AE G; AE H; Tr. 86-89, 94-95, 100-107, 121-122.)

Applicant is indebted on an account placed for collections by a boat store in the approximate amount of \$2,177, as alleged in allegation 1.b. This creditor is identified on Applicant's Creditor Matrix, which is part of his Chapter 11 bankruptcy filing. (AE H; Tr. 30-31.)

Applicant is indebted on an account placed for collections by a telecommunications company in the approximate amount of \$102, as alleged in allegation 1.c. This creditor is not identified on Applicant's Creditor Matrix and does not appear to be part of Applicant's Chapter 11. He testified that he will make sure this creditor is added to the bankruptcy filing. (AE H; Tr. 33.)

Applicant is indebted on a collections account in the approximate amount of \$686, as alleged in allegation 1.d. This debt was incurred when Applicant failed to return cable equipment. This creditor is not identified on Applicant's Creditor Matrix and does

not appear to be part of Applicant's Chapter 11. He testified that he will make sure this creditor is added to the bankruptcy filing. (AE H; Tr. 34.)

Applicant is indebted on a water bill in the approximate amount of \$220, as alleged in allegation 1.e. This creditor is not identified on Applicant's Creditor Matrix and does not appear to be part of Applicant's Chapter 11. He testified that he will make sure this creditor is added to the bankruptcy filing. (AE H; Tr. 33-35, 45.)

Applicant is indebted on a gas bill in the approximate amount of \$126, as alleged in allegation 1.f. This creditor is not identified on Applicant's Creditor Matrix and does not appear to be part of Applicant's Chapter 11. He testified that he will make sure this creditor is added to the bankruptcy filing. (AE H; Tr. 35, 45-46.)

Applicant is indebted to a cable company in the approximate amount of \$186, as alleged in allegation 1.g. This creditor is not identified on Applicant's Creditor Matrix and does not appear to be part of Applicant's Chapter 11. He testified that he will make sure this creditor is added to the bankruptcy filing. (AE H; Tr. 31-32.)

Applicant is indebted on a collections account in the approximate amount of \$461, as alleged in allegation 1.h. Applicant testified that he has no recollection of this debt and contests its validity. However, he has not taken any steps to formally contest this debt. This creditor is not identified on Applicant's Creditor Matrix and does not appear to be part of Applicant's Chapter 11. He testified that he will make sure this creditor is added to the bankruptcy filing. (AE H; Tr. 36.)

Applicant is indebted on a charged off account in the approximate amount of \$9,323, as alleged in allegation 1.i. This creditor is identified on Applicant's Creditor Matrix, which is part of his Chapter 11 bankruptcy filing. (AE H; Tr. 36.)

Applicant is indebted on a charged off account in the approximate amount of \$61,446, as alleged in allegation 1.j. This creditor is identified on Applicant's Creditor Matrix, which is part of his Chapter 11 bankruptcy filing. (AE H; Tr.37.)

Applicant is indebted on a charged off account in the approximate amount of \$61,446, as alleged in allegation 1.k. This creditor is identified on Applicant's Creditor Matrix, which is part of his Chapter 11 bankruptcy filing. (AE H; Tr.37.)

Applicant is indebted on a charged off home equity line of credit in the approximate amount of \$460,943, as alleged in allegation 1.l. This creditor is identified on Applicant's Creditor Matrix, which is part of his Chapter 11 bankruptcy filing. He testified that he expects this debt to be "stripped," if his bankruptcy plan is approved. (AE H; Tr. 41-42.)

Applicant had a delinquent real estate loan in the approximate total amount of \$400,000, as alleged in allegation 1.m. This property has been foreclosed upon. This creditor is identified on Applicant's Creditor Matrix, which is part of his Chapter 11 bankruptcy filing. (AE H; Tr. 43.)

Applicant had a delinquent real estate loan in the approximate total amount of \$575,000, as alleged in allegation 1.n. This property was foreclosed upon. This creditor is identified on Applicant's Creditor Matrix, which is part of his Chapter 11 bankruptcy filing. (AE H; Tr. 44.)

Applicant had a delinquent real estate loan in the approximate total amount of \$100,000, as alleged in allegation 1.o. This property has been foreclosed upon. This creditor is identified on Applicant's Creditor Matrix, which is part of his Chapter 11 bankruptcy filing. (AE H.)

Applicant had a delinquent real estate loan in the approximate total amount of \$429,278, as alleged in allegation 1.p. This property has been foreclosed upon. This creditor is identified on Applicant's Creditor Matrix, which is part of his Chapter 11 bankruptcy filing. (AE H; Tr. 44.)

Applicant had a delinquent second mortgage in the approximate total amount of \$168,985 as alleged in allegation 1.q. This property has been foreclosed upon. This creditor is identified on Applicant's Creditor Matrix, which is part of his Chapter 11 bankruptcy filing. (AE H; Tr. 44.)

Applicant had a delinquent real estate loan in the approximate total amount of \$825,000, as alleged in allegation 1.r. This property has been foreclosed upon. This creditor is identified on Applicant's Creditor Matrix, which is part of his Chapter 11 bankruptcy filing. (AE H; Tr. 44-45.)

Applicant currently earns a salary of approximately \$142,000 per year. He also receives \$3,000 per month in military retirement pay. His wife is currently on disability and does not plan to return to work. Applicant has \$35,000 to \$40,000 set aside to pay creditors as part of the bankruptcy reorganization plan. He indicated that he intends to stay within his means and not use credit cards again. (AE J; Tr. 61, 127, 146.)

Applicant has the support of his Congressman, a business partner, and a former fellow service member, who each wrote letters of support on Applicant's behalf. Among his awards and recognition for his distinguished service while in the Navy he received two Good Conduct medals; a Navy Commendation Medal; the Navy Achievement Medal; and six Sea Service Ribbons. He also has been awarded a number of certificates, citations, and letters of appreciation highlighting his professional achievements and training. (AE A; AE B; AE C; AE D; AE E; AE J.)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 clearance 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 protect or 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 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, 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 concern under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (d) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Applicant accumulated millions of dollars in delinquent debts while earning a joint annual income of between \$200,000 to \$250,000 maximum. He has been unable or unwilling to pay his obligations since 2007. His delinquencies have been on-going for several years. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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.



Applicant's debt is extensive and on-going. He financed an unusually large amount of debt, which he now seeks to resolve through Chapter 11 bankruptcy. Even in the event Applicant's Disclosure Statement and/or the proposed Plan of Reorganization are approved, and his debts are restructured, his unsecured creditors may only receive a small portion of what he actually owes them. Applicant did not exercise good judgment in financing so many properties, taking out large lines of credit, exhausting his credit cards, and making extravagant purchases like the super yacht, the airplane, and the luxury vehicles at the same time. He was living a life style which his income could not afford, by obtaining large amounts of credit. Not enough time has passed to predict whether Applicant will be able to live within his means on his current income. AG ¶ 20(a) is not applicable.

Applicant's financial difficulties were partially caused by the economic downturn. However, his losses were enhanced by his poor judgment in acquiring an excessive amount of debt. He had no control over the weakening economy; however he should have exercised more prudence over his investment decisions. Further, to be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. With the Bankruptcy pending, I cannot hold Applicant has made a significant attempt to responsibly address his remaining debts. AG ¶ 20(b) is not applicable.

Applicant attended pre-bankruptcy counseling. However, he has failed to show that his financial problems are under control. It would be premature to apply AG ¶ 20(c) without a sustained showing by Applicant that he can live within his means.

Applicant has applied for Chapter 11 bankruptcy. Assuming his Disclosure Statement and/or the proposed Plan of Reorganization is approved, he will have a long period of repayment before his debts are resolved. While bankruptcy is a legal remedy, it is not a substitute for a track record of repayment. AG ¶ 20(d) is not mitigating.

Finally, Applicant has not formally contested any of his outstanding debts. AG ¶ 20(e) cannot be fully applied.

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

Applicant honorably served in the Navy for 23 years. He is well respected by his friends, colleagues, and fellow service members. Applicant's financial situation was adversely affected by the economic downturn, which occurred after he had taken on large mortgages on numerous properties. However, there is little indication that he will regain financial stability in the near future. While he hopes to manage his debt through Chapter 11, the plan has not yet been approved. Moreover, he has not demonstrated he now has the restraint to limit his spending and stay within his means. There are significant unresolved concerns about Applicant's finances and judgment.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated Financial Consideration 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:	AGAINST APPLICANT
Subparagraph 1.a.i.~1.a.xxiii:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant

Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	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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Jennifer I. Goldstein  
Administrative Judge