



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



In the matter of: )  
)  
) ISCR Case No. 10-07915  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel  
For Applicant: *Pro se*

July 10, 2012

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 46-year-old employee of a defense contractor, who is indebted to a bank for a delinquent mortgage in the approximately amount of \$225,096. Applicant failed to mitigate the Financial Considerations security concern. Eligibility for access to classified information is denied.

**Statement of the Case**

The Defense Office of Hearings and Appeals (DOHA) issued an undated 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 September 1, 2006.

Applicant answered the SOR on February 23, 2012, and requested a hearing before an administrative judge. The case was assigned to me on May 4, 2012. DOHA

issued a notice of hearing on May 7, 2012, scheduling the hearing for May 24, 2012. The hearing was convened as scheduled. The Government offered Exhibit (GE) 1 through GE 8 and two documents for administrative notice marked GE 9 and GE 10, which were admitted without objection. Applicant testified on his own behalf and presented Applicant Exhibit (AE) A through J. The record was left open for Applicant to submit additional exhibits and on June 20, 2012, Applicant presented two emails with attachments that I have marked AE K through AE T. Department Counsel had no objections to Applicant's post-hearing documents and they were admitted. DOHA received the transcript of the hearing (Tr.) on June 1, 2012.

### **Findings of Fact**

Applicant is a 46-year-old employee of a defense contractor. He has worked in the defense industry since 1990. He is married and has a 17-year-old daughter, a 15-year-old son, and cares for his 9-year-old nephew.

Applicant's credit reports from June 5, 2010; September 11, 2011; and May 11, 2012; and his answers to interrogatories, show that Applicant is indebted on a mortgage loan in the approximate amount of \$225,096 as alleged on the SOR. This debt remains unpaid. (GEs 1-8.)

In May-June 2005, Applicant and his wife invested in a vacant parcel of land. Their friend, a mortgage broker, worked with a developer to sell subdivided plots that they intended to develop into upscale housing. The developer needed capital for building the infrastructure of the housing project. Through his mortgage-broker friend, Applicant entered into a verbal agreement with the developer to purchase a parcel in the subdivided project. The developer agreed to reimburse Applicant for his monthly mortgage payments for one year. After the first year, Applicant agreed to sell the property back to the developer for the purchase price plus \$100,000 in profit. (AE K; AE O; Tr. 36-42.)

On June 8, 2005, Applicant purchased the parcel for \$321,250. He put \$85,000 down, which he obtained by taking a second mortgage on his residence, and paid \$85,557.13 in fees. The remaining amount of the purchase price, \$236,250, was financed through a mortgage held by a bank. Monthly mortgage payments were \$1,513.19. Payments were due on the 5<sup>th</sup> of each month, until the maturity date of June 5, 2010, at which time a balloon payment of \$222,946.57 became due. (AE S; Tr. 36-42.)

Applicant made the mortgage payments from July 2005 through May 2006. The developer reimbursed Applicant for those mortgage payments on May 17, 2006. Applicant received a 1099-INT showing interest income from the developer for that reimbursement. From May 24, 2006, through January 26, 2009, the developer made monthly mortgage payments to Applicant. Applicant documented the payments with copies of the checks from the developer. The developer attempted to acquire the appropriate permits to add infrastructure on the land, but permission was not granted by the city. Eventually, the developer stopped making the payments to Applicant. Applicant

and his wife made payments on the parcel from January 27, 2009, through June 10, 2009. They stopped making payments on this mortgage at that time. Applicant did not attempt to sell the plot because it had declined in value and improvements could not be built upon it. (AE N; AE Q; AE S; Tr. 43-51.)

On August 13, 2009, Applicant received a notice of default from the bank. He consulted an attorney and was advised to let the bank foreclose on the plot. On April 16, 2012, the bank filed a complaint against Applicant, alleging three causes of action for "Breach of Written Contract, Judicial Foreclosure on Real Property, and Common Counts-Money Lent." Applicant hired an attorney to represent him in the litigation. The dispute is pending. (AE S; AE M; AE R; AE S; AE T; Tr. 44-51.)

In May 2010, the down-turn in the economy led to Applicant's wife's unemployment. They removed their children from private school and placed them in public school. His wife was fortunate and found another job. Applicant testified that he has approximately \$270,000 worth of equity in his residence. He presented documentation that shows he has a net monthly remainder of \$1,709, after his expenses are met. He has four savings accounts totaling \$4,411.89 and a checking account with a balance of \$6,414.99. His pay statement shows that he has over \$16,500 in 401K savings. Applicant recently purchased a new vehicle for his daughter to use for college. With the exception of the mortgage he defaulted upon, he pays his bills on time. (GE 2; GE 3; GE 4; GE 8; AE A; AE F; AE G; AE H; AE I; AE K; Tr. 61-68.)

Applicant is well respected by his direct-line manager, former co-workers, and friends. Applicant was said to have high integrity and is described as a conscientious, hard-working individual. He performs well at work and has the respect of his past and present colleagues. (AE B; AE C; AE D; AE E.)

### **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 concerns for Financial Considerations are 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. One is potentially applicable in this case:

- (a) Inability or unwillingness to satisfy debts.

Since June 10, 2009, Applicant has been unwilling to pay his mortgage on his plot of land. When the developer failed to uphold his verbal agreement, Applicant paid the mortgage for only four-to-five months before he chose to default on his contract with the bank. The Government established a *prima facie* case for disqualification under Guideline F.

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 financial difficulties are recent and on-going. His debt remains unsatisfied and pending in litigation, despite having equity in his home, funds available in his savings and 401K, and \$1,709 left monthly after his expenses are met. Applicant made an investment decision, based upon misplaced trust in his friend. When the developer failed to uphold his end of the verbal bargain after the first year, Applicant remained involved in the project. He did not try to sell the plot. Instead, he continued to take the money from the developer. When the developer failed to remit the monthly mortgage payment, Applicant decided that he would stop payments to the bank after only four-to-five additional monthly payments.

Applicant failed to demonstrate that his family took any responsible cost cutting measures before defaulting on the mortgage. It was only after Applicant's wife lost her job that they took measures to reduce their expenses. His children remained in private school until Applicant's wife lost her job. Further, despite their growing debt on the plot mortgage, his family used surplus funds to purchase a new vehicle for their daughter. Applicant has not demonstrated that he acted in good faith or that he demonstrated

good judgment. The debt is currently in litigation and unresolved. None of the mitigating conditions 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 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 in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is well respected by his direct-line manager, former co-workers, and friends. He performs well at his job. However, he has at least \$225,096 worth of debt that he has failed to adequately address. Applicant is currently involved in litigation over this debt. At this point, Applicant has not shown financial prudence or demonstrated that he uses sound 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 the Financial Considerations 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:	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