



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-09116
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

October 25, 2011

**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On May 3, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. 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 May 30, 2011, and requested a hearing before an administrative judge. The case was assigned to me on August 2, 2011. DOHA issued a notice of hearing on August 10, 2011, scheduling the hearing for August 31, 2011, by video teleconference (VTC). The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 3, which were admitted without objection.

Applicant testified and submitted Exhibits (AE) A through M, which were admitted without objection. Applicant's e-mail forwarding AE A through M is marked Hearing Exhibit (HE) I. The record was held open until October 12, 2011, for Applicant to submit additional information. Applicant timely submitted documents that were marked AE N through V and admitted without objection. Department Counsel's e-mail is marked HE II. DOHA received the hearing transcript (Tr.) on September 7, 2011.

### **Findings of Fact**

Applicant is a 31-year-old employee of a defense contractor. He has worked for his current employer since March 2010. He seeks to retain his security clearance. He served on active duty in the U.S. military from 1998 until he was honorably discharged in 2007. He has an associate's degree. He is married and has a ten-year-old child.<sup>1</sup>

In February 2007, while he was on terminal leave from the military, Applicant was hired by a company that provided contract employees to another company. He earned a good salary, and he bought a house that was financed through a mortgage of about \$175,000. The economy softened, and Applicant's company lost business. Applicant had the choice of being laid off or working directly for the company, to which he was contracted out at a substantially lower pay. In January 2008, Applicant started working for the second company. In 2009, the company initiated a 5% pay cut for all employees, rather than lay off some employees. Applicant's wife was diagnosed with cancer. Their health insurance covered most of her medical bills, but the co-payments and deductibles placed a financial burden on them. She also has a preexisting medical condition that was not covered by their health insurance. She could not work, and her disability pay was a fraction of her salary. Applicant used other loans and credit cards to help make the mortgage payments. He was unable to maintain the payments. A number of debts became delinquent, and he lost his house to foreclosure.<sup>2</sup>

The SOR alleges Applicant's mortgage in foreclosure and three delinquent debts with balances totaling about \$11,815. Individual debts are discussed further below.

SOR ¶¶ 1.a and 1.e allege the same debt: namely, Applicant's foreclosed mortgage. The mortgage company in SOR ¶ 1.a was assigned the loan from the mortgage company that first held the mortgage (SOR ¶ 1.e). After he was no longer able to pay the mortgage, Applicant attempted to "short sell" the property or arrive at some other mutually agreed upon resolution. A notice of trustee's sale was issued on April 26, 2010, stating the property would be sold at a trustee's sale on September 3, 2010. The amount due on the mortgage in May 2010 was \$168,796 in principal, \$7,233 in interest, and \$3,311 in late charges, escrow advances, expenses, and fees. Applicant retained an experienced realtor to assist him in selling the property. The realtor described the mortgage servicer as "the most difficult servicer [he had] ever encountered." The realtor stated that the mortgage servicer informed him that they would accept a short sale and would postpone their planned public sale if they received

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<sup>1</sup> Tr. at 24, 49-50, 54; GE 1, 2; AE A.

<sup>2</sup> Tr. at 16-31; GE 1-3; AE B-G.

an offer. On August 30, 2010, the realtor received a cash offer of \$175,000 for the property, which, because of interest and other fees, was less than what was owed on the property, but was equal to the original amount borrowed. The mortgage servicer did not accept the offer and told the realtor that the planned public sale would not be postponed. The house was eventually sold for \$167,000, less \$4,881 in concessions. State law in Applicant's jurisdiction precludes the mortgage company from obtaining a deficiency judgment against Applicant.<sup>3</sup>

SOR ¶ 1.b alleges a debt that was \$462 past due, with an approximate balance of \$7,978. This loan was obtained in an attempt to pay the mortgage and prevent foreclosure. Applicant admits that he fell behind on this debt. He paid \$200 on March 25, 2011, and established an automatic monthly transfer of \$99 from his checking account. Applicant has made all the required monthly payments since April 2011. On October 10, 2011, the creditor reported the balance as \$7,606.<sup>4</sup>

In March 2010, Applicant received a letter from a collection company attempting to collect the \$1,593 debt alleged in SOR ¶ 1.c. Applicant contacted the collection company and made arrangements to settle the debt. He paid the collection company \$100 in May, June, July, and September 2010. He paid \$50 in August 2010. Applicant believed the debt was settled, but the original creditor bought legal action against him to collect the debt. Applicant's attorney is in negotiations with the original creditor's attorney about a resolution of the issue.<sup>5</sup>

Applicant admitted owing the \$2,244 debt alleged in SOR ¶ 1.d. The law firm representing the creditor indicated the balance due was \$2,364 on September 13, 2011. Applicant has been in contact with the law firm. He had not made any payments as of his hearing date. Now that he is in better shape financially, he plans to pay \$150 per month until the debt is resolved.<sup>6</sup>

Applicant attended an eight-hour financial literary course, and he worked directly with a financial counselor. He has a budget and a plan that includes paying his delinquent debts. His wife's health is better, and she has returned to work. He credibly testified that he intends to resolve all his delinquent debts. He recently received a promotion and a pay raise. He is not accumulating new delinquent debt. His current finances are sound. He is able to make payments toward his delinquent debts, and he has a positive cash flow that can be used for savings and emergencies.<sup>7</sup>

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<sup>3</sup> Tr. at 18-20, 35-36, 49; Applicant's response to SOR; GE 1-3; AE I, J, M.

<sup>4</sup> Tr. at 19, 36-38; Applicant's response to SOR; GE 2, 3; AE K, S, T.

<sup>5</sup> Tr. at 38-46; Applicant's response to SOR; GE 1-3; AE P, Q.

<sup>6</sup> Tr. at 46; Applicant's response to SOR; GE 1-3; AE L, U, V.

<sup>7</sup> Tr. at 30-35, 38, 46-49; AE H, O, V.

Applicant's site manager described him as a "highly qualified, skilled and valued employee."<sup>8</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.

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

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<sup>8</sup> AE A.

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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. 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;
- (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 was forced to work at another company at a lower salary rather than accept a lay off from his original employer. His new company then initiated a 5% pay cut for all their employees. At about the same time, his wife was diagnosed with cancer, and she also had other health problems. He is now working for a third employer. He recently received a promotion and a salary increase. His wife's health is better, and she has returned to work. Applicant has received financial counseling. He has begun repaying his delinquent debts. Any deficiency that might be owed on his foreclosed mortgage is barred from collection by his state's anti-deficiency statute. He credibly testified that he intends to settle or pay his debts. He has a budget and a plan to address his financial problems. He is now in the position where he can pay his current and delinquent debts, and he has a positive cash flow that can be used for savings and emergencies.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant's loss of income and his wife's medical problems qualify as conditions that were outside his control. I find that he acted responsibly under the circumstances and made a good-faith effort to pay his unsecured debts. AG ¶ 20(b) is applicable. AG ¶ 20(d) is applicable to SOR ¶¶ 1.b and 1.c; it is not applicable to SOR ¶ 1.a. A creditor's inability to collect a debt because of an anti-deficiency statute does not equate to a good-faith effort on Applicant's part to pay or otherwise resolve any deficiency owed on his foreclosed mortgage.<sup>9</sup> However, there are clear indications that his financial

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<sup>9</sup> The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [good-faith mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or an anti-deficiency statute]) in order to claim the benefit of [good-faith mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

problems are being resolved and are under control. They occurred under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(c) are applicable. AG ¶ 20(e) is applicable to the duplicate mortgage debt alleged in SOR ¶ 1.e.

### **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 that guideline, but some warrant additional comment.

I considered Applicant's honorable military service and his favorable character evidence. I found Applicant to be honest and candid about his finances. I believe he is sincere about resolving his remaining financial issues. As indicated above, an applicant is not required to establish that he has paid every debt listed in the SOR. All that is required is that an applicant establish a plan to resolve the financial problems and take significant actions to implement the plan. I find that Applicant has established a plan to resolve his financial problems and has taken significant action to implement that plan. His finances do not constitute a security concern.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated 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: FOR APPLICANT

Subparagraphs 1.a-1.e: 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge