



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-09349
	)	
Applicant for Security Clearance	)	

**Appearances**

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

September 27, 2011

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**Decision**

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ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the file and exhibits in this case, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

**Statement of Case**

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on February 11, 2010. On June 2, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted 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) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an answer to the SOR on June 16, 2011. He requested that his case be adjudicated on the written record in lieu of a hearing. The Government

compiled its File of Relevant Material (FORM) on July 18, 2011. The FORM contained evidentiary documents identified as Items 1 through 10. Additionally, the Government offered three documents, marked as Items 11, 12, and 13, which were not evidentiary, but which contained facts for administrative notice. By letter dated July 21, 2011, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information or objections within 30 days of receipt. Applicant received the file on July 25, 2011. His response was due on August 25, 2011. Applicant did not submit any additional information or objections for consideration by an administrative judge. On September 15, 2011, the case was assigned to me for a decision.

### **Findings of Fact**

The single allegation in this case recites that, as of June 2, 2011, Applicant owed a mortgage debt pending foreclosure that was past due in the approximate amount of \$27,660 with a high balance of \$478,125. (SOR ¶ 1.a.) In his Answer to the SOR, Applicant admitted the allegation. Applicant's admission is entered as a finding of fact. (Item 1; Item 3.)

The facts in this case are established by the record provided by the Government and by information provided by Applicant in his response to DOHA interrogatories and his Answer to the SOR. The record evidence includes Applicant's February 11, 2010 e-QIP; official investigation and agency records; Applicant's responses to DOHA interrogatories;<sup>1</sup> and Applicant's credit reports of March 6, 2000,<sup>2</sup> February 19, 2010, July 7, 2010, and July 18, 2011. (See Items 4 through 10.)

Applicant, who is 56 years old, is employed as a technician by a government contractor. He has worked for this employer for 28 years. He married in 1995, and he is the father of three children. On his e-QIP, he stated that he had not previously held a security clearance. (Item 5.)

In response to questions on his e-QIP about his financial record, Applicant admitted being over 180 days delinquent on his mortgage debt and stated that the debt would be satisfied by a short sale. (Item 5.)

In a personal subject interview with an authorized investigator in July 2010, Applicant stated that, in 1986, he purchased a home for \$80,000. His monthly mortgage payments were \$1,100. In 1999, Applicant refinanced the mortgage on the property in order to purchase another residence, which is where he has lived for the last twelve

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<sup>1</sup> Applicant was interviewed by authorized investigators from the U.S. Office of Personnel Management (OPM) on March 5, 2010 and July 29, 2010. On April 8, 2011, in response to DOHA interrogatories, Applicant reviewed the investigators' reports, and he then signed a statement that the investigator's reports accurately reflected his two interviews. (Item 8; Item 9.)

<sup>2</sup> Item 4 in the list of documents in the FORM identifies a credit report. The correct date for the credit report is March 6, 2000 and not January 1, 1955. (FORM at 3; Item 4.)

years.<sup>3</sup> Applicant's refinanced loan on the first property was interest only, and his monthly payments rose to \$1,500. Applicant rented the property, but in 2009, the tenants moved out, and Applicant's monthly mortgage payment on the property rose to \$1,800. (Item 5; Item 8.)

Applicant was unable to carry the higher mortgage payment on the rental property without tenants. He contacted the lender and sought a loan modification or a short sale of the property.<sup>4</sup> Neither alternative was possible, and Applicant fell behind in his mortgage payments. The lender initiated foreclosure on the property. (Item 6; Item 7; Item 8; Item 10.)

In his March 5, 2010, interview with an authorized investigator, Applicant stated that his financial problems began in 2009 when the recession began, and he was unable to pay his mortgage on the first property. He stated that he moved out of the home and rented it to tenants, but the tenants soon moved out, and he had no additional income to pay the mortgage. He also stated that he was laid off and out of work for approximately six months. He stated that he had acquired a new job in the latter months of 2009 and believed he would be able to satisfy his bad debt in approximately three months. (Item 8.)

In his answer to the SOR, Applicant stated that he had been employed with his current employer since 1983. He also stated:

I admit to . . . subparagraph 'a' listed on the statement of reasons that financial hardship and poor decision making have led to my current circumstances. I have an adjustable loan which caused the principal to increase to the point that I can't afford to keep it. The property is in poor condition and has been vacated for over one year. I am unable to find a renter. My debts have increased significantly to the point that I am unable to keep up with my mortgage payments. I have tried every possible way to keep and maintain the property including traditional sale. The loan value is more than 50% over the current market value. Short sale and loan modifications were denied by the lender. All of these circumstances have led to my current financial hardships.

(Item 3.)

In response to DOHA interrogatories, Applicant stated that he had not paid the delinquent mortgage account for several reasons. First, he was paying the college expenses of two of his children. Second, the cost of living had increased. Third, he was

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<sup>3</sup> In response to Section 11 on his February 11, 2010 e-QIP, Applicant stated that he had lived at the residence he purchased in 1999 from August 1999 to "Present." (Item 5 at 10.)

<sup>4</sup> While Applicant told the authorized investigator that he had proposed either loan modification or a short sale to the creditor, he did not provide documentation to support these actions.

not being assigned as much overtime work as he once was. Fourth, his father-in-law had died, which resulted in increased expenses for him and his wife. And fifth, his mortgage payments on the rental property had increased, but he was unable to rent the property. (Item 9.)

Department Counsel provided for administrative notice facts about the anti-deficiency law in effect in Applicant's state of residence. Applicant failed to provide documentation to establish the current status of the delinquent loan, whether the provisions of the state anti-deficiency statute applied to his delinquent real estate loan, and whether a foreclosure or short sale had occurred. Moreover, he did not provide an IRS Form 1099-C indicating any financial gain he may have accrued as a result of the sale of the property and any cancellation of his mortgage debt by the lender. (Item 12; Item 13.)

In response to DOHA interrogatories, Applicant provided a personal financial statement. He reported that his net monthly salary was \$3,000 and his wife's net monthly salary was \$4,100, for a total net monthly income of \$7,100. (Item 9.)

Applicant reported \$3,900 in monthly living expenses. His monthly debt payments of \$3,436 included the following: \$2,668 on the home mortgage for the residence he purchased in 1999 and where he continues to reside; \$209 for an automobile loan; \$109 for tax and home owners' association fees; and \$450 in property tax for a time share and homeowners' association fees. Additionally, Applicant reported a negative monthly remainder of \$236. (Item 9.)

Applicant reported total assets of \$31,000, distributed as follows: bank savings: \$11,000; a car or boat: \$15,000; miscellaneous: \$5,000. Nothing in the record suggests that Applicant has received financial credit counseling. (Item 9.)

### **Burden of Proof**

The Government has the initial burden of proving controverted facts alleged in the SOR. The responsibility then shifts to the applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant carries a heavy burden of persuasion. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.*

at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant's suitability for a security clearance, an 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 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching 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 applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion in seeking 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 protect classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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:

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 financial considerations guideline notes conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant has accumulated delinquent mortgage debt which he has not paid. This evidence is sufficient to raise security concerns under ¶¶ 19(a) and 19(c) of Guideline F.

The guideline also recites conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if "it 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." (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if "the conditions that resulted in the financial problem were largely beyond the person's control," such as "loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances." (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include evidence "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" (AG ¶ 20(c) or "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." (AG ¶ 20 (d)). Finally, security concerns related to financial delinquencies might be mitigated if "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." (AG ¶ 20 (e)).

Applicant's delinquent mortgage debt on his rental property is recent. He asserts that current financial obligations prevent him from addressing the mortgage debt associated with the rental property. His current financial obligations leave him with a monthly net deficit of \$236. These facts suggest that Applicant's financial situation is

unstable and future financial delinquencies might occur. This raises security concerns about his reliability, trustworthiness, and good judgment.

Applicant cited the economic downturn in the housing market, his inability to find a tenant to rent the property he purchased in 1986, the poor condition of the property, and his increased familial financial obligations as reasons for his inability to pay his monthly mortgage obligation on the rental property. The economic downturn in the housing market may well have been a circumstance beyond Applicant's control. Applicant apparently contacted the lender and tried to seek a loan modification or a short sale, two solutions that the lender rejected. However, Applicant then allowed his mortgage debt to accumulate, without payment or a payment plan, and he assumed additional financial obligations that caused him to run a monthly deficit of over \$230.

Applicant has not had financial counseling. He has been employed by his present employer for 28 years. Although he told an authorized investigator in March 2010 that he had been laid off for six months in 2009, he reported no periods of unemployment on his e-QIP. He failed to provide documentation to establish that he acted reasonably when confronted with financial problems. He lacks a clear and timely strategy to resolve his delinquent mortgage debt. Accordingly, I conclude that none of the Guideline F mitigating conditions fully applies to the facts of Applicant's case.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an 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. Applicant is a mature adult. He is responsible for a mortgage account of \$478,125, and he owes \$27,660 in past due payments on that mortgage account. He claims he lacks the resources to pay his delinquent mortgage account, and there is no record evidence that the property secured

by the mortgage has been foreclosed upon or sold in a short sale. He has been steadily employed at his present position for 28 years, since August 1983. In a March 2010 interview with an OPM investigator, he stated he would be able to satisfy his delinquent debt in three months. However, his mortgage delinquency remains unaddressed, and Applicant's personal financial statement indicates that he is financially overextended. His failure to satisfy his mortgage creditor raises security concerns about his judgment and reliability.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

### **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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Joan Caton Anthony  
Administrative Judge