



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-10083
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Fahryn Hoffman, Esquire, Department Counsel  
For Applicant: *Pro se*

September 16, 2011

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I deny Applicant's eligibility for access to classified information.

**Statement of the Case**

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) on June 28, 2010. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on March 18, 2011, detailing security concerns under Guideline F, financial considerations, that provided the basis for its preliminary decision to deny him a security clearance. The action was taken 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 For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on April 11, 2011. He answered the SOR on April 19, 2011 and requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on May 25, 2011. I received the case assignment on June 2, 2011. DOHA issued a Notice of Hearing on June 2, 2011, and I convened the hearing as scheduled on June 16, 2011. The Government offered exhibits marked as GE 1 through GE 9, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits marked as AE A through AE H, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on June 23, 2011. I held the record open until July 5, 2011, for Applicant to submit additional matters. Applicant timely submitted AE I through AE Y, which are admitted without objection. After the close of the record on July 5, 2011, Applicant submitted one additional document, AE Z. This document is admitted into the record as the Government does not object to its admission.

### **Procedural and Evidentiary Rulings**

#### **Notice**

Applicant received the hearing notice less than 15 days before the hearing. (Tr. 9.) I advised Applicant of his right under ¶ E3.1.8 of the Directive to receive the notice 15 days before the hearing. Applicant affirmatively waived his right to the 15-day notice. (*Id.*)

#### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 34 years old, works for a Department of Defense contractor as a linguist and recruiting specialist. He began this job in October 2010.<sup>1</sup>

Applicant was born in Afghanistan. In 1982, his family fled Afghanistan to India when the Union of Socialist Soviet Republics (the Soviet Union) invaded his homeland. He and his family emigrated to the United States from India in 1984, when Applicant was seven years old. Applicant grew up in the United States and became a United States citizen in 1998. His only passport is from the United States.<sup>2</sup>

Applicant attended college and received a doctorate in chiropractic medicine in 2001. He is licensed as a chiropractor as well as licensed to perform x-rays and as a qualified medical evaluator for injured workers. Applicant worked in his medical field

---

<sup>1</sup>GE 1; Tr. 34, 40-42.

<sup>2</sup>GE 1; GE 3.

from 2000 until 2005, when he decided to enter the mortgage business. He and casual friends formed a company, where he worked for two years. In December 2008, he started working in the banking business, which he left in September 2009 to return to work as a chiropractor. He accepted employment with an existing chiropractor business, but left this practice in December 2009. He was unemployed for six months, then started working for another company until he accepted his current position. Applicant's income fluctuated greatly in these years.<sup>3</sup>

Applicant married in 2001 and has two daughters, who are six and three. His parents and siblings all reside in the United States. His wife received training as a dental hygienist and now works in this career field.<sup>4</sup>

In 2002, Applicant and his wife bought a primary residence home for approximately \$320,000. They deposited \$20,000 to \$30,000 on this purchase from money they had saved. Two years later, they purchased a second home as their primary residence for approximately \$500,000 with a 10% down payment. They rented the first home. At the time of these purchases, Applicant estimated he and his wife earned around \$200,000 a year. Between 2005 and 2007, he and his wife purchased four more houses for an approximate cost of \$3 million. They moved into the last home they purchased around 2007. They rented the first four homes, but not the fifth home they purchased.<sup>5</sup>

Applicant and his wife financed these extensive purchases with negative amortization loans. By 2007, their income had declined, and they encountered difficulties paying the mortgages. At the same time, their mortgage payments increased. His tax returns for 2005 through 2008 indicate that his rental income on three properties from 2005 through 2007 averaged \$49,000 a year and that his mortgage payments on these properties ranged from \$4,000 to \$50,000 more a year than his rents. His 2008 tax return shows that the lender foreclosed on two properties that year. Applicant stated that he tried to renegotiate the mortgages on these properties, but did not provide any written documentation between he and the creditor which reflected his efforts.<sup>6</sup>

In 2009, the bank foreclosed on a property purchased for \$900,000. His 2009 tax return shows a cancellation of debt in the amount of \$770,000 and a principle residence exclusion in the same amount. Another property also foreclosed in this year. Applicant recently sold that last property through a short-sale.<sup>7</sup>

---

<sup>3</sup>GE1; GE 3; Tr. 35-37, 63-65, 110-114.

<sup>4</sup>GE1; Tr. 33, 43.

<sup>5</sup>Tr. 70-101.

<sup>6</sup>AE T - AE X; Tr. 104.

<sup>7</sup>AE Y; 107-110.

Applicant's tax returns for the years 2005 through 2009 reflect rental income and employment income for his wife. The tax returns show high expenses for the rental properties, high mortgage interest deductions on personal income, and lost business income. These expenses are in excess of the income shown on the tax returns. Overall, for most tax years, Applicant and his wife had a minimum or negative taxable income. Except for one year, he received a tax refund. Each year, a professional prepared his tax returns.<sup>8</sup>

Applicant and his wife filed a Chapter 7 bankruptcy petition on May 26, 2011, listing more than \$800,000 in debts and \$29,000 in assets. As part of this process, Applicant enrolled in debt education classes in June 2010, January 2011, and August 2011. He provided documents, indicating he completed the courses.<sup>9</sup> His bankruptcy petition reflects a net monthly household income of \$6,145 and monthly expenses of \$6,054.<sup>10</sup> The bankruptcy petition includes the following SOR debts:

¶ 1.a: credit card for \$8,493,<sup>11</sup>

¶ 1.b: credit card for \$2,443,<sup>12</sup>

¶ 1.c: credit card for \$9,701,<sup>13</sup>

¶ 1.e: credit card for \$19,085,<sup>14</sup>

¶ 1.f: equity line of credit for \$106,300,<sup>15</sup>

¶ 1.h: notice only to this mortgage creditor, zero balance due on mortgage,<sup>16</sup>

¶ 1.j: notice only to this mortgage creditor, zero balance due on mortgage,<sup>17</sup>

---

<sup>8</sup>AE T - AE Y.

<sup>9</sup>Applicant verified that his wife also enrolled in at least one debt counseling course. AE O, p. 9.

<sup>10</sup>AE O, p. 6, 44; AE P - AE R; AE Z.

<sup>11</sup>GE 5; GE 7; AE O, p. 30.

<sup>12</sup>GE 5; GE 7; AE O, p. 23.

<sup>13</sup>GE 5; AE O, p. 25.

<sup>14</sup>GE 5; GE 7; AE O, p. 22.

<sup>15</sup>GE 5; GE 7; AE O, p. 34-35.

<sup>16</sup>AE O, p. 33.

<sup>17</sup>AE O, p. 33.

¶ 1.k: medical bill for \$46,<sup>18</sup>

¶ 1.l: judgment for \$50,000.<sup>19</sup>

The SOR identifies three mortgages (\$555,000, \$730,000, \$435,000) in foreclosure. Each mortgage is listed on the June 23, 2010 and July 15, 2010 credit reports as foreclosed with a zero balance. The July 15, 2010 credit report showed that the lender reclaimed each of these properties to settle the debt. The credit reports do not show a deficiency on these debts. Appellant listed a debt cancellation of \$769,000 on his 2009 tax return, which I find relates to the mortgage debt in SOR ¶ 1.l, which is not listed in his bankruptcy petition.<sup>20</sup>

Applicant believes all the debts owed by he and his wife are listed in his bankruptcy petition. The creditor in SOR ¶ 1.d purchased the mortgage debts of another company, which collapsed during the economic downturn. Applicant's equity debt with the collapsed company is listed on his bankruptcy petition. These debts may be the same, but it is not clear from the information in the record. The remaining SOR debt of \$1,066 (1.g) may also be on the bankruptcy petition in the name of the original creditor, but this information is unclear. Applicant's wife's foreclosure properties are listed in the bankruptcy petition.<sup>21</sup>

Applicant prepared a budget. He lists his net monthly household income as \$8,000 and his monthly expenses at \$5,830, which is \$700 higher than the expenses shown on his February 2011 personal financial statement. His earnings statements for May 2011 reflect a monthly net income of \$2,727. His wife's earnings statements for May 2011 show a net monthly income of \$4,789. The total household income shown on these earnings statements is \$7,516, which is less than his estimated net household income of \$8,000 and more than the net income listed in his bankruptcy petition. His income in May 2011 is approximately the same as the income shown in his answer to interrogatories in February 2011. The May 26, 2011 bankruptcy petition notes that his wife's working hours have been reduced by one employer and will result in a loss of \$1,000 a month in household income.<sup>22</sup>

Several friends and co-workers wrote letters of recommendation on behalf of Applicant. They praise his work in the medical community and the Afghan community. They consider him trustworthy. None of his references are aware of his financial

---

<sup>18</sup>AE O, p. 36.

<sup>19</sup>AE O, p. 39.

<sup>20</sup>BE 5; GE 7; AE Y.

<sup>21</sup>AE O.

<sup>22</sup>GE 2; AE F - AE H; AE O, p. 42.

problems. Another federal agency investigated Applicant for a security clearance in 2010 and concluded that he lived above his income.<sup>23</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 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, these guidelines are applied 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, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for obtaining 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 an 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.

---

<sup>23</sup>GE 3; AE A - AE D; AE M; AE N.

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 relating to the guideline 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

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

Appellant developed significant financial problems when he and his wife decided to invest in the real estate market, and he started working in the mortgage and banking business. They financed their real estate venture with credit cards and equity loans. By 2007, they had difficulty paying their debts. Most of the debts have not been resolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through 20(f), and 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts are recent. He and his wife financed their property investments with negative amortization loans with increasing monthly payments, lines of equity, and credit cards. Their chosen methods to finance their real estate investments do not reflect good judgment because they clearly lacked the resources to pay the debts they incurred. The record does not contain any evidence of a good-faith effort to contact his creditors and resolve his debts. AG ¶¶ 20 (a) and 20(d) do not apply.

The decline of the real estate market impacted Applicant's ability to rent his properties and his ability to earn money in his business. However, Applicant's financial problems are also the result of financial mismanagement. He has not provided evidence which shows he acted reasonably under the circumstances in the management of his debt problems. AG ¶ 20(b) is not applicable.

As part of the bankruptcy process, Applicant took credit counseling courses on three occasions and his wife took one credit counseling course. The mortgage debts identified in SOR ¶¶ 1.h (\$555,000), 1.i (\$730,000), and 1.j (\$435,000) are resolved. The mortgage company reclaimed each of these properties to settle the debt owed by Applicant after it initiated foreclosure. Each mortgage is listed on the June 23, 2010 and July 15, 2010 credit reports as foreclosed with a zero balance and no deficiency on these debts. I find that these debts are resolved.

Applicant and his wife are now in the process of resolving their debts through a Chapter 7 bankruptcy. Except for the debts in SOR ¶¶ 1.f (\$106,300) and 1.g (\$1,066), the remaining SOR debts are included in his bankruptcy petition and will be resolved if his petition for discharge is granted. These two debts may be included in his bankruptcy, but the evidence is unclear. AG ¶ 20(c) is partially applicable in this case.

### **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 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 200). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant and his wife began investing in real estate even though they lacked sufficient financial resources to pay for the properties they purchased. They used negative amortization

loans, equity lines, and credit cards to fund their investments. The monthly payments on these properties, as well as operating costs, exceeded their financial resources regularly. Rather than continue to work in his chosen profession, Applicant decided to work in the mortgage and banking industry, which eventually created financial problems for him from lost income and work. He accumulated a large debt in a short period of time. His debt and corresponding monthly payments were much higher than his monthly income. Even with this knowledge, he and his wife continued to purchase expensive property until their finances collapsed. Their decision to invest in property when they clearly lacked the income to pay for the properties shows poor judgment on their part. See ISCR Case No. 10-01978 (App. Bd. Aug. 24, 2011).

Applicant and his wife are taking steps to improve their financial management and to reduce their debts. They are not paying their creditors because their resources are insufficient to eliminate their massive debt. They have not shown a track record for managing their finances. Likewise, Applicant has not demonstrated that he has a complete understanding of fiscal matters, his income, his expenses, or control over his finances. A concern remains about his ability to manage his finances.

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 security concerns arising from his finances.

### **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
Subparagraphs 1.a-1.g:	Against Applicant
Subparagraphs 1.h-1.j:	For Applicant
Subparagraphs 1.k-1.m:	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.

---

MARY E. HENRY  
Administrative Judge