



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



In the matter of: )  
)  
) ISCR Case No. 10-10493  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeffrey Nagel, Esq., Department Counsel  
For Applicant: Joseph Testan, Esq.

August 19, 2011

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 35-year-old employee of a defense contractor. He is alleged to be indebted to two creditors in the approximate amount of \$414,955 on two defaulted mortgages. Applicant mitigated the Financial Considerations security concerns, because the debts were caused by unforeseen circumstances beyond his control, and he has acted responsibly with respect to these two debts. Eligibility for access to classified information is granted.

**Statement of the Case**

On May 2, 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 September 1, 2006.

Applicant answered the SOR on May 26, 2011, and requested a hearing before an administrative judge. The case was assigned to me on June 20, 2011. DOHA issued a notice of hearing on July 14, 2011, scheduling the hearing for August 9, 2011. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 5, which were admitted without objection. The Applicant offered Exhibits (AE) A through O, which were admitted without objection. Applicant testified on his own behalf and called three witnesses. The record was left open for Applicant to submit additional exhibits and on August 15, 2011, Applicant presented AE P through AE T. Department Counsel had no objections to AE P through AE T and they were admitted. DOHA received the transcript of the hearing (Tr.) on August 16, 2011.

### **Findings of Fact**

Applicant admitted SOR allegations 1.a and 1.b., in part. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 35-year-old employee of a defense contractor. He has worked for his current employer since November 1999. He was married May 2006 and separated from his former spouse in April 2008. His divorce was finalized in March 2009. He has no children. (GE 1; AE K; Tr. 24-45.)

As stated in the SOR, Applicant is alleged to be indebted to two creditors in the approximate amount of \$414,955. The first debt was listed as a mortgage account totaling \$330,000 (1.a.), and the second was a mortgage account totaling \$84,955(1.b.). Each of his debts were established through the credit reports entered into evidence by the Government. (GEs 3-5.)

Applicant attributes his recent financial problems to a series of events beyond his control. In April 2005 Applicant and his girlfriend (now ex-wife) purchased a condominium together. They used the loan officer associated with the condominium property to secure financing. The property cost approximately \$412,550. Applicant and his girlfriend financed the purchase with a first mortgage of \$330,050 and a second mortgage of \$82,500. The mortgages each had a fixed interest rate for only the first three years and then the interest rates were to adjust. (GE 2; AE A-D; Tr. 39-44.)

In May of 2006 Applicant married his girlfriend. They lived together in the condominium. They were able to make the \$2,800 monthly payments on the property without difficulties and had no other financial difficulties. (GE 1; GEs 3-5; AE K; AE L; Tr. 53-54.)

In January 2008, prior to the interest rates adjusting, Applicant met with his loan officer to discuss refinancing the mortgages. During that meeting, Applicant realized for the first time that the loans were interest only loans and the balance of the mortgage had not decreased during the three years they had been making payments. He pressed his loan officer to help them refinance the property. However, he learned that due to the

decline of housing prices in their area, the value of the condominium was significantly less than what they owed on their two mortgages. (Tr. 46-49.)

Applicant and his wife began researching other options. He considered both selling the property and trying to rent out the property. However, other units in the condominium with the same floor plans were for sale or rent and remained empty. Units that did rent only took in approximately \$1,000 per month in rent. In May 2008, the payments on the two mortgages went up to \$3,800. Applicant made two payments at this rate. At the same time, Applicant and his wife began experiencing marital difficulties. In April 2008 they decided to separate. Neither he nor his wife could afford the mortgage payments on their own. (AE K; Tr. 49-51.)

Applicant and his wife sought advice from attorneys. Three different attorneys advised Applicant that his only option was to have the mortgage holders foreclose on the property. He provided emails from the attorney he hired to help him in the foreclosure process as proof that he sought professional advice regarding his options with respect to his two mortgages. The attorney advised them to stop paying their mortgage to allow for foreclosure proceedings to begin. (AE P; Tr. 46-53.)

A Notice of Default was recorded on December 12, 2008. The property was foreclosed upon and resold on July 2, 2009, for \$193,500. Applicant denied that he owed any further debt to either of his mortgage holders. He disputed the negative mortgage accounts on his credit reports and each of the accounts were changed to reflect a zero balance. (AE E; AEs Q-S; Tr. 53.)

Applicant is current on all of his other debts. His credit report displays no other negative history. His budget shows that he has \$733 left over after he meets his monthly expenses. He currently rents an apartment. He pledged that if he ever buys a home again, he will take a course on understanding mortgages and save up a significant down payment. He has \$53,964 saved in a 401K. (GEs 3-5; AE L; AE N; AE O; Tr. 53-55.)

Applicant is well respected by his supervisor, friends, and colleagues, as expressed in letters and testimony from both. He is classified as “a mature, responsible, and diligent” individual, as well as “a peerless professional.” A coworker testified that Applicant is very mindful of security requirements and has taken all necessary precautions to protect the national interest. His performance evaluation for 2009 shows he is “an exceptional supervisor.” (AE J; AE M; Tr. 24-40.)

### **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 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 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. One is potentially applicable in this case:

(a) inability or unwillingness to satisfy debts.

Applicant was unable to satisfy his two mortgages totaling \$414,955, as alleged on the SOR. His default on these loans led to the foreclosure of Applicant's property. The Government established a 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; and

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

(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 meets significant mitigating factors for financial considerations. While his financial difficulties are recent, they were limited to one property, and the circumstances under which they occurred are unlikely to recur. Applicant and his ex-wife proceeded reasonably in buying the condominium. They did not predict their divorce or the market downturn. Applicant's financial problems are directly attributable to these unforeseen circumstances. He continues to remain current on his other financial obligations. It does not appear that Applicant was living beyond his means in any regard. When he found that he could not refinance the property, and could not afford the payments based on his income alone, he consulted several attorneys to find

the most responsible solution to his inability to meet his mortgage payments. He followed the advice of his attorney and allowed the property to be foreclosed upon. He then disputed the past due balances on his credit reports and the balance of each mortgage was changed to reflect zero due. Applicant learned his lesson and will be careful in any future real estate transactions. He can be trusted to monitor his finances closely and resolve his debts in the future. Applicant has acted responsibly by following the advice of his counsel. Clearly, Applicant's financial problems are under control. AG §§ 20(a), 20(b), 20(c), 20(d), and 20(e) 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 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 is well respected by his supervisor, friends, and colleague. He performs well at his job. His integrity and his financial track record, mortgages aside, show Applicant is trustworthy.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concern.

### **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
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Jennifer I. Goldstein  
Administrative Judge