



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



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 11-01380  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

03/22/2012

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on May 7, 2010. On November 25, 2011, the Defense Office of Hearings and Appeals (DOHA) notified him that it was unable to find that it is clearly consistent with the national interest to continue his access to classified information, and it recommended that his case be submitted to an administrative judge for a determination whether to revoke his clearance. DOHA set forth the basis for its action in a Statement of Reasons (SOR), citing security concerns under Guidelines F and E. 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) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR on December 6, 2011; answered it on December 16, 2011; and requested a hearing before an administrative judge. DOHA received the request on December 21, 2011. Department Counsel was ready to proceed on January 12, 2012. The case was assigned to me on January 23, 2012. DOHA issued a notice of hearing on January 30, 2012, scheduling it for February 14, 2012. I convened the hearing as scheduled. Applicant affirmatively waived the 15-day notice requirement prescribed by Directive ¶ E3.1.8. His written waiver, dated January 27, 2012, is attached to the record as Hearing Exhibit (HX) I. He orally confirmed his waiver at the hearing. (Tr. 15.) Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified, presented the testimony of three witnesses, and submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. DOHA received the transcript (Tr.) on February 22, 2012.

I kept the record open until February 29, 2012, to enable Applicant to submit additional documentary evidence. He timely submitted AX E and F, which were admitted without objection. Department Counsel's comments regarding AX E and F are attached to the record as HX II and HX III. On March 14, 2012, I extended the deadline for submitting evidence until March 19, 2012, and he timely submitted AX G and H, which were admitted without objection. Department Counsel's comments regarding AX G and H are attached as HX IV.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.d. He admitted inadvertently omitting information on his security clearance application, as alleged in SOR ¶¶ 2.a and 2.b, but he denied intentional falsification. On January 12, 2012, Department Counsel withdrew SOR ¶¶ 2.a and 2.b. Applicant's admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 47-year-old employee of a federal contractor. He graduated from high school in June 1982 and served on active duty in the U.S. Navy from February 1983 to March 1987, receiving an honorable discharge. He worked for another federal contractor from November 1999 until he began his current employment. He has held his current job as a lead network engineer since April 2004. He has also worked part time as a network monitor for the U.S. Coast Guard since July 2009. He has held a security clearance since 1983. He needs a clearance to retain his current position with his primary employer.

Applicant married in October 1996 and divorced in February 2001. He married again in November 2002 and divorced in November 2010. (Tr. 60.) He has two daughters, ages 24 and 12, both born out of wedlock. He pays child support of between \$600 and \$700 per month for his younger daughter. (Tr. 40-41.)

The SOR alleges an unpaid medical bill for \$214. Applicant was unaware of this bill, which had been incurred by his second wife, until he received the SOR. (GX 3 at 18.) This debt has been satisfied. (AX B at 25.)

In 2004, Applicant and his wife purchased a home for \$302,000, with a down payment of about \$16,000, and a first mortgage for about \$286,000. He and his wife separated for about six months in 2006 and then reconciled. His wife decided that she wanted a larger home, closer to work. (Tr. 44-45.) In 2007, they purchased a second home for \$750,000, without selling their first home. Applicant had misgivings about the wisdom of this purchase, but he did not resist it because he believed that their loan application would not be approved. (Tr. 47-48.) When the loan was approved, Applicant obtained a home equity loan on the first home for \$100,000, used about \$20,000 for his daughter's college expenses, \$35-40,000 for improvements on the first home, and the remainder as a down payment on the second home. (Tr. 41-44.) He financed the purchase of the second home with a first mortgage for about \$603,000 and a second mortgage for about \$150,000.<sup>1</sup> They rented the first home, with the tenants obligated to make the mortgage payment. After about 18 months, Applicant and his wife evicted the tenants for failure to make the mortgage payments. They could not find another tenant willing to pay rent high enough to cover the mortgage payments. (GX 3 at 15; Tr. 49, 79.)

When Applicant and his wife bought the second home, they had a combined monthly net income of between \$11,000 and \$12,000, with about \$5,000 attributable to his wife. (Tr. 47.) Although Applicant was the sole borrower on the first home, he and his wife were joint obligors on the mortgages for the second home. Applicant's wife was a realtor, and the downturn in the real estate market caused her income to be cut in half. (Tr. 76, 79.) They separated about a year after they purchased the second home, and his wife stopped contributing to the mortgage payments. (Tr. 47-49.) Applicant exhausted his retirement account and savings account, totaling about \$40,000 to \$45,000, in an effort to keep the payments on both homes current. (Tr. 61.)

After Applicant and his wife separated, he moved back into the first home. He contacted the lender for the first home regarding a loan modification. Starting in about December 2008, he went through a series of "trial payment" programs. (GX 3 at 33-36; AX A at 1, 5; AX D.) In October 2011, he engaged a nonprofit credit counseling service to assist him with his efforts to modify his loan. In December 2011, he was approved for a permanent loan modification, with the first payment due in February 2012. (AX A at 10-17.) He made the first payment and has arranged for subsequent payments to be automatically deducted from his credit union account. (AX E.)

Applicant also contacted the lender for the \$100,000 home equity line of credit on the first home. In June 2011, he converted his home equity line of credit to a fixed equity loan. (GX 3 at 27-32.) His payments on this loan are current. (GX 2 at 3; AX B at 16; Tr. 57.)

After Applicant and his former wife fell behind on the payments on the second home, they received and accepted an offer of \$450,000 for a short sale, but the lender

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<sup>1</sup> The down payment of \$60-65,000 plus the two mortgages for \$603,000 and \$150,000 total more than the purchase price of \$750,000. There are many possible explanations for this discrepancy, but they are not reflected in the record.

would not approve the short sale for that amount. (Tr. 76.) The mortgages on the second home were foreclosed in August 2010, and the property was sold. The Internal Revenue Service (IRS) Form 1099-A reflects an outstanding loan balance of \$603,958 and a fair market value of \$375,000 for the foreclosed property.<sup>2</sup> (GX 3 at 25.) As of the date of the hearing, Applicant had not contacted the lender regarding a potential deficiency, and the lender had not contacted him. (Tr. 65.)

I held the record open to enable Applicant to provide evidence regarding the status of the two delinquent mortgages related to the second home. (Tr. 99.) He submitted a statement that he contacted the lender, asked about the status of his account, and was informed by an unidentified person of unknown authority that he owed no money to the lender. He also stated that the lender would not provide any documentation other than the IRS Form 1099-A, which it had previously provided. (AX F; AX G.)

Applicant's representation that someone told him he had a zero balance with the lender is plausible, because his credit reports reflect a zero balance on both mortgage accounts. His September 2011 credit report reflected that the first mortgage account was closed when foreclosure was started and the second mortgage account was transferred to another lender. (GX 2 at 3.) Applicant's February 2012 credit report reflects that the first mortgage account was closed when foreclosure proceedings started and that it was past due in the amount of \$133,457. This credit report shows that the second mortgage account was transferred to another lender. (AX B at 29.) Neither credit report reflects cancellation of the past-due amounts on the first and second mortgages. They show only that the delinquent amounts were transferred to another account, another creditor, or a debt collector.

Applicant's net monthly income, after deduction of child-support payments, is about \$5,300. His monthly expenses are about \$1,496, and his debt payments, including payments on the two mortgages on the first home, are about \$3,638, leaving a net monthly remainder of about \$166. (GX 3 at 8.)

The mother of Applicant's 12-year-old daughter has known him for about 14 years. She has weekly contact with Applicant, because his daughter stays with him on weekends. She testified that Applicant is very careful, conscientious, and responsible about financial matters, and that he has faithfully paid child support. She described Applicant as a "great person" and "a wonderful dad." (Tr. 68-71.)

Although they had divorced in November 2010, Applicant's ex-wife testified that he is a "great guy, great dad, family man." Their marriage ended largely because of disagreements about financial issues. (Tr. 74-75.) The divorce decree made no provision for sharing the debts related to the second home, and Applicant's ex-wife has made no payments on those debts. (Tr. 60.) His ex-wife testified that she had not

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<sup>2</sup> IRS Instructions for Forms 1099-A and 1099-C (2012) provide: "Generally, the gross foreclosure bid price is considered to be the FMV [fair market value of a foreclosed property]." The IRS Form 1099-A indicates that the foreclosed property was sold for less than the \$450,000 short-sale offer.

contacted the lender for the second home and has no intention to do so. (Tr. 77.) In an interview with a security investigator in June 2010, Applicant speculated that his then wife might have filed for bankruptcy, but he told the investigator that he was not willing to consider that option. (GX 3 at 18.)

Applicant's supervisor since 2004 testified that Applicant is an excellent worker. Applicant and his supervisor have daily contact, and his supervisor relies heavily on him and values his opinions on work issues. (Tr. 82-83.)

### **Policies**

"[N]o 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 applicants 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531.

“Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline F, Financial Considerations**

The SOR alleges an unpaid \$214 medical debt (SOR ¶ 1.a); a delinquent mortgage on Applicant’s first home (SOR ¶ 1.c); and delinquent first and second mortgages on his second home (SOR ¶¶ 1.b and 1.d). The concern under this guideline 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.

Applicant’s admissions, corroborated by his credit reports, establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(e): consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

AG ¶ 19(b) (“indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt”) is not established. The heavily leveraged purchase of the second home before selling the first home was irresponsible. However, the second prong of AG ¶ 19(b) is not established because Applicant demonstrated willingness and intent to resolve the debt by making payments for as long as he could and negotiating a short sale for a reasonable price. After his marital breakup, he lost the financial means to negotiate. Even though AG ¶ 19(b) is not established, the evidence supporting AG ¶ 19(a), (c), and (e) shifted the burden to Applicant to rebut, explain, extenuate, or mitigate the facts.

Security concerns based on financial problems can be mitigated by showing that “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.” AG ¶ 20(a). Applicant’s delinquent debts are ongoing. They were not infrequent, because he accumulated four delinquent mortgages and a delinquent medical bill. His delinquent mortgages are unlikely to recur because Applicant is divorced from the wife who persuaded him to become financially overextended. The evidence raises concerns about his current reliability, trustworthiness, and good judgment; because it reflects that he undertook a foolish obligation to make a heavily leveraged purchase of an expensive home before selling his first home. He had misgivings about the transaction, but he acquiesced to his wife’s wishes. His irresponsible decision to overextend himself to please his wife suggests his susceptibility to being persuaded to engage in irresponsible behavior by persons with whom he has bonds of affection or obligation. Thus, I conclude that AG ¶ 20(a) is not established.

Security concerns under this guideline also can be mitigated by showing that “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.” AG ¶ 20(b). Both prongs, *i.e.*, conditions beyond the person’s control and responsible conduct, must be established.

The reduced income of Applicant’s wife and their subsequent marital breakup were circumstances beyond his control. He acted responsibly regarding the mortgage on the first home, and he initially acted responsibly regarding the mortgages on the second home by trying to rent the first home and by pursuing a short sale of the second home. However, after the second home was foreclosed, he made no effort to contact the lender until after the hearing. He took no action to determine the amount of the deficiency, to settle the deficiency, or to request cancellation of the debt. He vigorously pursued a modification of the mortgage on his first home, but he made no comparable effort to resolve the foreclosure deficiency on the second home. Unless the foreclosure deficiency on the second home is cancelled or discharged in a bankruptcy proceeding, he does not have sufficient income to resolve it. He has taken no action to compel his

ex-wife, a joint debtor, to contribute to resolving the debt. He receives some credit under AG ¶ 20(b), but it is not fully established.

Security concerns under this guideline also can be mitigated by showing that “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). Applicant sought and received counseling to assist him in resolving the delinquent mortgages on the first home, but this mitigating condition is not fully established because the problems associated with the second home are not being resolved or under control.

Security concerns under this guideline also can be mitigated by showing that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” AG ¶ 20(d). Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999).

A security clearance adjudication is aimed at evaluating an applicant’s judgment, reliability, and trustworthiness. It is not a debt collection procedure. 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 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).

I conclude that AG ¶ 20(d) is established for the delinquent medical debt and the debts associated with the first home, but it is not established for the delinquent mortgages on the second home. Although Applicant did not have sufficient financial resources to resolve all four delinquent mortgages at once, his limited financial resources did not preclude him from contacting the second-home lender and explaining his hardship situation, asking the lender for forbearance until the other debts were resolved, or asking the lender to cancel all or part of the debt. After the foreclosure, he ignored the debts associated with the second home until after the hearing. In his post-hearing submissions, he asserted that he had been told by an unknown person of unknown authority that he did not owe anything on the foreclosed second home, but he produced no documentation that the deficiency was resolved. If the debts had been cancelled, Applicant would have received IRS Form 1099-C, either in lieu of IRS Form 1099-A or in addition to it.<sup>3</sup>

### **Whole-Person Concept**

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. In applying the whole-

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<sup>3</sup> See IRS Publication 4681, *Cancelled Debts, Foreclosures, Repossessions, and Abandonments* (2011) at 11.



person concept, an 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. An 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.

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. Applicant is a mature adult with a high school education. He has a long history of dedicated federal service, in and out of uniform. He has held a clearance for most of his adult life. He is a dedicated father. He was candid, sincere, and very earnest at the hearing. He is financially conservative by nature, but he acquiesced in his former wife's desire for a larger, more expensive home, even though it was risky to buy it without selling their first home and the financing of the transaction was precarious. His vulnerability to manipulation and his lack of effort to address the foreclosure deficiency until after the hearing leave me with doubts about his reliability and good judgment.

Applicant needs a security clearance to hold his current position. (AX G at 2.) However, the consequences of an adverse security determination on his career and financial well-being are not relevant to the adjudication of his security eligibility. See ISCR Case No. 02-09220 (App. Bd. Sep. 28, 2004.)

After weighing the disqualifying and mitigating conditions under Guideline F, evaluating all the evidence in the context of the whole person, and mindful of my obligation to resolve close cases in favor of national security, I conclude Applicant has not mitigated the security concerns based on financial considerations. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraph 1.a:  
Subparagraph 1.b:

For Applicant  
Against Applicant

Subparagraph 1.c:  
Subparagraph 1.d:

For Applicant  
Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman  
Administrative Judge