



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-03300
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

January 27, 2012

**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant’s primary residence and four investment properties went to either foreclosure or short sale. The majority of the debt on the properties has been released or cancelled. However, security concerns remain as to additional delinquent obligations, totaling in excess of \$73,000. Applicant has failed to rebut or mitigate the security concerns under financial considerations. Clearance is denied.

**Statement of the Case**

Applicant contests the Department of Defense’s (DoD) intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued

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<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

a Statement of Reasons (SOR) on June 8, 2011, detailing security concerns under Guideline F, financial considerations.

On July 8, 2011, Applicant answered the SOR and requested a hearing. On August 10, 2011, I was assigned the case. On August 15, 2011, DOHA issued a Notice of Hearing for the hearing held on August 30, 2011.

The Government offered exhibits (Ex.) 1 through 6, which were admitted into evidence without objection. Applicant testified and submitted Exhibits A through F, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional information, which was received on November 3, 2011. This material was admitted, without objection, into the record as Exs. G through L. On September 8, 2011, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

In Applicant's Answer to the SOR, he admitted the debts listed in SOR ¶ 1.b, 1.c and 1.k. He denied the remaining factual allegations. His admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 34-year-old senior systems analyst who has worked for a defense contractor since February 2010, and seeks to obtain a security clearance. Applicant called no witnesses other than himself, and produced no work or character references.

Applicant's primary residence and four investment properties went to either foreclosure or short sale. The majority of the debt on the properties has been released or cancelled. He owed approximately \$725,000 in first mortgages and more than \$164,000 in second mortgages totaling approximately \$888,000.

From 2001 to April 2005, Applicant worked as a programmer for an aerospace company. (Tr. 26, 47) In 2001, Applicant purchased his first investment property. (Tr. 94) That property's value appreciated to almost twice the purchase price. (Tr. 28) In 2005, at the peak of the market, Applicant starting working for a property management company as their information technology director. (Tr. 27) He leveraged the value in his first investment property and his savings to buy additional properties. (Tr. 28) He purchased a new primary home and three additional rental properties, one of which was purchased in a partnership with a family member. (Tr. 29)

Applicant experienced no financial problems the first year of ownership. All the properties had tenants and mortgage payments were made timely. (Tr. 29) In late 2006, the real estate market dramatically changed. Some of the rental properties went unrented for extended periods of time. One property was vacant for six months. Rent payments arrived late or were absorbed for maintenance costs or management fees. Mortgage payments increased due to the adjustable rate mortgages. He was unable to refinance the properties and unable to sell the properties. All these factors contributed

to his monthly expenses exceeding his monthly income. (Ex. A, Ex. B, Ex. 4, Tr. 30, 87) After expending his savings accounts and his 401(k) retirement funds, he started using his credit cards to pay his monthly expenses including food and living expenses. (Ex. B, Ex. 4, Tr. 34) In January 2008, he attempted to negotiate with the real estate lenders for better terms. (Ex. A, B, C, Tr. 31)

Property # 1, Primary Residence: Applicant purchased in 2006 for \$320,000. The primary mortgage was \$285,000 with \$1,500 monthly payments, and a \$48,000 second mortgage. (Tr. 42) Monthly payments were made until February 2010, when he took a new job and moved to another state. (Tr. 44) In July 2010, a Release and Reconveyance of Deed of Trust was issued indicating the indebtedness secured by the Deed of Trust had been paid in full. (Ex. D, Tr. 41) Applicant asserted, but provided no documentation, that the lender agreed to absorb the loss of \$48,200 on the second mortgage on the property. (Ex. 4)

The state where all of the property in question is located does have an anti-deficiency statute limiting creditors' rights as to deficiency judgments following foreclosures or short-sales of property. However, Applicant provided no testimony, documentation, or other information as to how the anti-deficiency statute would affect creditors' claims related to his property.

Property #2, first investment property: Applicant had a \$132,469 first mortgage and a \$29,186 equity loan. In 2008, when he was unable to make the monthly payments the property, it went to short sale selling for less than the loan value. (Ex. 4) Applicant asserts, but failed to document, that the lender absorbed the loss on this sale. He does not agree that \$10,666 (SOR 1.i) is past due on this property. (Ex. 4)

Property #3: Applicant had a \$193,350 mortgage loan (SOR 1.h) on a property in State A which went into foreclosure in 2009, but also sold prior to the foreclosure. (Ex. 4) A lender claimed Applicant owed \$19,218 for the second mortgage following the short sale of property. (Ex. 4) He disputes this amount.

Property # 4: Applicant had a \$147,490 mortgage loan on a house which went into foreclosure in 2009, but sold prior to the foreclosure. It also sold for less than the loan value. (Ex. 4) A lender claimed Applicant owed \$25,356 for the second mortgage following the short sale of property. (Ex. 4) He disputes this amount.

The lender holding the first mortgages on Property # 3 and # 4 cancelled their debt on the properties and issued Forms 1099-C, Cancellation of Debt. (Ex. K) The debt for the first mortgage on Property # 3 was cancelled in February 2010 and the first mortgage on Property # 4 was cancelled in April 2010. Applicant has received no communication from the holder of the second mortgages. (Tr. 63)

Property # 5: Applicant had a \$126,000 mortgage loan on another house. (Ex. 4) In December 2008, when he was unable to make the monthly payments the property went to foreclosure and was sold for less than the loan value. Applicant asserts the

lender absorbed the loss on this sale. There was a \$54,000 second mortgage owed to the same lender on this property, which he asserts, but failed to document, that the lender absorbed the loss on.

A credit card company obtained an \$8,526 judgment (SOR 1.b) against Applicant and garnished his wages \$500 monthly. (Ex. 4) A balance remains on this debt after the monthly garnishment ended in February 2010, when he changed employment and left the state. (Tr. 53, 56) Applicant believes a few thousand dollars is still owed on the account. At the hearing, he asserted he intended to contact the creditor to attempt settlement. (Tr. 55) He provided no documentation as to actions taken related to this debt.

Applicant owes \$12,564 on another credit card account. He agreed to make \$250 monthly payments on the account. He owed \$1,212 on another credit card account (SOR 1.c) on which he agreed to make \$500 monthly payments. (Ex. 4) He failed to provide any documentation showing payment in accord with the offer.

Applicant owed a third credit card company \$11,180 (SOR 1.g) on which he agreed to make \$250 monthly payments. (Ex. 4) The account was transferred to another collection firm. (Tr. 37) In August 2011, the creditor offered to settle the debt for 60% of the balance if the amount was paid by September 17, 2011. A second option was to settle for 80% of the balance if 12 monthly payments of \$775 were made. The third option was that Applicant could chose to make \$100 monthly payments on the debt. (Ex. F) He asserted, but failed to document, that he accepted the option to make \$775 monthly payments on the debt. (Tr. 61) He has not shown any payment on this debt.

When asked about his finances in January 2011, Applicant did not recognize four delinquent accounts: a cable collection account (SOR 1.a, \$58), a credit union debt (SOR 1d, \$225), a time share holiday club account (SOR 1.j, \$487), and a speeding ticket collection account (SOR 1.k, \$364).

When Applicant closed his credit union account it had a negative \$5 balance. (Tr. 59) With fees attached the amount grew to \$225. He disputed the debt with the creditor. (Ex. 5) At the hearing, Applicant asserted he had paid the credit union obligation and would provide documentation showing payment. (Tr. 60, 101) No documentation as to payment was received.

At the hearing, Applicant acknowledged entering into the time-share agreement, which he now disputes. (Ex. 5, Tr. 72) The debt appears on his January 2011 CBR (Ex. 2), but not on his March 2011 CBR (Ex. 3) or his August 2011 CBR (Ex. 6) He offered the lender \$200 to settle the debt, but has received no response from them. (Tr. 75) In his May 2011 Personal Financial Statement (Ex. 5), he indicated he would be making \$100 monthly payments on this debt.

At the hearing, Applicant stated he thought the speeding ticket debt (SOR 1.k, \$364) would be removed when he took an online-defensive-driving course. (Tr. 76) In his May 2011 Personal Financial Statement (Ex. 5), he indicated he would be making \$50 monthly payments on this debt, but he failed to document any payment.

In 2007, Applicant was notified he owed the IRS approximately \$14,000 due to unreported income for tax year 2006. Starting in June 2008, he paid the IRS \$500 monthly per a repayment agreement before raising it to \$1,000 monthly. (Ex. 4, Tr. 98) In April 2011, he was able to pay the remainder due from his income tax refund. (Tr. 97)

Since moving to his current location in February 2011, Applicant has been renting. His spouse has obtained some credit cards and they are attempting to rebuild their credit. (Tr. 79) They have three children and are expecting their fourth. (Tr. 80)

A summary of Applicant's judgment, accounts charged off, accounts placed for collection, and other unpaid obligations and their current status follows:

	Creditor	Amount	Current Status
a	Collection account for cable bill.	\$58	Disputed. When Applicant left State A his cable was shut off, but he was charged for one additional month of service. He disputed this with the creditor and the credit bureau and does not appear on his August 2011 credit bureau report (CBR). (Ex. 5, 6, Tr. 38, 49, 51)
b	Credit card account judgment filed in May 2009.	\$8,526	Unpaid. A balance remains on this debt after his monthly garnishment ended in February 2010. (Tr. 53, 56) He provided no documentation as to actions taken related to this debt. (Tr. 55)
c	Credit card charged-off account.	\$1,000	Disputed. Applicant disputed this debt with the creditor. (Ex. 5) In January 2011, he made a statement agreeing he owed \$1,200 on this debt. (Tr. 101)
d	Credit union charged-off account.	\$225	Unpaid. Applicant asserts he paid this debt, but provided no documentation showing payment. (Ex. 5, Tr. 59, 60)
e	Charged-off account for a second mortgage on the Property # 3. (Tr. 62, 82)	\$17,000	Unpaid. In February 2010, the mortgage company holding the first mortgage (SOR 1.h) cancelled their debt and issued a Form 1099-C, Cancellation of Debt. (Ex. L) However, Applicant has received no communication from the holder of the second mortgage. (Tr. 63)

	Creditor	Amount	Current Status
f	Charged-off account for a second mortgage on Property # 4. (Tr. 62)	\$25,000	Unpaid. In April 2010, the mortgage company holding the first mortgage cancelled their debt on the property and issued a Form 1099-C. (Ex. K) Applicant has received no communication from the holder of the second mortgage. (Tr. 63)
g	Credit card collection account. (Tr. 37)	\$11,000	Unpaid. Applicant asserts he accepted the creditor's settlement offer, but has provided no documentation showing payment on this debt. (Ex. F, Tr. 61)
h	First mortgage on Property # 3.	\$193,000	Debt has been cancelled. The mortgage company holding the first mortgage cancelled their debt on the property and issued a Form 1099-C. (Ex. L, Tr. 67)
i	Home equity loan on Property # 2.	\$10,000	In December 2008, when this property went to a short sale, the first mortgage company was paid \$132,469 and this creditor received \$20,186. (Ex. I, J, Tr. 70, 71) From the record it is unclear if this amount claimed is in addition to the amount already paid this creditor at time of sale.
j	Collection account for a time-share vacation property.	\$487	Unpaid. Applicant acknowledged entering into the time-share agreement, but has now disputed this debt. (Ex. 5, Tr. 72)
k	Collection account for a speeding ticket. (Tr. 76)	\$364	Unpaid. In a May 2011 Personal Financial Statement (Ex. 5), he had allotted \$50 monthly payments on this debt. He has failed to provide documents showing payment of this debt.
	Total debt listed in SOR	\$266,660	

### 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 must be considered 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 interests of 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 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 Executive Order (EO) 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. Applicant had his primary residence and four investment properties go to foreclosure or short sale. Additional charged-off or collection accounts remain unpaid. The total delinquent debt listed in the SOR was approximately \$266,000. One of the debts totaling \$193,000 has been cancelled. However, ten additional charged-off or collection accounts totaling in excess of \$73,000 remain unpaid. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

The majority of the debt associated with his primary residence and four investment properties has been resolved. He disputed two debts totaling approximately \$1,000 stating he had no knowledge as to the nature of the debts. The one debt (\$58) no longer appears on his CBR. He asserted he has had no contact with the holders of second mortgages on two of his properties. His assertion that the creditors have failed to contact him is insufficient to establish the obligations no longer exist. When one property went to short sale, the creditor (SOR 1.i) received funds from the sale. However, Applicant has failed to document the \$10,000 claimed as past due was satisfied by the short sale. He has provided no documentation that the other obligations have been paid or he has established a repayment arrangement with the creditors.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple. Although the downturn in the market resulted in his real estate investment going to foreclosure, he has failed to produce evidence of circumstances beyond his control, and he has not acted responsibly in addressing the other debts. The garnishment of his wages stopped when he changed jobs. He knows he owes a balance on the judgment, but has made no arrangements to



repay the balance. Five of the SOR debts were for delinquent obligations of less than \$500 each. He has provided no documentation that the debts have been addressed.

There is no evidence of Applicant having received credit or financial counseling. He has not made a good-faith effort to satisfy his debts. I conclude Guideline F against Applicant.

### **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. The largest of his debts were incurred when the housing market was good. When the market changed, his five real estate properties went to foreclosure or short sale. The majority, but not all, of the indebtedness related to those properties has been cancelled, forgiven, or barred by statute from being collected. But he has additional debts which remain unpaid. He has failed to document any payments on his remaining delinquent accounts even the small ones. The issue is not simply whether all Applicant's delinquent obligations have been paid – they have not – it is whether his financial circumstances raise concerns about his fitness to hold a security clearance.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial considerations.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime

occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, he has failed to document that debts have been properly addressed and a clearance is not recommended. Should Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise addressed the obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

### **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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i – 1.k:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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CLAUDE R. HEINY II  
Administrative Judge