



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



In the matter of: )  
)  
) ISCR Case No. 11-04289  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Raashid Williams, Esq., Department Counsel  
For Applicant: John F. Mardula, Esq.

06/12/2012

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant mitigated the financial considerations security concern. Clearance is granted.

**Statement of the Case**

On November 17, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, financial considerations. 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 (AG) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on December 5, 2011, admitting all of the allegations and requesting a hearing. The case was assigned to me on March 2, 2012. A notice of hearing was issued on March 26, 2012, scheduling the case for April 12,

2012. I held the hearing as scheduled and received five Government exhibits, marked as Government Exhibits (GE) 1 through 5, and eight Applicant exhibits (AE); marked as AE A through H. Also, I considered the testimony of Applicant and two witnesses. DOHA received the transcript (Tr.) on April 23, 2012.

### **Findings of Fact**

Applicant is a 39-year-old, married man with two children from a previous marriage, ages 12 and 8. His first marriage ended in 2004. He remarried in January 2011. He and his current wife cohabited for six years before getting married.

Since October 2009, Applicant has worked as a software engineer for a defense subcontractor. His duties include developing software mapping and reporting capabilities. (Tr. 47) According to Applicant's supervisor, he is the company's best employee, and is always ahead of schedule. (Tr. 22) According to the project leader, Applicant is an exemplary team member who "always finishes his work and asks for more to be done." (Tr. 34)

Applicant graduated from college in 1998, majoring in computer science. Shortly after Applicant and his first wife got married, they moved to the Midwest. (Tr. 45) She completed her medical residency in neurosurgery while Applicant worked as a software developer. In 2005, Applicant started an online business. (Tr. 45) During its first three years in operation, it was very successful. By 2006, Applicant was generating \$125,000 annually from his business. Together with his full-time job, and the alimony he received from his ex-wife, he earned approximately \$275,000 a year between 2006 and 2008. (Tr. 51)

After Applicant and his first wife divorced, she moved from the Midwest to take a neurosurgeon position at a hospital on the east coast. (Tr. 92) As she had physical custody of the children, they moved with her. Seeking to maintain a close relationship with his children, Applicant moved to the same city and arranged to telework with his employer. (Tr. 51)

In September 2006, Applicant purchased a two-unit "fixer-upper" for \$225,000. (Tr. 73) He financed the purchase through a 30-year, fixed mortgage, and borrowed 100 percent of the purchase cost. (Tr. 113) He lived in it with his girlfriend for the next two - and-a-half years. During that time, he spent approximately \$70,000 renovating it. (Tr. 52) The monthly mortgage payment was approximately \$1,700 per month. (Tr. 100)

In December 2008, Applicant purchased and moved into a single family home. The purchase price was \$414,000 and Applicant financed it with a 30-year fixed mortgage. (Tr. 112) He made a \$44,000 downpayment using money borrowed from his ex-wife. (Tr. 127) Over the course of the next year-and-a-half, Applicant repaid his ex-wife. (Tr. 117)

The monthly mortgage payment on Applicant's second real estate purchase was approximately \$2,700 monthly. (Tr. 99) Applicant's total real estate expenses, counting utilities, were approximately \$12,000 per month. (Tr. 126) After moving, Applicant kept his first property and rented it for \$1,300 per monthly. (Tr. 41)

In February 2009, the principal investor for Applicant's online company withdrew his financial support. Absent this investment capital, the business began to struggle. In May 2009, Applicant's employer told him they were laying off all of their remote employees. They gave Applicant the opportunity to keep his job if he returned to the company's Midwest headquarters. Not wanting to live such a long distance from his children, Applicant chose not to move. (Tr. 58)

Because of Applicant's unique information technology skill set, he anticipated finding a new job before the layoff was scheduled to occur. Applicant's efforts at obtaining another job before the layoff were unsuccessful. Ultimately, he did not obtain full-time employment until October 2009, four months after he lost his previous job. (Tr. 59) While Applicant was unemployed, his online business failed. Also during this time, his girlfriend lost her job. (Tr. 97) Before buying the second home, Applicant calculated that he could pay the mortgage if he lost one of his streams of income. He did not anticipate losing his job and his business, and his girlfriend losing her job. (Tr. 96-97)

Applicant's new job was in a different city, prompting him to relocate.<sup>1</sup> He put his primary residence on the market the day he moved. (Tr. 106) He continued to rent the duplex.

In October 2009, one month after relocating, Applicant returned to the city from which he had moved, to visit his children and check on his rental property. He discovered that the tenant had vacated it without notice. (Tr. 62) Applicant then returned home. He visited his family again, two weeks later. This time when he inspected the rental property, he discovered that the garage door had been "kicked in," and that the inside of the property was severely water-damaged. Nearly all of the floors and part of the ceiling were ruined, there was extensive drywall damage, and the inside of the home was overrun with highly toxic black mold. (Tr.62-63)

After filing a police report for the vandalized door, Applicant contacted his insurance company and was told that his policy did not cover mold damage. Also, the insurance company told him its premiums were going to rise if he intended for it to remain vacant. Applicant then began to obtain cost estimates, and discovered that repairs were going to cost "tens of thousands of dollars." (Tr. 65)

While Applicant was attempting to resolve the problem with the rental property, his primary residence remained on the market. His efforts at selling it were

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<sup>1</sup>Applicant's girlfriend got a job shortly after they relocated. (Tr. 102)

unsuccessful. Applicant gradually began falling behind on the mortgage payments on both properties.

After depleting his savings trying to pay the mortgages, Applicant consulted an attorney. The attorney advised him to stop making mortgage payments to prevent going further into debt. Also, the attorney told him that he would assist in negotiating either a short sale or a deed-in-lieu-of-foreclosure of these properties. If these options were unsuccessful, the attorney told him he would then begin foreclosure proceedings. (Tr. 65-66, 71)

Applicant has three mortgages on the two properties, as listed in subparagraphs 1.a through 1.c. Subparagraph 1.a is the primary mortgage on the duplex, and subparagraph 1.c is a second mortgage on the duplex. (Tr. 87) The loan balance on the primary mortgage is approximately \$170,000, and the loan balance on the secondary mortgage is approximately \$78,000. Subparagraph 1.b is the mortgage on the home Applicant moved to after relocating from the duplex. The approximate loan balance totals \$367,000.

Applicant's attorney began working to resolve the outstanding mortgages in December 2009. (AE B) (Tr. 71) According to the attorney, as of March 2012, "all of the . . . mortgages have been resolved in the . . . courts by consents by [Applicant]" and agreements of the mortgagees. (AE B) Moreover, the mortgages were resolved without "costly motions and trials . . . to the benefit of the mortgagees," and the results "have been with the agreement and to the satisfaction of counsel for the mortgagees." (AE B) Whether the mortgages were resolved by foreclosures or deed-in-lieu-of-foreclosures is unclear from the record.

Since October 2009, Applicant has been earning \$115,000 per year. (Tr. 77) His annual household income, which includes his wife's salary and his ex-wife's alimony payments,<sup>2</sup> is approximately \$260,000 per year. (Tr. 124) Applicant and his wife have approximately \$5,000 of monthly discretionary income.

When Applicant and his first wife divorced in 2006, he had approximately \$60,000 in credit card debt. When he purchased the duplex, he used approximately \$30,000 of unsecured credit for renovations. He continued to satisfy these debts, along with the loan from his ex-wife, while his attorney was attempting to resolve the delinquent mortgages. (Tr. 126)

Applicant has satisfied all of the aforementioned debts, in addition to his student loans. Moreover, he has replenished his savings accounts. As of March 2012, he had approximately \$45,000 in a money market account and \$3,700 in a savings account. (AE F at 8 and AE G at 2) Since July 2011, he has deposited between \$5,000 and

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<sup>2</sup>Applicant will continue to receive \$60,000 per month in alimony through 2021. (Tr. 131)

\$9,000 per month into his money market account. (AE F) He also has approximately \$49,000 in his 401k account. (Tr. 124) He is current on all of his bills. (AE H)

## **Policies**

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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.”

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 for obtaining a favorable security decision.

## **Analysis**

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

Under this guideline, “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” (AG ¶ 18). Applicant’s delinquent mortgages trigger the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.

The following mitigating conditions are potentially applicable:

(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 financial difficulties occurred over a six-month period when he and his girlfriend lost their jobs, his business failed, the tenant vacated his rental property, and extensive damage rendered it uninhabitable. Moreover, upon finding a job and relocating, Applicant was unable to sell his home, the second property he purchased after moving from the Midwest. Applicant then consulted an attorney who advised him not to pay the mortgages. The attorney has been working toward resolving them through the state court.

Citing ISCR Case No. 09-08462 (App. Bd. May 31, 2011), Department Counsel characterized Applicant's decision to stop paying the mortgages as a strategic default. Further, he argues that Applicant's decision to spend more than \$100,000 on unsecured debt payments when that money could have been applied to the mortgages reflected negatively on his security-clearance worthiness.

I reject this argument. Applicant was not acting irresponsibly or in bad faith when he stopped paying the mortgages. He was simply following the advice of his attorney. Consequently, his satisfaction of all of his other debts while his attorney worked with the banks to resolve the outstanding mortgages constituted "concomitant conduct" that Applicant was acting responsibly under the circumstances. (*Id.* at 4)

In reaching this conclusion, I considered the surrounding circumstances of the purchases. Specifically, Applicant's real estate investments were neither capricious nor poorly planned. He financed them with traditional fixed-rate loans, making a 10 percent downpayment on the second purchase. Also, he was not engaging in speculation when he made the purchases. Moreover, he purchased them anticipating that he could continue to make payments if he lost his job. It was not reasonably foreseeable that his girlfriend would lose her job too, his business would fail, and his rental property would incur colossal damages all within a short time period.

Applicant's real estate attorney's letter was ambiguous concerning the legal consequences of the resolution of the mortgages, such as whether Applicant may conceivably owe deficiencies after the foreclosure processes are concluded. Applicant had never had any financial problems before the ones that triggered the mortgage defaults. He prudently sought legal counsel, and while his counsel was negotiating the resolution of the delinquent mortgages, Applicant was satisfying all of his other debt, and replenishing his savings, depositing between \$5,000 and \$9,000 each month into a money market account. I conclude any negative inference generated by the possibility that Applicant may owe deficiencies is outweighed by these positive facts.

I conclude that all of the mitigating conditions, listed above, 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 the 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.

Applicant is an industrious employee. His financial difficulties were caused by circumstances beyond his control, and he has been addressing them responsibly, resolving his mortgages with the help of an attorney, satisfying all of his other debts, and replenishing his savings. Upon considering this case in the context of the whole-person concept, I conclude Applicant has mitigated the 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
Subparagraphs 1.a - 1.d:	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.

MARC E. CURRY  
Administrative Judge