



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-06432
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

03/12/2012

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**Decision**

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LYNCH, Noreen A, Administrative Judge:

On December 13, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations). The action was taken under 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), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing. DOHA assigned the case to me on January 23, 2012. A notice of hearing was issued on February 2, 2012, and the case was heard on March 1, 2012. Department Counsel offered four exhibits (GE) 1-4, which were admitted without objection. Applicant testified, presented three witnesses on his own behalf, and submitted three exhibits (AE) A-C at the hearing, which were admitted without objection. DOHA received the hearing transcript on March 7, 2012. Based on a review of the pleadings, submissions, and exhibits, I find Applicant has not met his burden of proof of mitigation regarding the security concerns raised. Security clearance is denied.

## Findings of Fact

In his answer to the SOR, Applicant admitted the delinquent debt in the SOR with explanations. Applicant is 37 years old. He is married and has two children. He attended college but did not obtain a degree. (Tr. 24) He held a security clearance from 1997 until 2000, and from 2004 to present. (Tr. 69) Applicant worked as a systems engineer for a federal contractor from 2004 until 2011. (GE 1) Applicant has been employed with his current employer for approximately one month.

In September 2000, Applicant and his wife purchased their first home for approximately \$298,000. In 2006, he obtained a home-equity loan and refinanced the home, and put his home on the market. It was on the market for several weeks when Applicant moved to his second home. He used the \$200,000 from the refinancing as a down payment on the second home. (Tr. 32) The purchase price of the second home was \$600,000. (Tr. 35) Applicant believed that there would be no difficulty in selling the first home. He followed advice from a realtor and other financial advisors. (Tr.36) However, the first home did not sell.

Applicant lowered the selling price to \$500,000 after two months. The house was vacant from September 2006 until February 2007. Since the house still had not sold, he decided to take the home off the market and rent it. While the home was rented from 2007 until 2008, Applicant paid his mortgage on both homes. The renters agreed to stay for one year. Applicant made the mortgage payments on the unsold home until May 2008. (Tr. 41) He also paid the home-equity loan until May 2008. Applicant's first home went to foreclosure in August 2008, and was sold in October 2008. The sale covered the mortgage, but it did not cover the home-equity loan.

Applicant has not made any payments on the home-equity loan alleged in the SOR in the amount of \$261,000. He explained that at this point he has no intention of paying the charged-off account. (Tr. 47) His reasoning is based on his prior attempts to work with the bank. He offered a short sale contract with a buyer for \$390,000 in May 2008. (AE A) He submitted a letter from the bank confirming that his request for a pre-foreclosure sale was denied. (AE B) Applicant believed that the original home equity loan was \$200,000 and that the fees, interest, and penalties account for the current balance alleged in the SOR of \$261,000. He elaborated that he also tried to get reduced payments for the home-equity loan. He believes he worked in good faith to resolve the issue. The collection agency would require \$10,000 cash and approximately \$2,100 monthly until the debt is paid. Applicant is not willing or able to do this. Applicant also relies on the statute of limitations for the debt. (Tr. 84) He would like to have the debt removed from his credit report.

Applicant believes that the debt was the result of conditions beyond his control. He believed he could sell his house quickly, which did not happen. He paid on the mortgage and home equity loan as long as he was able. He did not understand why the short sale was rejected. He states that would have paid for a large portion of the home equity loan. He is considering bankruptcy. He also believes he may have been the

victim of an illegal banking practice with respect to the foreclosure. He testified that he did not have financial difficulties prior to this event. He knows this will not happen again.

Applicant's former team lead, retired military, testified that Applicant is reliable and trustworthy. He recommends him for retention of his security clearance. (Tr. 52) A peer of Applicant who has known him for eight years testified that Applicant is an upstanding person. (Tr. 53) A third witness who has known Applicant for nine years, describes him as a technically proficient, reliable, smart asset to the team. (Tr. 62)

## **Policies**

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." <sup>1</sup> The burden of proof is something less than a preponderance of evidence. <sup>2</sup> The ultimate burden of persuasion is on the applicant. <sup>3</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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

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<sup>1</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>2</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>3</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

the applicant may deliberately or inadvertently fail to protect 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 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.”<sup>4</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>5</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>6</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

## **Analysis**

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

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant admitted the delinquent debt that is approximately \$261,000. His credit report confirms the delinquent debt. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant purchased a home in 2006 before his first home had sold. He obtained a home-equity loan to provide for the down payment on the second home. He continued to pay the mortgage on the first home and the home equity loan until 2008. The amount of the home equity loan was approximately \$200,000. He still has unresolved debt. Thus, from 2008 until the present, Applicant has not resolved the

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<sup>4</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>5</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>6</sup> *Id.*

debts despite good intentions. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) is potentially applicable. As noted, Applicant expected to sell his home but that did not occur. He did not and could not have foreseen the downturn in the economy. He tried a short sale. Applicant was not prepared for the foreseeable problems associated with using a home-equity loan for a down payment on a second home when the first home had not yet sold. He knew there was a chance that he might have two mortgages until the home sold. He used questionable judgment in his decision to buy the second home before the first home sold. This mitigating condition partially applies.

FC MC AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. As noted above, Applicant initially tried to work with the financial institutions. However, he has no intention of paying this home equity loan. He relies on the statute of limitations. He believes his option is to file for bankruptcy. He has not received financial counseling. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) does not 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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the whole-person factors. Applicant is 37 years old. He has worked steadily in the defense industry and has held a security clearance without incident. He is described as reliable and trustworthy. He had no financial issues until 2006, when he moved into a second home without selling his first home. He obtained a home-equity loan and used it as a down payment for his second home. His first home did not sell due to the housing market. He tried to rent the home and was able to pay the mortgage and the home equity loan until 2008.

Applicant's financial difficulties do not stem entirely from circumstances beyond his control, nor has he acted reasonably for the past few years. Granted, he had no idea that his home would not sell quickly. He attempted to remedy the situation with a short sale. However, he bought another home before selling his first and used a home equity loan for the down payment. Certain events were beyond his control, but he did not act reasonably or prudently. He has not met his burden. He has not acted responsibly in resolving his delinquent debt. He does not intend to pay this debt. He believes he may file for bankruptcy. He has not mitigated the security concerns raised in this case. Clearance is denied.

### **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
Subparagraph 1.a.:	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 a security clearance. Clearance is denied.

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NOREEN A. LYNCH.  
Administrative Judge