



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



In the matter of: )  
)  
) ISCR Case No. 11-07115  
)  
Applicant for Security Clearance )

**Appearances**

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

04/29/2013

**Decision**

O’BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guideline for financial considerations. His request for a security clearance is denied.

**Statement of the Case**

On July 23, 2012, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) that detailed security concerns under Guideline F (financial considerations). This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992) as amended; and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

In his Answer to the SOR, Applicant admitted all the allegations under Guideline F, except allegation 1.j. The case was assigned to me on December 17, 2012. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on January

17, 2013, setting the hearing date for February 13, 2013. At the hearing, I admitted seven Government exhibits into evidence (GE 1-7). Applicant testified, offered the testimony of one witness, and presented three exhibits, admitted into evidence as AE A-C. I held the record open to allow Applicant to submit additional documentation. He timely submitted one document, admitted as AE D. DOHA received the transcript of the hearing (Tr.) on February 22, 2013.

### **Findings of Fact**

Applicant's admissions to 11 of the 12 SOR allegations are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the evidence, I make the following additional findings of fact.

Applicant is 42 years old. He and his wife started living together in 2002, and married in October 2010. They have a nine-year-old daughter. They have been separated since October 2011. Applicant completed a bachelor's degree in fine arts in 1996, and works in graphics and multimedia. He joined his current employer as a visual information specialist in June 2009. Since then, he has been working on-site for a federal agency. (GE 1; Tr. 16-20)

In November 2007, Applicant had a motorcycle accident. He was hospitalized and over time had numerous surgeries and was on pain medications. He was out of work until June 2008. Applicant's share of the medical bills was more than \$10,000. He received disability insurance payments that were about 40% less than he had been earning. His income dropped from \$75,000 to \$45,000. When he returned to work, his position had been assigned to another person, the company did not find another appropriate position for him, and he was laid off. He was unemployed or working part-time in July and August 2008. He paid some of his medical bills, but was unable to pay all of them because of his reduced income while on disability and his job loss. In July 2010, he was hospitalized for two weeks with a staph infection in the injured leg. He continued treatment at home for about 10 weeks, and was able to work from home. (GE 7; Tr. 21-28, 102-103, 117-118)

After Applicant and his wife separated in 2011, he paid court-ordered child support of \$1,000 from May 2012 to November 2012. Since then, he has been informally paying his wife \$500 per month in child support. His next court hearing regarding child support was set for March 2013. (Tr. 17-19)

In 1997, Applicant purchased Property C. He resided there until 2003, and then rented it. At that time, he began purchasing other properties for investment. Between 1997 and 2007, Applicant purchased seven properties.<sup>1</sup> He had a plan about how to invest:

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<sup>1</sup> Applicant also bought a property in 2009, but it is not alleged in the SOR. See page 6.

My plan all along, and it was a very good plan, once I had a family and we moved into (Property E), then the plan that we both had was to buy investment properties. So I used the condo because it had equity in it and I got a home equity loan on it, I think to fix the house up and then I put -- I refinanced it so then I paid that off and then I got another home equity line on that one and then that's what I used to start to build up the investment side of the business. So it was very structured. (Tr. 68)

He also noted that he rarely used his own funds, and for some of the mortgages at the time, “. . . you would only have to have \$1,000 down or \$2,000 down.” However, when the real estate market faltered, and then crashed, Applicant's tenants stopped paying their rent, or his rental properties were vacant. His mortgage loans became delinquent, and some were foreclosed. When Applicant met with a security investigator in November 2010, they discussed his properties that were in delinquent or foreclosure status. He stated that he was trying to have his delinquent mortgage loans modified, or to short-sell the properties. Applicant did not submit Internal Revenue Service Form 1099-A or Form 1099-C for any of his foreclosed properties. (GE 2; Tr. 77, 116)

According to Applicant's April 2012 personal financial statement, and the information he provided at the hearing, his gross annual income is approximately \$88,000.<sup>2</sup> His net monthly income, including about \$350 from rental property, is \$5,336. His expenses total \$1,114. His debt payments have decreased significantly from \$4,061 in April 2012, to \$1,122. Although he is now paying \$511 on his credit card debt, he is no longer paying \$3,068 on the mortgage for the house where his wife lives, and he has not paid \$382 per month on his \$85,000 home equity loan (HEL) for the past few months. In April 2012, he had a monthly net remainder (MNR) of \$267; as of the February 2013 hearing, his MNR has increased to \$3,100. Applicant noted in his interrogatory response that he did not include his legal fees, or one-time expenses such as car repair. He did not indicate how much he has spent on legal fees. Applicant testified that he uses one credit card, which is current, and has no delinquent debts other than those listed in the SOR. In September 2012, Applicant enrolled in a financial capabilities course which ends in July 2013. (GE 2; AE A; Tr. 23, 107, 111-115)

Applicant's delinquencies appear in credit reports dated January 2005, October 2010, and April 2012. (GE 4-6) The debts listed in the SOR comprise six medical debts totaling \$6,126; four mortgage loans with \$73,000 in delinquent payments, on balances totaling \$420,000; and one credit card debt of \$18,000. The SOR also alleges that lenders foreclosed on three properties in addition to the four cited delinquent mortgage loans. The status of Applicant's SOR debts follows.

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<sup>2</sup> Applicant updated the information on his monthly income and expenses at the hearing. (GE 2; Tr. 112-115)

## **MEDICAL DEBTS**

**Allegations 1.a – 1.f: Six debts totaling \$6,124, UNPAID** – Applicant incurred substantial medical debt related to his 2007 motorcycle accident. He testified that he has paid many of the debts, but the six alleged in the SOR remain unpaid. At the time of his 2010 security interview, he stated that he was paying \$100 per month on the largest debt of \$4,987 (allegation 1.f). Three of the debts are between \$90 and \$99. Applicant's friends, who are financial planners, advised him to handle his larger debts first. He also stopped paying the medical debts because of problems with his investment properties when the real estate market crashed. He plans to arrange a payment plan when he is financially able. (GE 2, 4; Tr. 24-28)

## **CREDIT CARD**

**Allegation 1.k - \$18,000, PAYMENT PLAN** - Applicant opened this credit card account in 2003. It became delinquent in 2010 with a balance of \$18,000. The creditor filed suit, and Applicant appeared in court in April 2012. The creditor agreed to a settlement of \$9,200, to be paid in monthly installments of \$511.11 from May 2012 to October 2013. If Applicant defaults, a judgment for \$18,349 will be entered. He provided evidence of monthly payments from May 2012 through February 2013. (GE2, 4; AE D; Tr. 106-107)

## **MORTGAGE DEBTS<sup>3</sup>**

### **PROPERTY A (allegation 1.g) - \$18,000 past due on a balance of \$118,000. DELINQUENT**

Applicant bought three adjacent city properties between 2006 and 2007 (Properties A, B, and G). He purchased Property A in the summer of 2006 for \$90,000. Housing values were inflated at the time. After purchasing the two adjacent properties (B and G), he refinanced each of them for \$110,000, and used the additional \$20,000 from each refinance for upkeep on the three properties, and Properties D and F. Property A was rented at times, and vacant at times. His last reliable tenant vacated in about 2010. According to his 2012 credit report, the mortgage has been delinquent since 2009. When the loan became significantly delinquent, the lender would not accept further payment. Applicant testified he stayed in touch with the lender, and is hoping to short-sell it. However, he expects the process could be lengthy. (GE 4, 5; Tr. 74-89)

### **PROPERTY B (allegation 1.h) - \$24,000 past due on a balance of \$126,000. FORECLOSED**

A few months later, in spring 2007, Applicant purchased this city property, adjacent to Properties A and G, for slightly under \$90,000. At the time, rents were higher than the

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<sup>3</sup> The Government's evidence concerning Applicant's mortgage debts includes a summary of an interview with Applicant by another government agency. It contains no date to indicate when the interview occurred. It also contains no indication that Applicant reviewed or adopted it as accurate. I have assigned it little weight. (GE 3)

mortgage payments because of the real estate market boom. However, in 2007, his tenant stopped making payments for several months, and Applicant was unable to rectify the situation because he was in the hospital. (Tr. 82) The loan became delinquent in 2009. The house was foreclosed in 2011, and sold by the lender. Applicant does not know the sale price. (GE 2, 4, 5; Tr. 74-75, 78-89)

**PROPERTY C (allegation 1.i) - \$21,000 past due on a balance of \$123,000. DELINQUENT**

Applicant bought this property in 1997 for \$87,500, and lived in it until 2003. He then rented it to a tenant. Applicant made about \$300 per month profit until the tenant stopped paying in January 2010. Between 2010 and 2011, his tenant tried to qualify to buy the house, but failed. Applicant obtained a home equity loan (HEL) to make repairs. He refinanced his mortgage loan twice, taking out a total of \$85,000. The loan balance is currently \$123,000. Applicant testified that he stopped making payments after his tenant stopped paying in January 2010. He also testified that he stopped making payments because when he first requested a loan modification, he was told he must be delinquent to qualify. That modification was denied. Applicant stayed in touch with the lender. He tried to short-sell the house, without success. After his separation from his wife in May 2012, he moved to this property, where he currently resides. As of June 2012, he had again requested a loan modification. He is not making payments. He believes any amount he owes will be added to the new mortgage loan. (GE 1, 2, 4; Tr. 29-32, 49- 64, 114)

**PROPERTY D (allegation 1.j) - \$36 past due on a balance of \$53,000. DELINQUENT**

Applicant bought this property in 2007 for about \$31,000. He obtained a HEL for \$53,000 in late 2007 or early 2008, secured by the property in allegation 1.i, to purchase this property. He paid the full purchase price of \$31,000, and did not obtain a mortgage. He also used the HEL funds to pay debts and to make repairs on other properties. He has rented Property D for \$300 per month to the same person since he bought it. Applicant's 2012 credit report shows the loan is \$36 delinquent, and Applicant admitted this allegation in his Answer to the SOR. At the hearing, he denied it is delinquent, but did not provide documentation to support his contention. (GE 2, 4; Tr. 64-72)

**OTHER PROPERTIES (allegation 1.i)**

The SOR alleges Applicant had three additional properties that were foreclosed. However, other than the foreclosed Property B (allegation 1.h), only two other properties were foreclosed--Properties F and G. The lender initiated foreclosure proceedings on a third property (Property E), but that house was sold in 2011 through a short sale. (GE 5)

- **PROPERTY E: SHORT SALE** - Applicant bought this property in 2003 for \$260,000. He remodeled it to live in with his girlfriend and daughter. He refinanced it in 2005 and 2007, when home values were increasing. As a result, the property had a

first mortgage of \$430,000 and a second mortgage of \$49,000. Applicant and his girlfriend were joint owners. When it appeared they would not remain together, Applicant gave about \$80,000 of the funds from the refinance to his girlfriend, to buy her share. According to Applicant's October 2010 credit report, the lender had initiated foreclosure proceedings on the property. However, Applicant testified it was not foreclosed, but was short-sold in 2011 for approximately \$250,000. Applicant stated he has not been contacted by the lender regarding a deficiency balance. (GE 5; Tr. 32-39)

- **PROPERTY F: FORECLOSED** – In about 2005,<sup>4</sup> Applicant bought an older property for \$85,000, with an additional \$15,000 included for rehabilitation. He purchased the property from an individual rather than an institutional lender. The loan allowed him to make repairs using a small “draw” on the \$15,000; when certain repairs were completed, he could apply for the next draw. He planned to remodel it, rent it, and then apply for a loan with better terms. Between 2006 and 2008, he spent about \$20,000 on rehabilitation. After making repairs, the house was vandalized numerous times. Applicant requested a refinance, or a short sale, but the lender was inflexible. Applicant made the mortgage payment for several years, but eventually stopped making repairs or payments. The house was foreclosed in about 2009, and sold. Applicant does not know the sale price, and has not been contacted about a deficiency. (GE 4, 5; Tr. 39-49)

- **PROPERTY G: FORECLOSED** – This is one of the three adjacent city properties Applicant purchased. He bought it in 2007 for about \$90,000, which was less than market value. He refinanced it for \$110,000. The tenant paid one month’s rent and no more. In fall 2007, Applicant had the motorcycle accident and a lowered income. The loan became delinquent in 2009. The lender foreclosed in April 2010, and sold the property soon after. Applicant does not know the sale price. (GE 4, 5; Tr. 74-89)

In June 2009, Applicant and his girlfriend bought a property for \$435,000 as the family residence. The mortgage became delinquent in January 2012. After their separation in May 2012, Applicant's wife and daughter remained in the home, and Applicant moved to Property C. Applicant is not making payments, and the loan remains delinquent. He is attempting to obtain a loan modification. This property is not alleged in the SOR.<sup>5</sup> (Tr. 91-98, 114)

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<sup>4</sup> Applicant testified that he purchased Property F between 2003 and 2006. His credit reports appear to show this mortgage was opened in 2005. (GE 4, 5)

<sup>5</sup> ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003). (Conduct not alleged in an SOR may be considered: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive § 6.3.)

Applicant's friend of 20 years testified. He stated that Applicant has lived within his means and has good judgment and integrity. He believes Applicant's financial problems started when he was hospitalized and then lost his job, and was unable "to see to his financial affairs as closely as he had prior to that." He knows Applicant to be responsible in taking care of his affairs. (Tr. 123-134)

Applicant's immediate supervisor submitted a character reference. She is familiar with his financial issues. In describing his investing, she opined that Applicant was trying to better himself financially, but did not prepare for unexpected circumstances such as accidents, the economy, and divorce. However, she considers him to be honest and dependable. Applicant's realtor also submitted a reference. She believes that Applicant was a careful investor and a "responsible financier" and noted that his separation added to his financial burden because of legal costs. She stated that he is in negotiations with two lenders. She believes that he is not living beyond his means. (AE B, C)

### **Policies**

Each security clearance decision must be a fair and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.<sup>6</sup> Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the "whole-person" concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (financial considerations).

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest<sup>7</sup> for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.<sup>8</sup> A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore,

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<sup>6</sup> Directive. 6.3.

<sup>7</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>8</sup> See *Egan*, 484 U.S. at 528, 531.

the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as her or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.<sup>9</sup>

## Analysis

### Guideline F (Financial Considerations)

AG ¶18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. . .

Applicant’s debts stem primarily from his investments in real estate. He bought five properties between approximately 2005 and 2007, when real estate values were rising. Although they were not high-priced properties, taken together, Applicant assumed more debt than his income could support. Three of his properties have been foreclosed, and other loans are currently delinquent. The following disqualifying conditions under AG ¶19 apply:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (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.

The Financial Considerations guideline also contains factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶ 20, especially the following:

- (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;

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<sup>9</sup> See *Egan*; AG ¶ 2(b).



(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 debts are both numerous and recent, because he has mortgage loans that are currently delinquent. As to recurrence, the housing crash and Applicant's real estate ventures may not recur. However, his response to the housing bubble that preceded the crash is troubling. He bought multiple properties, leveraging funds from one property to place down payments as small as \$1,000 or \$2,000 on other properties. He did not have a manager to handle the properties when he could not physically manage them after his accident. He overextended himself. He bought three properties in a short period of about 18 months. His income was \$75,000 in 2007, and less in the period of 2003 to 2007 when he was buying numerous properties that his income would not support. Applicant's conduct shows a lack of good judgment and willingness to engage in financially risky behavior. AG 20(a) does not apply.

Several unexpected events affected Applicant's finances. Most significant was his 2007 motorcycle accident, which caused a 40% reduction in his income for about seven months. The resulting lay-off from his employment was not significant, because he was unemployed for only two months. However, his separation from his wife in 2011 resulted in child support payments of \$1,000 per month--later \$500 per month--and unspecified expenditures for legal fees. The other significant event was the depressed housing market starting in about 2008, which made Applicant's properties difficult to rent or sell. Applicant could not predict these events, and they had a negative effect on his ability to pay his debts. He made some efforts to resolve his property debts by seeking loan modifications and short sales from the lenders. AG ¶ 20(b) applies in part.

When Applicant started to purchase rental properties in 2003, he consulted informally with friends about real estate investing. In September 2012, after the SOR was issued, he enrolled in a 10-month financial course. However, his mortgage and medical debts are not under control or resolved. Applicant receives partial mitigation under AG ¶ 20(c).

During his November 2010 security interview, Applicant stated he was trying to resolve his mortgage debts by working with the lenders to obtain loan modifications, or trying to sell the properties through short sale. As of the hearing date, he was still trying

these avenues to resolve his delinquencies. His efforts on one house, Property E, produced a short sale. Foreclosure was initiated on Property E, which had mortgage loans of \$480,000, but it eventually short-sold in 2011 for \$250,000 less than the balance. Three other properties were foreclosed--Property F in about 2008, Property G in 2010, and Property B in 2011. Applicant currently owns four properties, three of which were alleged in the SOR. All are delinquent. Although Applicant contends that one of the three--Property D--is not delinquent, he did not provide evidence the loan is current. Applicant also had significant credit card debt of approximately \$18,000. Applicant only started paying on this debt in June 2012, after the creditor sought relief in court. Applicant's inconsistent efforts have not resulted in a concrete plan to resolve his mortgage debts, which precludes full mitigation under AG 20(d).

### **Whole-Person Analysis**

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of an applicant's conduct and all the 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant invested in real estate starting in 2003. His fortunes changed when he lost about 40% of his income due to a motorcycle accident in 2007. The housing market crash starting about that time further compounded his financial problems when his tenants in some properties stopped paying rent and other properties were vacant. Although he made efforts to work with the lenders, three properties were foreclosed. He currently owns four properties, and all the loans are delinquent. One of the four, the house where his wife and daughter now live, is not alleged in the SOR. In 2009, Applicant and his wife bought it for \$435,000, despite his ongoing problems with numerous delinquent mortgage loans. The mortgage on this property became delinquent in January 2012, and remains delinquent.

Applicant has been working full-time since 2008. Since at least 2010, when he completed his security clearance application, he has been on notice that his financial status is a security concern. His \$18,000 credit card debt was delinquent for two years until he was forced to a resolution through court action. He did not seek financial counseling until 2012, after the SOR was issued. Under the Appeal Board's jurisprudence, an applicant does not have to show that he paid every debt, but he does have to show that he has a viable plan in place and has taken steps to implement that plan. Applicant is still seeking loan modifications and short sales, as he was in 2010. His mortgage delinquencies and lack of a plan to pay them fail to demonstrate reliability and good judgment.

The awarding of a security clearance is not a once in a lifetime event, but is based on applying the disqualifying and mitigating conditions to the evidence presented. Under Applicant's current circumstances, a clearance is not warranted. Should Applicant be afforded an opportunity to reapply for a security clearance in the future, having established that he has addressed his obligations, he may be able to demonstrate evidence of security worthiness.

However, the record evidence at this time fails to satisfy the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns raised by the cited adjudicative guideline.

### **Formal Findings**

Paragraph 1, Guideline F	AGAINST APPLICANT
Subparagraphs 1.a – 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 allow Applicant access to classified information. Applicant's request for a security clearance is denied.

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RITA C. O'BRIEN  
Administrative Judge