



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



In the matter of: )  
)  
) ISCR Case No. 11-07982  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: James S. Delsordo, Esq.

04/01/2013

**Decision**

MASON, Paul J., Administrative Judge:

Applicant mitigated his delinquent credit card debt through settlement. He is actively engaged in seeking a home loan modification for his primary mortgage. However, he has taken no action to address his second mortgage or the \$205 medical debt. Applicant has not mitigated the security concerns raised under the financial considerations guideline. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP), identified as Government's Exhibit (GE 1), on December 1, 2010. He was interviewed by an investigator from the Office of Personnel Management (OPM) on December 20, 2010. The interview summary appears in GE 2, Applicant's interrogatory

answers, dated July 3, 2012. Applicant responded “yes” when asked whether he agreed summary could be admitted in evidence at a hearing to determine his security suitability. (GE 2)

On September 20, 2012, the Department of Defense issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 furnished his notarized answer to the SOR on September 29, 2012. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 8, 2013, for a hearing on March 1, 2013. The hearing was held as scheduled. Five Government exhibits (GE 1-GE 5) were admitted in evidence without objection. Applicant testified and offered three exhibits (AE) A-C that were admitted into evidence without objection. Applicant’s three post hearing exhibits (AE D-F) were admitted into evidence without objection. The transcript was received on March 7, 2013. The record closed on March 19, 2013.

### **Findings of Fact**

The SOR contains four allegations under the financial considerations guideline. Applicant admitted SOR 1.a. He settled the account on September 19, 2012. He admitted SOR 1.b, and stated that he had complied with every request of the lender for approval of a home loan modification agreement (HMA). He admitted SOR 1.c (second mortgage) and was told the account was written off and no longer existed. Applicant denied SOR 1.d because he could not identify the debt or collection agency.

Applicant is 35 years old. He has been married since February 2000. He has three children, 11, 8, and 3 years old. He studied computer technology in college for two years, but received no degree. From August 2010 to the present, Applicant has been employed as a systems engineer with employer C. Before his current employment, he worked as a systems engineer for employer B between May 2009 and August 2010. He was a computer engineer from 1999 to May 2009 with employer A. He has held a security clearance for the past three years with no record of a security violation. He was investigated for a security clearance in August 2005. (Tr. 18; GE 1 at 14-16, GE 2 at 3)<sup>1</sup>

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<sup>1</sup> Page number cites from Applicant’s e-QIP and interview summary are typed and located in the upper right hand corner of the page. Page number cites from other exhibits are handwritten and appear in the lower right portion of the exhibits, except where otherwise noted.

By May 2009, Applicant had been working full-time as a computer engineer for employer A for 10 years, where he was earning \$62,000 a year. A new employer won the contract and decreased Applicant's salary by 40%. Applicant resigned from employer A and was unemployed for about 30 days before being hired by employer B at a salary of about \$79,000. He was employed with employer B until the Department of State replaced employer B with a major contractor to perform a project. Applicant currently earns about \$80,000 with employer C. (Tr. 30-33; GE 1 at 14-16)

Applicant's wife was fired from her job because her employer did not provide maternity leave. She was unemployed for about three months between March and June 2009. She found another job. Her current salary is \$72,000. (Tr. 33-34, 52)

Applicant purchased his home in August 2005 for about \$500,000, with an "80/20 mortgage loan," consisting of two mortgage loans on the same home to make the home more affordable for the buyer. His monthly mortgage payments were almost \$4,000 a month. Applicant refinanced the home in August 2006 and withdrew \$60,000 in equity to pay some debts that he indicated were not delinquent. Applicant testified that in 2007, he obtained another equity loan of \$20,000 to pay bills that were not delinquent debts. (Tr. 36, 49)<sup>2</sup> He claimed he is now current on the 2007 equity loan which has a monthly payment of \$352. Applicant's credit report shows the account as past due as of June 2012. The creditor designated the account in repayment phase with credit no longer available. (Tr. 28, 36, 49; GE 2 at 186)

Applicant became delinquent on the listed mortgages in 2008 when his wife, who had been paying the second mortgage, lost her job. She found other employment, but Applicant never caught up on the two mortgages. (Tr. 21, 35-39) As shall be addressed later in the factual findings, Applicant furnished different positions about when he completely stopped paying on both mortgages.

Applicant applied for a home HMA in 2009. He was approved for the trial payments (a method for the lender to determine whether he could afford the HMA). He paid the three trial payments, but the HMA was not approved. The SOR 1.b creditor did not supply Applicant with a reason. Applicant claimed that he continued to make payments on the mortgage. (Tr. 25, 38-40) No additional evidence of payment information was provided.

Applicant stopped making payments on the mortgage in the middle of 2011 on the advice of the Neighborhood Assistance Corporation of America (NACA), a non-profit organization that assists mortgagors to obtain fair home modification agreements from their lender. The organization told Applicant that to get an HMA from the SOR 1.b lender, he

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<sup>2</sup> Applicant's credit report reflects the account was opened in October 2006. (GE 2 at 186)

should stop paying the mortgage. Another reason Applicant stopped paying the mortgage was because of the times the lender returned his mortgage payments. He has not made any payment on his mortgage since the middle of 2011. (Tr. 22-23, 42)

Applicant began his second HMA process by making payments in February 2012 under a trial modification. The SOR 1.b lender told Applicant the purpose of the payments was to find out whether the mortgagor could afford the loan. He testified that he had made three payments under the trial modification, but had not brought the supporting documents with him. (Tr. 43-45)<sup>3</sup>

Applicant believed his most recent HMA would be approved because the SOR 1.b creditor has continually communicated with him by mail or telephone. Though he was not present during the telephone conversation, Applicant believed his home was under an HMA because a loan officer talked to Applicant's wife on February 27, 2013. He submitted AE E which states that qualification for the modification agreement required a three-month trial period. During the three-month period, a payment of \$2,952 would be due on the first of April 2013, and at the beginning of the next two months. (Tr. 45; AE E) No payments have been made under the trial payment procedure.

The debts will be discussed in the order they appear in the SOR:

SOR 1.a (Resolved), \$7,713, credit card. The account was opened in April 2007. The last activity on the account was July 2009, and it was charged off in March 2010. Applicant provided proof the account was settled on September 19, 2012. SOR 1.a is resolved in Applicant's favor. (GE 2 at 189; Tr. 20, 45; AE B, D)

SOR 1.b (Beginning HMA process trial payment period), primary mortgage that is delinquent by \$19,101, with a balance of \$443,488. The account was opened in August 2005, with the last activity posted as October 2011. (GE 2 at 220) Applicant's attempts to obtain an HMA agreement have been addressed earlier in this section. Applicant's testimony intimates he was involved in three, not two, home loan modifications. The documentation provided by Applicant concerning his attempts to obtain an HMA warrant a finding in his favor under SOR 1.b.

SOR 1.c (Unresolved), second mortgage, \$168,000. The account was opened in September 2006 and charged off in May 2012. Last activity on the account was October 2011. Applicant explained in his answer that the SOR 1.b lender told him the second loan was written off and no longer existed. The SOR 1.c lender has contacted Applicant, but he

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<sup>3</sup> In GE 2, he claimed that he made a payment to the SOR 1.b lender in May 2012. The undated exhibit is a notice from the lender requesting payment. It is not evidence of a payment by Applicant. (GE 2 at 179)

does not intend to reply until he receives something in writing from the lender. He has made no payments on the second mortgage. (Tr. 23-24, 45)

SOR 1.d, \$205 (Unresolved), medical account. The account was transferred to a collection agency in March 2009 by the original creditor. At the hearing, Applicant surmised the account could be for medical services. If someone presented documentation that indicated it was for medical services, he would pay the debt. He made a phone call to the collection agency about the debt. About eight months before the hearing, he disputed the debt on the Internet. He indicated he had proof of his search, but he did not bring that evidence to the hearing. Later he testified that he disputed SOR 1.d with the three credit agencies, but received no reply. Applicant intended to contact the collection agency to resolve the debt. (Tr. 27-28, 47-49, 60-61)

Applicant has never had financial counseling. He consulted with a law firm providing HMA services. After discovering the law firm was unable to provide assistance, Applicant contacted NACA in the middle of 2011. (Tr. 25, 42; GE 2 at 181)

Applicant indicated he has saved about \$11,000 that he would have normally used to pay the mortgages. The savings account is at his primary bank. When the home loan modification is approved, Applicant intends to begin payments on the primary mortgage. (Tr. 56, 58-59) No additional evidence of a savings account was submitted.

The monthly net income of Applicant and his wife totals \$9,100. When the two monthly mortgage payments are added to Applicant's list of monthly debt and expense payments, his July 2012 monthly debts and expenses (\$11,184) exceed his combined net income by \$2,084. He will eliminate the shortfall by buying less food and using less gas for his car. (GE 2 at 176; Tr. 54-55)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

The disqualifying and mitigating conditions should also be evaluated in the context of nine general factors of the whole-person concept to bring together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision for security clearance eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard

classified information. Such decisions entail a certain degree of legally permissible extrapolation as to the potential, rather than actual, risk of compromise of classified information.

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 of establishing that it is clearly consistent with the national interest to grant him a security clearance.

## **Analysis**

### **Financial Considerations**

The security concern for financial considerations is set forth 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The Government has the responsibility of presenting sufficient information to support all allegations under the financial considerations guideline. Based on the credit reports (GE 3, 4, and 5), Applicant's interview summary, his interrogatory responses, and the record transcript, the Government has established its case.

The two pertinent disqualifying conditions under AG ¶ 19 are:

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

As of the date of the SOR, Applicant's four delinquent accounts included a credit card account, two mortgages, and a medical account. Though SOR 1.d was the first listed account to become delinquent in March 2009, the preliminary signs of financial difficulty emerged in August 2006, one year after purchasing his home, when Applicant refinanced

his home to obtain a \$60,000 equity loan to pay bills. Two months later, he obtained a \$20,000 loan to pay bills in October 2006. In 2008, the second mortgage became delinquent after his wife lost her job. They have not been able to restore either mortgage to a current status. AG ¶¶ 19(a) and 19(c) are applicable.

Five mitigating conditions under AG ¶ 20 are potentially pertinent:

(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 reliability, trustworthiness, and good judgment);

(b) (the conditions that resulted in the financial problem were largely beyond the person's control 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);

(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts); and

(e) (the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue).

Applicant owes more than \$168,000 for the second mortgage (SOR 1.c) and the medical debt (SOR 1.d). He has been delinquent to both creditors for more than three years. It is likely that he will continue to be indebted to both creditors in the near future. His failure to address either account continues to cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant's mortgage problems were triggered by his wife's loss of employment in 2008, an unforeseen event beyond Applicant's control. Though she and Applicant were unemployed for different periods of time in 2009, they have both been employed continuously since then. Under the second prong of the mitigating condition, an applicant must also show that he acted "responsibly under the circumstances." Applicant provided no documentary evidence of steps taken to resolve the second mortgage or the medical debt. AG ¶ 20(b) applies only in part based on the unanticipated unemployment of his Applicant and his wife in 2008 and 2009.

Applicant never had financial counseling. His consultation with the home loan modification law firm was unsuccessful. He exercised good judgment by settling the delinquent credit car account (SOR 1.a) debt and actively pursuing a home loan modification with the first mortgage lender (SOR 1.b). However, he has done nothing to resolve the two remaining accounts. Without a plan to deal with his second largest delinquent account and documented action to resolve the account, I am unable to conclude his financial problems are being resolved or under control. AG ¶ 20(d) applies to Applicant's good-faith efforts in handling the first two listed accounts. On the other hand, Applicant receives no credit under AG ¶ 20(c).

Applicant made claims about disputing the medical debt identified in SOR 1.d. The mitigating condition requires an applicant to provide a reasonable basis for the dispute and documented proof to support the dispute. The record contains no documentation to confirm that Applicant formally disputed the medical account. AG ¶ 20(e) does not apply.

### **Whole-Person Concept**

I have examined the evidence under the disqualifying and mitigating conditions of the financial considerations guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors set forth in 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 the participation was 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 a commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

The record reflects that Applicant is 35 years old. He attended college for two years, where he studied information technology. Except for about 30 days in May 2009, he has been continuously employed in the information technology field since at least 1999. There is no record of security violations. Applicant has been married since 2000, and has three children. In September 2012, he settled a credit card debt. From 2009 to the present, he



has been actively engaged in obtaining a home loan modification, and is currently in a three-month trial period payment plan.

What is missing from Applicant's case in mitigation is financial counseling which could have influenced Applicant to make more responsible decisions about his financial practices. Purchasing a less expensive home and prudent use of credit could have averted the necessity to obtain \$80,000 in loans in 2006 and to incur mortgage delinquencies in 2008. Applicant's July 2012 complete list of debts and expenses (including the two mortgages) exceeds the combined monthly income of Applicant and his wife by \$2,084. Applicant's financial problems are not under control. Having weighed and balanced the evidence under the disqualifying and mitigating conditions, and in the context of the whole-person concept, Applicant has not mitigated the security concerns under the financial considerations guideline.

One additional issue warrants discussion. Applicant cited two hearing level cases (ISCR Case No. 11-06512, Jan. 15, 2013, ISCR Case No. 04-06180, Mar. 20, 2006) to support his position that the whole-person concept supports a finding in Applicant's favor. Hearing-level decisions are not binding on other administrative judges even when factual similarities may exist between the cited decision and the case to be decided. Each of the cited cases is factually distinguishable from the instant case primarily because the applicant was more active in addressing all listed debts and in settling debts when able.

### **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, 1.b:	For Applicant
Subparagraph 1.c, 1d:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Paul J. Mason  
Administrative Judge

