



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 11-08530

**Appearances**

For Government: Jeff Nagel, Esq, Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

09/17/2012

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns regarding his finances. Eligibility for access to classified information is granted.

**Statement of Case**

On February 15, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and DOHA recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 (AGs) implemented by the Department of Defense on September 1, 2006.

Applicant responded to the SOR on March 2, 2012, and requested a hearing. The case was assigned to me on April 12, 2012, and was scheduled for hearing on May 10, 2012. At Applicant's request, the case was rescheduled for August 1, 2012. At hearing, the Government's case consisted of five exhibits (GEs 1-5). Applicant relied on one witness (himself) and seven exhibits (AEs A-G). The transcript (Tr.) was received on August 7, 2012.

### **Procedural Issues**

Before the close of the hearing, Applicant requested the record be kept open to afford him the opportunity to supplement the record with documentation of his latest bank statement reflecting his balance in his checking account. There being no objection from Department Counsel, and for good cause shown, I granted Applicant seven days to supplement the record and the Government one day to respond. Applicant supplemented the record with his July 2012 bank statement covering funds in his checking account. I admitted his submission as AE H.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated a past due debt of \$110,759 on his home mortgage, which reflects a total mortgage balance of \$2,207,471. In his answer to the SOR, Applicant denied the allegations, explaining that he did not have all of the records necessary to verify the amounts owing on his mortgage. He claimed that he retained an attorney to help him and was making good-faith attempts to resolve the matter.

### **Findings of Fact**

Applicant is a 51-year-old chief executive officer of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant married in June 1999 and has two children from this marriage. (GE 2; Tr. 17) He earned a bachelor's degree in December 1983 from a respected university. (GE 1; Tr. 17) He earned a certificate of completion of an executive program from another respected university in 2006. (GE 2)

Applicant served in the Navy's civil engineering corps between April 1984 and March 1988, and earned an honorable discharge. (GE 1; Tr. 18) Applicant's father is a retired Navy Rear Admiral. (AEs A-C; Tr. 18) Among his Navy assignments, Applicant was responsible for road and school building projects on important humanitarian missions. (AEs A and C)

## **Applicant's finances**

Between August 1992 and May 2008, Applicant was employed by an engineering consulting firm in a managerial position as a senior vice president. (GE 2; Tr. 19) Due to his company's restructuring plans, Applicant was afforded an option by his company in 2008 to either resign or be laid off. (GE 2) At the time, he was earning \$250,000 a year. (Tr. 19-20)

Applicant ultimately resigned and was awarded a severance package that did not afford him any rehiring privileges. (GE 2; Tr. 20) His severance benefits included a \$450,000 stock option distribution. Because Applicant's employer was a privately-held company, his company stock was illiquid and could become liquid only upon sale of the company. (Tr. 30) Due to this liquidity impediment, Applicant's severance distribution was withheld for several years. He received his \$450,000 severance check just last year following his ex-employer's merger with another firm. (Tr. 20)

In October 2005, Applicant and his wife purchased their current home for about \$1,850,000. (GEs 2-5; Tr. 22, 26) They financed the purchase with an \$800,000 down payment and a mortgage exceeding \$1,000,000. (GEs 3-5; Tr. 26-27) Monthly mortgage payments approximated \$10,000. (Tr. 27) Following his resignation in May 2008, Applicant continued to make his mortgage payments for a number of years with his savings, and income from his new start-up consulting firm. (GEs 1 and 2). As of February 2012, he had a delinquency balance of \$110,759. (GEs 3-5; Tr. 28)

In November 2009, Applicant tentatively completed a loan remodification that decreased his monthly payments from \$10,000 a month to \$7,000 a month and raised the mortgage balance to around \$2.2 million. (GE 2 and AEs E and F) In late 2010, he was notified by his lender that he was no longer in the lender's trial mortgage program because of application discrepancies. (GE 2) With the help of his attorney, he was able to reach modification approvals and was told to keep making the lowered payments. (GE 2 and AE E) Applicant complied with his lender's instructions and continued making his mortgage payments.

As the result of two lender-requested appraisals in January 2011 and March 2011, Applicant's home lender lowered the appraised value of Applicant's home to around \$2 million. It is currently valued at only \$1.9 million. (Tr. 31) Applicant earns about \$250,000 a year from his consulting firm and has a monthly remainder of \$4,000. (Tr. 22) Under the terms of his most recently modified mortgage, he has a 30-year fixed rate of interest on the monthly balance. (AE E) His monthly mortgage payments have increased to \$8,610 on a revised \$2,252,664 loan balance. (AE E; Tr. 29)

Applicant is current with his mortgage payments. (AE E; Tr. 21, 29) Applicant's most recent bank statement covering the period of June 2012 through July 2012 reflects an ending cash balance of \$144,200, a slight reduction in his cash balance from the period of March 2012 through April 2012. *Compare* AEs G and H. His credit reports and

bank statements reveal solid credit and finances and earnest efforts to manage his outstanding debts. (GE 2 and AEs F-H))

## **Endorsements**

Applicant is highly regarded by retired commanding officers who either served with Applicant or are familiar with his Navy and civilian work experiences. They extol his leadership, judgment, and character as beyond reproach. (AEs A-C; Tr. 23-26) Each of them cites Applicant's demonstrated leadership skills and commitment to U.S. safety and security. They stress his Navy achievements and cite his awarded medals and commendations when covering his major contributions to their commands before he was medically discharged from further service. (GE 2 and AEs A-C) These retired commanders credit Applicant as well with outstanding contributions to the defense industry throughout his 15-year career with a major defense contractor. (AEs A-C)

A college classmate, who roomed with Applicant in college and is familiar with Applicant's academic pursuits and ethics, credits Applicant with deep commitments to the United States and its military services and characterizes Applicant as trustworthy and worthy of a high level security clearance. (AE D; Tr. 24-25)

## **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information.

These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." They must be considered before deciding whether or not a security clearance should be granted, continued, revoked, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c)

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs. AG ¶ 2(a) is intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors:

(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.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

### **Financial Considerations**

*The Concern:* 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.

Adjudicative Guidelines, ¶ 18.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the

facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988). And because all security clearances must be clearly consistent with the national interest, the burden of persuasion must remain with the Applicant.

### **Analysis**

Applicant is a chief executive officer of a small defense contractor that he formed in 2008. After losing his senior management position in May 2008 (a position he had held for many years), Applicant incurred major delinquencies with his home mortgage. Prior to the loss of his employment, Applicant enjoyed excellent credit and was current with the mortgage he and his wife assumed in 2005 in connection with their home purchase.

After losing his senior position, Applicant managed to stay current with his mortgage for several years with his available savings while he pursued loan modification with his lender. By 2011, he had fallen behind in his mortgage by more than \$110,000. Still, Applicant persevered with his mortgage remodification efforts. With increasing income from the consulting company he founded, and counseling advice from his attorney, he completed a remodification of his home loan in March 2012. To date, he is current with his lowered monthly payments.

Applicant’s accumulation of mortgage delinquencies on his home and his past inability to resolve his mortgage delinquencies raise potential security concerns about his judgment, reliability, and trustworthiness in managing his finances. His actions warrant the application of two of the disqualifying conditions (DC) of the Guidelines ¶ DC 19(a), “inability or unwillingness to satisfy debts,” and ¶19(c) “a history of not meeting financial obligations.”

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases.

Unexpected loss of employment with his engineering firm in 2008, continuing payment efforts, and ensuing difficulties in obtaining a loan modification from his home lender, merit application of four of the mitigating conditions for financial considerations: ¶ MC 20(a), “the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment;” MC ¶ 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,” MC ¶ 20(c), “the person has received counseling for the problem and/or there are clear indications that the problem is being resolved or is under control,” and MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” These mitigating conditions all apply to Applicant’s accumulated mortgage deficiencies.

In circumstances similar to the present case, the Appeal Board has said that an applicant need not have paid or resolved every one of his proven debts or addressed all of his debts simultaneously. What Applicant needs is a credible plan to resolve his financial problems, accompanied by implementing actions. See ISCR Case No. 07-06488 (App. Bd. May 21, 2008)

By the proofs presented, Applicant has achieved his objectives. He completed a remodification of his only listed debt (his home mortgage), and is current with his lowered monthly payments. He has a new engineering company that produces solid income for himself and his family, and he retains a considerable monthly remainder to cover any contingencies in the foreseeable future.

Based on his strong financial history prior to his company resignation in 2008, and his successful efforts in modifying his home mortgage, Applicant demonstrates significant stabilization of his finances and excellent prospects for sustaining his recovery efforts in the foreseeable future.

Consideration of Applicant’s military and educational background, the extenuating circumstances associated with his mortgage deficiencies, his current income from the small company he founded in 2008, and the documented affirmative steps he has taken to resolve his mortgage deficiencies with his home lender permits a favorable assessment of his overall good judgment, reliability, and trustworthiness. Applicant’s proofs provide sufficient credible indicators of his ability to be trusted in times of financial stress and enable him to satisfy his evidentiary burden of mitigating the covered debts.

From a whole-person standpoint, the evidence is substantial that Applicant has performed well during his military and civilian service and is entitled to considerable credit for his military/civilian contributions. Unfortunate economic circumstances played a pivotal role in his inability to keep up with his mortgage payments on his home. His successful loan modification efforts and overall stabilization of his finances over the year are sufficient to meet mitigation requirements imposed by the AGs governing his finances.

