



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



In the matter of:	)	
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Applicant for Security Clearance	)	ISCR Case No. 11-09790

**Appearances**

For Government: Philip J. Katauskas, Esq., Department Counsel  
For Applicant: *Pro se*

09/23/2013

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**Decision**

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LYNCH, Noreen, A., Administrative Judge:

On April 4, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging 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; 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 before an administrative judge. The case was assigned to me on June 21, 2013. A notice of hearing was issued on July 1, 2013, scheduling the hearing for August 8, 2013. Government Exhibits (GX) 1-4 were admitted into evidence, without objection. Applicant testified, presented the testimony of three witnesses, and submitted Applicant Exhibit (AX) A, which was admitted without objection. The transcript (Tr.) was received on August 18, 2013. At Applicant's request, I kept the record open until September 16, 2013, but no additional documents were received. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

## Findings of Fact

In his answer to the SOR, Applicant denied the factual allegation under Guideline F (Financial Considerations), with explanations.

Applicant is a 57-year-old operations research analyst who is sponsored by a defense contractor. He received his undergraduate degree from a military academy in 1979, and his graduate degree in 1989. Applicant served on active duty in the U.S. Army for 26 years and was honorably discharged in 2005. He obtained a security clearance in 1984. (GX 1) He left his sponsoring employer, with whom he had been employed since 2006, to continue doctoral studies.

The SOR alleges a single debt which is for an overdue mortgage in the amount of \$242,000, with a total balance due of \$893,000. He admits that he owes the debt.

In 2005, Applicant agreed to involvement in a business venture. Based on a proposition from an unknown person, he invested and bought a house for approximately \$1 million dollars. The plan was to buy the house, and rent the house for events, etc. for conferences. At the time the property was to be renovated and also have renters to help defray costs. He believed he was investing with three other persons. However, on the day of settlement, Applicant learned that only he and another friend were on the mortgage loan. Applicant admitted that he had concerns, but was on his way out of the country and decided to sign the loan. He also stated that he knew the person who had originally organized the business venture had poor credit and that should have been a signal to him.

Applicant and one partner obtained two mortgages on the property. The first mortgage loan was \$800,000 and the second mortgage loan was \$180,000. The notes were from two different banks. Applicant and his partner decided to split the mortgages. (GX 1) Applicant made monthly payments of \$2,500 and \$1,000.

Applicant explained a series of events that occurred shortly after the purchase. He claims that he was defrauded by the organizer of the venture who did not rehabilitate the property as promised. He also explained that his partner moved into the house but did not pay rent. His partner stopped paying the mortgage in 2007. Applicant continued to pay until 2009. He believes he contacted the bank by phone when he started missing payments but then just panicked. (Tr. 109)

Applicant described another convoluted set of events that occurred. There were two lawsuits filed between the partners. (Tr. 32) He claimed that he did not know what to do. He stated that he stopped paying the mortgage because he realized that he would be spending all his savings and be in debt in a short time. (Tr. 30) He also stated that he was paying legal bills based on two lawsuits. (Tr. 31)

Another friend of Applicant's, who is an attorney, told him to stop making payments to the bank. He claims he was told that if the loan went into default, that the

banks would agree to work with him on a modified payment plan. At the same time, Applicant stated that he was withholding payments from the bank pending a lawsuit. He disclosed in his SF86 that he was in "litigation over the property" and was advised to not make payments on the mortgage loan. (GX 1) He could not articulate a nexus between the lawsuit and withholding payments.

Applicant moved into the property in 2009. However, he has not paid any money to the banks on the mortgages. He also explained that there were renters in the house who refused to move and did not pay rent. (Tr. 44)

Applicant decided to sell the house. In May 2013, he listed the house with a realtor for \$1,200,000. He submitted a sales contract for \$915,000. (AX A) He did not know whether the sale would materialize. Applicant also applied for a loan modification so that the outstanding payments might be forgiven and the loan rate reduced.

Applicant also mentioned that if the contract falls through, he could pursue a short sale. He does not want to do that because he would be responsible for the deficiency. (Tr. 55) He admitted that he has the monetary reserves to cash out his savings and resolve the debt. (Tr. 56)

Applicant admits that this venture has been the biggest mistake of his life. His interest and work with relief services overseas has led him to trust. He now says he does not care about money.

In the interim, Applicant has had a loan forgiveness from the bank for the \$180,000 amount. (GX 2) He believes the reason for the forgiveness is part of a government program. (Tr. 63)

Applicant acknowledged that he did not know what to do about the property for a long while. He also admitted that he knew he had to do something when the issue of his security clearance arose. (Tr. 101) He remained in the house but has not paid anything on the mortgage loans.

Applicant has never had any financial difficulties in the past. He even pays cash for his cars. Applicant has a history of paying all obligations in a timely manner for the past 35 years. (GX 3-4 ) He has a total net monthly income of \$8,864 and a net remainder of \$3,560. He has significant savings and stocks. (GX 2)

Applicant was candid in his explanation that he also might not sell the house, but continue to rehabilitate the house and rent it out. He believes he would have no problem in renting the house. He knows it will take some time to pay the amount that is in arrears. (Tr. 112) He also noted that he could try to sell his home in another state to pay the amount due on the mortgage loan. (Tr. 115) He did not submit any information after the hearing to substantiate a plan of action.

A close friend of Applicant testified that he knew the details of the investment property purchase in 2005. Originally, three other men, one unknown to Applicant

decided to purchase a property. The unknown person took advantage of the situation and in essence defrauded Applicant of money. He believes it went on from 2005 until 2008. The unknown party did not renovate the property as promised nor was he taking care of the renters in building. He would rent rooms, but would keep the money for himself. The other partner went bankrupt, which left Applicant the sole person responsible for the mortgages. (Tr. 69)

Applicant's friend, who is a defense contractor, praised Applicant for his integrity. He has known him since 1992. Applicant had a respected military career and has excellent judgment. (Tr. 72) Applicant's friend also believes that Applicant has tried to remedy the situation by dealing with banks and possible resale of the house.

The second witness, who is a colleague, and a former Army chaplain, describes Applicant as trustworthy and honest. He recommends him for a security clearance. He knows of Applicant's work in other countries. He has known Applicant for about ten years. (Tr.86)

The third witness, who has known Applicant for about one year testified that Applicant has shown due diligence in this matter. (Tr. 92) He praises Applicant's integrity, and reliability as a human being and a fellow officer.

### **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 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 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

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. Compulsive gambling is a concern as it may lead to financial crimes

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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).

<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.*

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.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (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;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;
- (h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and
- (i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant admits being past due \$242,000 on mortgages of more than \$800,000. It is not paid and he does not know whether he will sell the house or pay the debt over a period of time. He was provided 30 days to submit documentation as to his concrete plan, but no documentation was received. Consequently, the evidence is sufficient to raise the disqualifying conditions in ¶¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate security concerns. The following are potentially relevant:

(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;

(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;

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

(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; and

(f) the affluence resulted from a legal source of income.

Applicant invested in a business venture in 2005. He signed two mortgage loans based on little information. This act led to a convoluted set of events. Some of the events were out of his control, but he basically acted without real knowledge. He took advice and decided to stop paying the mortgages. However, he continued to live in the house. He has not made any payments to the banks since 2009. He recently decided to list the house on the real estate market. He submitted a sales contract on the house, but at the same time had no idea if that would come to fruition. He also noted that perhaps he would stay in the house and pay the mortgage. He has not acted responsibly. He did not submit any information after the hearing to show his definite plan of action. The large debt remains unresolved. He has not mitigated the financial considerations security concern. AG ¶¶ 20 (a), (b), (c) and (d) do 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 a 57-year-old highly educated retired Army officer. He has worked in the defense contract area for a number of years. He also works in the area of relief service out of the country. He trusted an unknown person and agreed to invest in a business venture in 2005.

Applicant did not research the business venture. An unfortunate set of events occurred after the purchase, but I do not find that he acted responsibly. He has been living in the property for four years without making a single payment on the mortgage. He has not mitigated the security concerns in this case. He did not meet his burden of proof. 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 continue Applicant's security clearance. Clearance is denied.

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NOREEN A. LYNCH.  
Administrative Judge



