



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-09841
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: Charles D. Swift, Esquire

07/09/2013

**Decision**

WHITE, David M., Administrative Judge:

Applicant defaulted on the mortgage loans on his former residence after relocating at the beginning of the economic downturn and his wife’s loss of employment caused his inability to continue making payments. Only the charged-off second mortgage remains of potential concern, and he is paying the taxes for its abandonment. The evidence is sufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SF-86) for a periodic review on May 17, 2011. On January 7, 2013, the Department of Defense issued a Statement of Reasons (SOR) to Applicant, detailing security concerns 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing on February 15, 2013 (AR), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 2, 2013. The case was assigned to me on April 8, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on April 18, 2013, and I convened the hearing, as scheduled, on May 7, 2013. Applicant, his counsel and witnesses, and the court reporter attended the hearing in person. Department Counsel participated from DOHA Headquarters by video teleconference. The Government offered Exhibits (GE) 1 through 5, which were admitted without objection, and Hearing Exhibit (HE) I, a Government exhibit list. Applicant offered Exhibits (AE) A through F, and testified on his own behalf. Three witnesses also testified for him. DOHA received the transcript of the hearing (Tr.) on May 17, 2013.

### **Findings of Fact**

Applicant is a 62-year-old employee of a defense contractor, where he has worked as an instructor pilot since October 2000.<sup>1</sup> He has been married to his second wife since 1992, and has no children. He is a college graduate, and honorably retired from the Air Force with the rank of major in 1993, after 20 years of service as a C-130 pilot. He has held a security clearance since 1973, in connection with his military and post-service contractor positions. (GE 1;Tr. 59-61.)

In his response to the SOR, Applicant admitted the truth of the single factual allegation in the SOR. Applicant's admissions, including his statements in response to DOHA interrogatories (GE 4), are incorporated in the following findings.

After retiring from the Air Force in 1993, Applicant went to work in state A for a series of defense contractors. He and his wife bought a home there in 1997, and refinanced the mortgage loans several times over the years to pay for remodeling and improvements to the property. In December 2006, they refinanced the first mortgage loan on the property, borrowing \$360,000 and paying off the previous \$256,500 first mortgage held by another bank. In August 2007, they refinanced their second mortgage loan, borrowing \$92,000 from a credit union and paying off the previous \$45,000 second mortgage with the bank holding their first mortgage. At the time of this last refinance, the home was valued at \$460,000. (GE 1; GE 2; AE A; AE B; Tr. 47, 62, 74, 95-96.)

While on active duty, Applicant had been stationed at an Air Force base in state B, and had always wanted to return to that area and make it his permanent residence. There is a similar program at that base, and he made several applications to relocate for jobs there. Finally, in late 2008, he was selected for a position in state B. Despite the fact that he had risen to a senior position at his former location, he accepted the new position as the most junior person at that facility. His seniority did not transfer and he was required to pay all of his moving expenses. (AE A; Tr. 61-64.)

---

<sup>1</sup>He performed the same job for a different contractor that won the service contract between January 2010 and March 2011, and for other contractors that held it between his retirement from the Air Force and 2000.

At the time, Applicant's wife had a job as an executive administrative assistant with a major company. She earned \$48,000 per year, and the couple relied on both incomes while always having lived within their means. She remained in their home and continued working while Applicant moved across country in December 2008 to begin working at his current location. In order to save money, he moved their horse trailer, which he configured into a temporary mobile home and lived in for his first nine months in the area. (Tr. 43, 46-47, 49, 56-57, 67.)

After arriving at his new location, Applicant sought to buy a new home. In April 2009, his wife's employer received an inquiry from a mortgage lender seeking to confirm and verify her employment status. At the time, her company was planning layoffs. She was asked about her husband's relocation and plans to purchase a new home, following which she was immediately selected to be laid off. She could not find a new job, so they decided to sell their home. With the collapsing state of the real estate market, several real estate agents informed her that they could not sell the home for near the balances on the outstanding mortgages. They decided to rent the property while waiting for the market to improve. Unfortunately, the rental market had also taken a severe downturn, so in order to get someone to rent the home they had to lower the rent to \$1,600 per month. This was half of their combined monthly mortgage payment. In August 2009, Applicant purchased their current home in the new location for \$417,000 with a mortgage loan from the same bank that held the first mortgage on their other home. That same month his wife found tenants who rented their other home for a year, and moved west to rejoin Applicant. (GE 3; Tr. 48-50, 64-68.)

Applicant's wife searched diligently for work but was unable to find a permanent position until August 2012, when she obtained her current job as an executive administrative assistant earning \$52,000 per year. Unable to afford mortgage payments for both houses with only Applicant's income, despite living frugally and depleting their savings, they tried to negotiate a loan modification on their first mortgage on the rental home. The bank refused, demanding full payment and refusing to accept partial payments. Finally, they made the last payment toward that first mortgage in December 2009 or January 2010. (Tr. 50-53, 67-69, 72, 80-81.)

In March 2010, the bank began foreclosure proceedings on the rental home first mortgage. The home was sold at a sheriff's sale in May 2010 for \$226,000. The renters remained in the home until August 2010, which was also the last month Applicant could afford to make his \$898 monthly payment on the home's second mortgage loan. In December 2010, the credit union charged off the remaining \$81,993 balance on that loan, as stated in the sole allegation in the SOR. (GE3; GE 4; Tr. 67-68, 75, 80-81.)

On November 16, 2010, the credit union that charged off the second mortgage issued an IRS Form 1099-A (*Acquisition or Abandonment of Secured Property*) to Applicant and his wife, showing an outstanding principal balance of \$81,993 and a fair market value of the property of \$239,000. On November 19, 2010, the bank that foreclosed on the first mortgage also issued Applicant an IRS Form 1099-A, showing an outstanding principal balance of \$348,008 and a fair market value of \$225,000.

Applicant's remaining deficiency on the first mortgage was extinguished by the bank's foreclosure action. He obtained a letter from the credit union, dated September 25, 2012, stating that although his second mortgage had been charged off, the outstanding balance remained due and payable in full. Although fully aware of his new location and address, neither institution has made any effort to further collect payments toward either loan. (GE 4; AE E; AE F; Tr. 51-52, 70-72, 76-79, 96-98.)

As a result of the income tax consequences of the foreclosure and acquisition/abandonment actions of the two mortgage lenders, Applicant and his wife incurred about \$8,200 in federal income tax debt. Upon discovering this issue, Applicant entered into an agreement with the IRS to repay it at a rate of \$500 per month. He has made all payments under this agreement, and Department Counsel represented that this issue did not raise any security concerns for the Government. Applicant has no other delinquent debts, except the second mortgage discussed above. (GE 4; Tr. 14-16, 86, 91-93.)

In April 2011, as a result of company reorganization and his status as the junior person, Applicant was changed from a full-time schedule to working half-time. This further stressed his financial situation, but through frugal budgeting and his wife's resumption of full-time employment, they have been able to avoid incurring new delinquencies. In May 2013, the bank holding the mortgage loan on their current home agreed to refinance the outstanding balance of about \$393,000 and related charges and fees of about \$9,500 for a new first mortgage loan balance of \$402,500. This is the same bank that foreclosed on the first mortgage on their previous home, and the Assistant Vice President/Mortgage Loan Officer involved in the refinance wrote that she was fully aware of that foreclosed mortgage and the second mortgage loan on the home, which she described as charged off and closed. The refinancing documents reflect that the bank does not consider either of those mortgages to be a current liability of Applicant or his wife. As a result of this approved loan refinancing, their monthly mortgage payment was reduced from \$2,784 to \$1,807. (AE C; AE D; Tr. 29, 52-53, 56, 63, 70-71.)

Applicant has not completed financial counseling. He submitted a personal financial statement in October 2012, which remains accurate except that it does not reflect the newly available \$977 per month from the reduced mortgage payments, or that he has finished making the \$100 payments toward a \$245 debt, in calculating what was then a \$1,644 net monthly remainder. He and his wife continue to live paycheck to paycheck, but remain solvent. (GE 4; Tr. 55, 81-90.)

Applicant's site manager and supervisor testified concerning his outstanding and dedicated performance of duties; openness with them concerning his financial situation; and their complete faith in his integrity, reliability, trustworthiness, and security worthiness. Applicant was well organized and knowledgeable about his financial circumstances, and credibly testified to his commitment to maintaining financial responsibility. In response to a question concerning his susceptibility to financial

temptation to betray national security, he convincingly declared, “I’d rather live in a cardboard box.” (Tr. 32-43, 73-74.)

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept. The 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 the 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon 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 or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## Analysis

### Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

The record evidence potentially raises security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant willingly paid his mortgage loans on his previous home for as long as he could after the 2009 collapse of the real estate market, but eventually was unable to do so. Around January 2010, he stopped paying the first mortgage loan but continued paying the second mortgage loan until his renters had to move out of the home due to its foreclosure sale. There is no remaining debt resulting from the first mortgage, the holder of which has recently approved refinancing of the mortgage on his current home. The second mortgage debt has been charged off, closed, and abandoned resulting in issuance of an IRS Form 1099-A by the creditor. Other than an income tax deficiency resulting from these transactions on which he is making agreed payments, he was able to pay all bills on time. This evidence raised minimal but sufficient security concerns, under DCs 19(a) and (c), to shift the burden to Applicant to rebut, extenuate, or mitigate those concerns. The evidence does not support any other DC under this guideline.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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; 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's single charged-off and abandoned but still technically collectible debt arose due to the unforeseeable collapse of the real estate market shortly after his home had been appraised at more than double what it sold for at the May 2010 sheriff's sale. It was caused by his relocation to accept a position in the area where he wanted to live that had not been available earlier. These circumstances were unique, and are highly unlikely to recur. The evidence establishes his current reliability, trustworthiness, good judgment, and substantial mitigation under MC 20(a).

Applicant offered sufficient evidence to support mitigation under MC 20(b) as well. His inability to pay some mortgage debts arose largely due to his wife's loss of a well-paying job that she intended to keep until their financial situation stabilized in his new location, and their former home's loss of value during an unexpected and severe economic downturn. His wife endured several years of unemployment and underemployment while they were able to maintain every other financial obligation. This demonstrates responsible action under the circumstances.

Applicant did not undergo financial counseling, but his ability to manage this series of setbacks without incurring any other delinquent debt is compelling evidence that he does not need to do so. He established clear indications that the financial problems have been resolved and are under control for the future. Applicant is paying the tax consequences of defaulting on the mortgage loans on his former home, and neither lender is pursuing further payments toward them. MC 20(c) and 20(d) are therefore applicable.

Applicant did not dispute the legitimacy of the debt alleged in SOR, to which he admitted. Accordingly, he made no effort to mitigate that allegation under MC 20(e).

### **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 the applicant's conduct and all relevant 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a sincere and hard-working individual, who suffered economic hardship due to the severe economic recession since 2008. He is mature and accountable for his choices and actions, and prioritized his spending of limited resources in a reasonable way. His disciplined actions to prevent any additional delinquent indebtedness demonstrate positive permanent behavioral changes and rehabilitation.

The potential for exploitation or duress is greatly diminished by his openness about the circumstances and the creditor's actions indicating no interest in collecting further funds from him. The likelihood of recurrence of financial issues has been minimized by his wife's good new job and their frugality. Applicant has a long and distinguished record of valuable service to the national security, and the trust and confidence of his supervisors. Overall, the record evidence creates no doubt as to Applicant's present eligibility and suitability for a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant



## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

DAVID M. WHITE  
Administrative Judge