



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-10640
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gina Marine, Esq., Department Counsel  
For Applicant: Jeffrey S. Gard, Esq.

07/31/2013

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on January 31, 2011. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on November 14, 2012, 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* (AG) implemented on September 1, 2006.

Applicant received the SOR, and he answered it on December 4, 2012. Applicant retained counsel and requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on January 30, 2013, and DOHA assigned the case to another judge on January 31, 2013. Due to workload considerations, I received the case assignment on March 20, 2013. DOHA issued a Notice of Hearing on May 17, 2013, and I convened the hearing as scheduled on June 11, 2013.<sup>1</sup> The Government offered exhibits (GE) marked as GE 1 through GE 4, which were received and admitted into evidence without objection. Applicant and four witnesses testified. He submitted a notebook with 17 exhibits (AE) marked as AE 1 through AE 17, which were received and admitted into evidence without objection.<sup>2</sup> DOHA received the hearing transcript (Tr.) on June 19, 2013. I held the record open until July 11, 2013, for Applicant to submit additional matters. Applicant timely submitted AE 18 - AE 45, which were received and admitted without objection. The record closed on July 11, 2013.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a-1.g of the SOR with explanations. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶ 1.h of the SOR.<sup>3</sup> He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 48 years old, works as a pilot for a DOD contractor. He began his current employment in February 2009. Applicant graduated from the United States Air Force Academy in 1988 and served in the United States Air Force until June 2008, when he honorably retired. Applicant retired at the rank of Lt. Colonel and pay grade of O-5. He held a security clearance from 1995 to 2008 without incident.<sup>4</sup>

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<sup>1</sup>Applicant requested a hearing in person, not by video teleconference. Because of travel restrictions, his request delayed the scheduling of the hearing in this case. When travel restrictions continued and he was told that his hearing would be by video teleconference, Applicant decided to travel to Arlington, Virginia to personally appear for his hearing.

<sup>2</sup>Each exhibit in the notebook is on top of the exhibit number, not after the exhibit number as is customary.

<sup>3</sup>When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

<sup>4</sup>GE 1; AE 5; AE 7; Tr. 21-23.

Applicant received his bachelor of science degree from the Air Force Academy in 1988 and his master's degree in business administration in 1994. He and his wife married in 1988 and divorced in August 2012. He has an 18-year-old son for whom he pays child support.<sup>5</sup>

In 2004, Applicant, his wife, and another couple signed an agreement to jointly own four properties in State A and two properties in State B. In 2006, Applicant received \$52,000, his share of the profits from the sale of the two properties in State B. He has sold two of the properties in State A, without any financial loss. He continues to own the two remaining properties in State A. Both properties are rented. The \$2,259 monthly income pays the two mortgages of \$1,071.64 and \$993.24 and the management fees giving Applicant a monthly income from the properties of \$200.<sup>6</sup>

After receiving the profits from the sale of the property in State B, Applicant investigated investing in property in State C, where he lived in 2006.<sup>7</sup> He decided to purchase four properties (P-1 to P-4). He purchased P-1 for about \$229,900 and financed the purchase with a 30-year fixed, interest rate mortgage. Applicant purchased P-2 for \$213,000. He applied one-third of his \$52,000 profit to this purchase and financed the remaining debt with an 80% primary mortgage of \$170,400 and a 20% home equity line of credit (HELOC) of \$31,900.<sup>8</sup>

Applicant purchased P-3 for \$211,000. He applied one-third of his \$52,000 profit to this purchase and financed the remaining debt with an 80% primary mortgage of \$168,800 and a 20% HELOC of \$31,600. Applicant purchased P-4 for \$212,000. He applied one-third of his \$52,000 profit to this purchase and financed the remaining debt with an 80% primary mortgage of \$169,600 and a 20% HELOC of \$31,800.<sup>9</sup>

Applicant rented P-1 immediately after purchase. The initial rent provided sufficient income to pay the \$1,886 monthly mortgage payment on the property. During their tenancy, the tenants experienced financial difficulties because of the economic down turn. As a result, the tenants started paying less than the full amount of the rent. Applicant supplemented the lower rent with his personal income to pay the monthly mortgage. By 2010, the tenants stopped paying the rent and eventually moved out of the property without notice to Applicant. During this time, he paid the monthly mortgage payment. His tenants left the property with significant damage, making it unrentable.<sup>10</sup>

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<sup>5</sup>GE 1; AE 7; Tr. 21, 120-121.

<sup>6</sup>GE 2; AE 2; AE 3; AE 6; Tr. 26, 60-64, 120.

<sup>7</sup>Applicant now lives in State D.

<sup>8</sup>GE2-GE4; AE 6; AE 9; AE 29; AE 38; Tr. 51, 53-54.

<sup>9</sup>GE2-GE4; AE 6; AE 9; AE 32; AE 35; Tr. 51, 53-54.

<sup>10</sup>GE 2; AE 6; Tr. 65-67, 75.

Applicant rented P-2, P-3 and P-4 quickly after purchase. His tenants rotated in and out of the property during his ownership of the properties. Initially, his rent receipts paid the mortgage payments on P-2 of \$1,400 and \$250, on P-3 of \$1,263 and \$250, and P-4 of \$1,386 and \$250. When these properties were rented, he believes that he broke even. As the economic downturn progressed, his rental income declined because of vacancy or due to lower rent payments from tenants. By 2010, he stopped his monthly HELOC payments on the advice of a real estate agent. Applicant continued to supplement the primary mortgage on these properties for some time. Applicant testified that as of July 2011, the P-2 to P-4 properties were rented, but his tax returns indicate that he did not receive any income on these properties in 2011. I find that his rental income ceased no later than December 31, 2010.<sup>11</sup>

In April 2010, he hired a real estate agent with the intent to sell three of his properties (P-1, P-2, P-3) through a short-sale. he did not have the funds to repair the damage to the P-1 property. At the same time and on the recommendation of the real estate agent, he notified the mortgage lenders holding the three HELOC loans that he could no longer pay the loans. He stopped paying his mortgage on P-1 in June 2010. The real estate agent obtained a short-sale contract on the P-1 property, which Applicant submitted to the mortgage lender for approval. The mortgage lender did not approve the short-sale and proceeded with foreclosure. The mortgage lenders foreclosed on the P-1, P-2, and P-3 properties and are in the process of foreclosing on the P-4 property.<sup>12</sup>

Applicant submitted his federal and some state tax returns for the tax years 2006 through 2011. His 2006 and 2007 tax returns reflect that he had 11 rental properties. By 2008, he held only seven rental properties, including the four properties at issue in this case. His tax returns reflect the following rental income and expenses, excluding depreciation for these four properties:<sup>13</sup>

<b>YEAR</b>	<b>INCOME</b>	<b>EXPENSES</b>	<b>GAIN or LOSS</b>
2006	\$29,414.00	\$37,437.00	(\$ 8,023.00)
2007	\$62,280.00	\$74,974.00	(\$12,694.00)
2008	\$55,200.00	\$70,454.00	(\$15,254.00)
2009	\$55,200.00	\$63,554.00	(\$ 8,354.00)
2010	\$43,223.00	\$55,991.00	(\$12,768.00)
2011	0	0	0

<sup>11</sup>GE 2; AE 6; AE 18-23; AE 31; AE 34; AE 37; Tr. 28-30, 72-76.

<sup>12</sup>GE 3; GE 4; AE 27, AE 30; AE 31; AE 33; AE 34; AE 36; AE 37; AE 39-41; Tr. 67-71, 75-78.

<sup>13</sup>AE 18 - AE 23.

Applicant's tax returns between 2006 and 2001 reflect the following:<sup>14</sup>

Year	Gross Household Income	Taxable Income	Rental losses <sup>15</sup>
2006	\$109,600	\$ 59,500	\$21,000
2007	\$164,257	\$ 66,100	\$71,404
2008	\$140,393	\$108,240	\$ 4,800
2009	\$197,961	\$152,00	0 <sup>16</sup>
2010	\$195,000	unknown	\$ 9,172
2011	\$230,404 <sup>17</sup>	\$156,152	0

Applicant contacted the mortgage lenders about renegotiating his loans, but they declined to work with him. He never refinanced these properties nor did he take any money out of the property. In April 2010, Applicant consulted with an experienced attorney and State C certified real estate specialist about his options. As the attorney understood the issue, Applicant's indebtedness on the property was more than the equity in the property. Applicant had four options: a short-sale, deed in lieu of foreclosure, foreclosure, or bankruptcy. Applicant did not find bankruptcy an acceptable option, and this option was quickly dismissed from discussion. Because the mortgage lenders had declined to work with him, the short-sale and deed in lieu were not viable options. The attorney believed that foreclosure would be the best option and advised that under the law in State C, Applicant would not have a deficiency balance.

The law in State C on mortgage deficiencies after foreclosure is as follows:

33-729 Purchase money mortgage; limitation of liability

A. Except as provided in subsection B, if a mortgage is given to secure the payment of the balance of the purchase price, or to secure a loan to pay all or part of the purchase price, of a parcel of real property of two and one-half acres or less which is limited to and utilized for either a single one-family or single two-family dwelling, the lien of judgment in an action to foreclose such mortgage shall not extend to any other property of the

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<sup>14</sup>*Id.* Applicant's tax returns are detailed and complicated. I only identified limited and relevant information needed for this decision.

<sup>15</sup>Applicant's personal tax deductions are not included in the rental loss amount, but were used to reach his taxable income.

<sup>16</sup>The business itemization portion of his tax return shows a loss on his rental properties.

<sup>17</sup>This amount includes \$20,000 in state tuition income.

judgment debtor, nor may general execution be issued against the judgment debtor to enforce such judgment, and if the proceeds of the mortgaged real property sold under special execution are insufficient to satisfy the judgment, the judgment may not otherwise be satisfied out of other property of the judgment debtor, notwithstanding any agreement to the contrary.

B. The balance due on a mortgage foreclosure judgment after sale of the mortgaged property shall constitute a lien against other property of the judgment debtor, general execution may be issued thereon, and the judgment may be otherwise satisfied out of other property of the judgment debtor, if the court determines, after sale upon special execution and upon written application and such notice to the judgment debtor as the court may require, that the sale price was less than the amount of the judgment because of diminution in the value of such real property while such property was in the ownership, possession, or control of the judgment debtor because of voluntary waste committed or permitted by the judgment debtor, not to exceed the amount of diminution in value as determined by the court.<sup>18</sup>

State law provides that when a lender gives a mortgage or money secured by the purchase of real property, the loan given to Applicant is a nonrecourse loan because the loan is considered a purchase money loan. A purchase money loan is defined as a loan where the proceeds are used to purchase the residence.<sup>19</sup> State law looks to the purpose of the loan, not the characterization of the loan. Under the law of State C, a HELOC used to purchase a residence may also be a nonrecourse loan under the anti-deficiency statute.<sup>20</sup>

Applicant did not receive a 1099-C form, a federal tax form, from his mortgage lenders after the foreclosure proceedings. The mortgage lenders have not contacted him for payments. The August 23, 2012 credit report reflects a zero balance for the mortgage on P-1, the primary mortgage on P-2, the primary mortgage on P-3, and HELOC on P-4. The P-4 HELOC is also shown as a charge off account. This credit report indicates that the P-4 property is in the foreclosure process and Applicant agrees. As of the hearing date, he did not believe that P-4 had been foreclosed.<sup>21</sup>

Applicant acknowledged in his answer that after consulting with legal counsel, he decided to stop his payments on the P-1 to P-4 properties to preserve his other assets.

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<sup>18</sup>AE F.

<sup>19</sup>804 P.2d 1310 (1991); 277 P.3d 198 (2012).

<sup>20</sup>If a HELOC is used for home improvements and repairs, it is not a purchase money loan and is not protected from payment under the anti-deficiency statute. 277 P.3d 198 (2012).

<sup>21</sup>GE 3; AE 9; Tr. 80-81.

He stated that he could not rent the properties or renegotiate the loans. He chose not to continue paying the mortgages because he would have exhausted his assets and then would need to file bankruptcy. Applicant provided a copy of the transactions in his bank account between March 13, 2011 and May 4, 2011. He did not explain the reason for the document or what it was intended to show. The document reflects several large income transfers and at least one large payment, to an unknown payee. This document is given little weight.<sup>22</sup>

The attorney Applicant consulted about his property debts testified on his behalf. The attorney confirmed that Applicant's four properties were covered under State C's anti-deficiency laws as the loans were purchase money loans. He also reviewed his discussions with Applicant of the options available, as previously outlined. After reviewing all options with Applicant and the facts related to the properties, he believed that foreclosure was Applicant's only reasonable option. He advised Applicant about any deficiencies owed. In his opinion, Applicant's HELOC are covered under State C's anti-deficiency statute. The attorney provided a post-hearing letter reaffirming his testimony on Applicant's liability for the debts on the property in State C.<sup>23</sup>

Besides the mortgage debts, the SOR identified one small debt for a Homeowners fee. Applicant denied owing the debt, because he believed the fee accrued after the lender foreclosed on the property. After the hearing, Applicant paid this debt because he determined that he was wrong.<sup>24</sup>

Applicant currently earns approximately \$200,000 a year in income from his employer plus \$20,000 in retirement income. If he works beyond 80 hours in a pay period, he receives additional pay. His adjusted gross income for his 2012 tax returns total \$223,747. He submitted his leave and earnings statement for May 2013. Both statements indicate that he worked more than 80 hours each pay period. After deductions for taxes, social security, and medicare, Applicant's largest deduction each pay period is \$1,944.77 for alimony and child support. His current net monthly income is \$4,814. He receives \$1,633 in gross monthly retirement income, with an estimated net monthly income of \$1,100.<sup>25</sup> His net monthly income will increase in November 2013 when his \$890 monthly child support ends. His normal monthly living expenses total about \$3,000, leaving nearly \$4,000 a month to pay debts and unanticipated expenses such as car repairs and medical.<sup>26</sup>

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<sup>22</sup>AE 2; AE 43..

<sup>23</sup>AE 10; AE 26; Tr. 93-103.

<sup>24</sup>AE 44.

<sup>25</sup>His former wife receives one-half of his military retirement income.

<sup>26</sup>AE 24; AE 25.

Three witnesses testified for Applicant. These witnesses also provided written letters of recommendation. Applicant served as the first witness's supervisor and squadron commander in 2007, and they remain good friends. This witness described Applicant as a person of the highest caliber, a trusted leader who had the support of those above him and below him, a decisive leader with good judgment. He is aware of the property issues in this case. This witness knows that Applicant is "incapable of being influenced by anyone outside the government to do anything other than the most honorable decision. He would never enter into any kind of espionage or any other activity that would harm our country." He would place his life in Applicant's hands.<sup>27</sup>

Applicant's supervisor testified. He recently promoted Applicant to chief pilot because of his high level of integrity and professionalism as well as his dependability and multiple other factors. He considers Applicant trustworthy or he would not have considered Applicant for the chief pilot position. He is aware of the real estate issues. The third witness described Applicant as trustworthy and does not believe that Applicant's financial problems would make him susceptible to foreign influence or capable of espionage. Finally, a retired brigadier general provided a written recommendation on behalf of Applicant. He also indicated that Applicant had unfailing integrity and unparalleled professionalism.<sup>28</sup>

At the hearing and in his response, Applicant denied that he was financially over extended. He stated that "I would rather die for my country than betray it for anything, let alone money." He does not intend to invest in additional property in the future.<sup>29</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny 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.

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<sup>27</sup>AE 12; Tr. 127-137.

<sup>28</sup>AE 11; AE 13; AE 14; Tr. 138-149.

<sup>29</sup>AE 2; Tr. 33, 38-39.



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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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. . . .” An applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

A person who seeks access to classified information enters 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 an 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.

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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to the guideline for Financial Considerations is set out 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant developed significant financial problems when he decided not to pay the mortgages on his property in State C. He has not paid several mortgages or HELOCs. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶¶ 20(a) through ¶¶ 20(f), and the following are potentially applicable:

(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.

AG ¶¶ 20(b) partially applies. Applicant purchased four rental properties in State C when the real estate market boomed. Because of the economic downturn, his rental income declined, necessitating the use of his own money to pay the mortgages. Applicant sought to renegotiate his mortgage loans but the mortgage lender declined his request. He submitted a short-sale offer on P-1. The mortgage lender refused to approve the sale of the property. He hired a real estate agent to try and sell his properties, but this did not happen as he did not have the cooperation of his mortgage lenders.

Applicant's mortgage debt on his property is resolved by operation of law. The state anti-deficiency statute prohibits Applicant's mortgage lender from seeking to recover the balances due on his primary mortgage loans after foreclosure because the loans are purchase money loans for property specifically covered by the statute, and under state law, his loans are nonrecourse loans. Likewise, the HELOC loans were used to purchase the properties and under court decisional law, these loans are covered by the state anti-deficiency statute. The mortgage lenders have not provided Applicant with a 1099-C for his properties.<sup>30</sup> Applicant has no control over the failure of the mortgage lender to meet its legal obligations. The mortgage lenders have not

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<sup>30</sup>The Appeal Board held that a 1099-C is one way to show there is clear evidence that the state law has been extinguished the debt. See ISCR Case No. 10-01978. The 1099-C is a tax form which provides information to the Internal Revenue Service on whether taxable income arose from the sale of a property. In this case, state law makes it clear that Applicant does not owe any money on his mortgage loans. State law does not require a 1099-C for this determination.

sought any payments from Applicant, and state law prohibits them from doing so. Applicant pays his other bills, and his finances are under control. Thus, he does not need financial counseling. AG ¶ 20(c) applies.

AG 20(d) applies to SOR allegation 1.h. Applicant reviewed his liability for this debt after the hearing and determined that he owed the debt. He paid the creditor the entire debt, which is four times the amount alleged in the SOR.

In summary, Applicant took reasonable efforts to resolve his mortgage debts listed in the SOR. The mortgage lender denied his requests and proceeded with foreclosure. Three of his properties have been sold and the remaining property is in foreclosure proceedings. Under state law, he has no legal obligation to pay the remaining balances on his mortgage loans and HELOCs, and the lender has no legal right to collect any balance owed. Even if not mitigated under Guideline F, this case is mitigated separately under the whole-person concept.

### **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 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of a denial. When the market value of his investment property in State C declined significantly and

his rental income also declined, Applicant decided not to continue with paying his mortgage debts on four properties in 2010 when he could have made an effort to continue some payments with his income and rental income. He decided to return the property to the mortgage holders to preserve his assets and avoid bankruptcy,

Applicant timely paid his mortgages on all four properties until April 2010. Each year his expenses exceeded his rental income on the properties. When the losses began to increase, he sought assistance on how to handle the problem. Before he decided to stop paying his mortgage, he contacted his mortgage lender about loan modifications, which his mortgage lender denied. He retained a real estate agency to sell three of his properties through a short-sale. The real estate agent obtained a buyer for his most expensive property with the largest mortgage. The mortgage lender refused to approve the sale of the property and foreclosed. By so doing, the mortgage lender understood that it could not recover any loan deficiency under state law.

Applicant spoke with a lawyer about his options. Because the mortgage lender refused to cooperate with the short-sale, the attorney advised that the short-sale and deed-in-lieu options were not feasible. Applicant did not want to file bankruptcy, leaving foreclosure as the only reasonable option. The attorney advised that Applicant would not be liable for any remaining debt on his four properties under the state anti-deficiency law. Based on the advice he had received, he decided to stop paying his mortgages. The attorney provided no advice to Applicant about the impact of his decision on his security clearance, although Applicant was concerned about the impact of foreclosure on his security clearance. Applicant's decision to invest in property in State C cannot be considered reckless or uninformed because he had successfully invested in property in two other states. This success enabled him to consider continuing to invest in property, which he no longer intends to do. He made an informed decision, not a careless or haphazard decision, to stop paying the mortgages on the four properties in State C. Essentially, he made a business decision which, in security clearance law, raises questions of poor judgment and lack of responsibility to honor one's contractual responsibilities.

Applicant timely pays his current rent, utility bills, car loan, and all other bills every month and always has. He does not have excessive debt nor has he financially over-extended himself. The record lacks evidence that he has ever violated the rules and procedures for handling classified information. His witnesses are aware of issues related to these properties. Each witness testified that he is trustworthy and a good decision-maker with good judgment. His friend and former subordinate strongly stated that Applicant was incapable of being influenced by anyone outside the Government to do anything dishonorable, such as espionage, which would harm the United States. The retired brigadier general opined that Applicant had unfailing integrity and unparalleled professionalism. Applicant emphatically stated that he would rather die than betray his country. Applicant listed his foreclosures on his e-QIP, and has been forthright and open about his decision on these properties.

Given his overall financial track record and his outstanding work record, Applicant's decision on his mortgages cannot be used to coerce or force him to reveal classified information. Initially, he sought help from the mortgage lender for assistance, but, as mentioned previously, received none. He next sought guidance from a real estate agent and gathered information on how to resolve the issue he believed he had. In making his decisions, he showed prudence and reasonable judgment after receiving advice from an attorney, whose opinion is based on his knowledge of state law, his expertise, and his experiences in his profession. The attorney's opinion would be considered reasonable and accurate professional advice under these circumstances. Having considered both his decision to walk away from his contractual obligations, his overall prudent fiscal management, and his good character disclosed in this record, I find that he has established the requisite nexus showing that he would exercise good judgment in handling classified information as he has done in the past and could resist those pressures reasonably foreseeable from his foreclosures.<sup>31</sup> In weighing the all the evidence of record, I find that Applicant has mitigated the Government's security concerns.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his finances under Guideline F.

### **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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant

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<sup>31</sup>Department Counsel argues the Government cannot be sure Applicant will not make the same decision in the future under similar circumstances. In light of his overall conservative financial decision making and this proceeding, it is unlikely that Applicant will make this same decision in the future.

## **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.

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MARY E. HENRY  
Administrative Judge