



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-12507
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Richard Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

09/10/2013

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

**Statement of the Case**

On March 18, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on April 11, 2013, and requested a hearing before an administrative judge. The case was assigned to me on July 23, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 9, 2013. I convened the hearing as scheduled August 27, 2013. The Government offered exhibits

(GE) 1 through 6, and they were admitted into evidence without objection. Applicant testified, and he offered exhibits (AE) A through D, which were admitted into evidence. DOHA received the hearing transcript (Tr.) on September 5, 2013.

### **Findings of Fact**

Applicant denied the SOR allegation in ¶ 1.a and admitted the allegation in ¶ 1.b. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 51 years old. He served in the Army from 1985 to 1989, and was honorably discharged. He earned a bachelor's and a master's degree. Applicant has held a security clearance without incident since 1985. He has been employed by the same company for 21 years.<sup>1</sup>

Applicant was married from 1983 to 2000, and has three grown children from the marriage. He remarried in 2002. He and his wife planned on adopting a child or two in the United States and knew it would be a lengthy process. In 2008, his wife traveled to a foreign country on a church mission trip. While there she was approached by a woman asking her to adopt her three children. Applicant's wife contacted her husband and they discussed adopting all three children and agreed to do so. They knew the process could potentially take years to complete and it would be expensive. They worked with an orphanage and paid a little at a time. Applicant traveled to the foreign country three times and his wife traveled about eight times over two years. They anticipated the process would be completed sometime in 2011. The process was very long and complicated. In 2010, the foreign country had a natural disaster. Due to the enormous devastation and loss of life, the adoption process was expedited. Although they had planned for the children, the sudden expediency of the situation was unexpected. Applicant and his wife were given ten days' notice before the children traveled to their new home to live with them. Applicant and his wife incurred additional expenses with the children, such as medical costs, that they had not anticipated having at that time. Their adopted children are ages 16, 13 and 5 years old.<sup>2</sup>

Applicant purchased a principal residence in 2004. In 2005, he took out a line of credit on the home so he could repair and refurbish it. His plan was to eventually sell it for a profit. He and his wife lived in the home while he completed the repairs. In 2010, after he and his wife learned they were going to adopt their children earlier than anticipated, they realized this house could not accommodate the size of their new family. When Applicant purchased the house, he obtained a mortgage with a low adjustable interest rate for seven years. His plan was to sell the house before the

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<sup>1</sup> GE 1.

<sup>2</sup> Tr. 25-27, 48-49, 58.

interest rate increased. He attempted to sell the house in 2010, but due to the declining real estate market, the house had depreciated, and he was unable to sell it.<sup>3</sup>

Applicant contacted a realty specialist and a real estate attorney for guidance. He was advised that the lender for the first mortgage would not allow a short sale of the property if the payments on the mortgage were current. Applicant was current on the payments through August 2010. He was advised by his attorney to stop making payments and put the house on the market, which he did. He found a buyer and notified the mortgage company. In February 2011, the mortgage company agreed to release the first mortgage and closed the account for less than the full amount of the mortgage. The debt has been released and SOR ¶ 1.a has been resolved.<sup>4</sup>

The line of credit debt is reflected in SOR ¶ 1.b. In 2011, Applicant attempted to negotiate a settlement with the creditor of this debt. Applicant acknowledged that he still owes approximately \$75,000 on the debt. He paid \$4,800 in 2011 toward the debt when he was completing the sale of the house.<sup>5</sup> He again attempted to negotiate a settlement with the creditor, but has been advised by his attorney to not accept a settlement unless the creditor puts it in writing. The creditor gave Applicant a lump-sum offer and an offer to pay \$50 a month. Applicant's attorney told him not to accept an offer until there is an agreed-upon settlement amount. Applicant did not accept the lump-sum offer. He is negotiating with the creditor, but has had difficulty communicating with a live person instead of an automatic voice message. He has left messages multiple times asking for a person to contact him and provide a settlement offer in writing. Applicant has sufficient funds to settle the debt, but his attorney advised him not to pay anything until he has the settlement in writing. He continues to leave messages with the creditor advising that he is willing to pay and resolve the debt, but needs to speak to someone in person. He continues to follow the advice of his attorney, who has told him it could take up to three years to resolve.<sup>6</sup>

Applicant and his wife purchased another house to accommodate their larger family. They were able to do so with money he withdrew from his IRA and money loaned to them by his wife's father. They have repaid the loan. He and his wife have no other delinquent debts. They incurred about \$40,000 in expenses for the adoptions. They received some tax deductions for the adoptions. They live within their means. They save for retirement. Applicant kept his employer informed of his finances during the entire time he was resolving his loan issues.<sup>7</sup>

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<sup>3</sup> Re. 23-25, 27.

<sup>4</sup> Tr. 28-30; GE 3 at page 11; AE A, B.

<sup>5</sup> GE 3 at page 8.

<sup>6</sup> Tr. 30-39, 45-47, 59-62.

<sup>7</sup> Tr. 39-44, 49-58, 64; GE 6.

## 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.

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 not drawn 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, 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 and has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard 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." 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 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.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant had two delinquent debts that he was unable or unwilling to pay. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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; and
- (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.

Applicant had two delinquent debts associated with mortgages on his home. He resolved one debt through a short sale and acknowledges he owes the other debt. He has been actively attempting to resolve the debt and has been following the advice of his real estate attorney. His financial issues arose when the adoption process for Applicant's children was expedited due to a natural disaster. Applicant needed a bigger house to accommodate his new family and he had extra expenses he did not anticipate at that time. These were factors that were beyond his control. For the full application of

AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant sold his house at a short sale and resolved the first mortgage on it. He acknowledges he owes the second loan on the house and has been following the advice of his attorney to negotiate a settlement. I find under the circumstances he is acting responsibly, and AG ¶ 20(b) applies.

Applicant is in a stable financial position, and his finances are under control. He sought advice from a real estate attorney when he ran into problems and continues to follow his attorney's guidance. He has attempted to negotiate a settlement with the creditor for his second mortgage, but has had difficulty communicating with the company. He acknowledges he owes the debt and wants to resolve it, but is following the advice of his attorney. The creditor has not provided a settlement amount in writing to Applicant to memorialize an offer. Considering that Applicant has had difficulty getting a live person to talk to instead of voice mail, it is reasonable and prudent for him to wait until he has an offer in writing. I find AG ¶ 20(c) applies.

### **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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 51 years old. He experienced financial issues with his house when the adoption process for his children was expedited and he incurred additional expenses. Applicant has responsibly addressed his debts and is pursuing a resolution of the remaining debt. His finances are not a security concern. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and

suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the financial considerations guideline.

### **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
Subparagraphs 1.a-1.b:	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 a security clearance. Eligibility for access to classified information is granted.

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Carol G. Ricciardello  
Administrative Judge