



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



In the matter of: )  
)  
) ISCR Case No. 11-14212  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gina L. Marine, Esq., Department Counsel  
For Applicant: Chester H. Morgan, II, Esq.

11/15/2013

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On March 4, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted under Executive Order (EO) 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) implemented by the DOD on September 1, 2006.

Applicant answered the SOR (Ans.) on March 26, 2013, and requested a hearing. The case was assigned to me on August 14, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 21, 2013, setting the hearing for September 11, 2013. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objections. Department Counsel's exhibit

index is marked as Hearing Exhibit (HE) I. Applicant testified, called two witnesses, and offered exhibits (AE) A through D, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on September 25, 2013.

### Findings of Fact

Applicant is 37 years old and has worked as an engineer for a government contractor for eight years. He has a bachelor's degree. He has been married for eight years and has two young children ages four years and nine months old. He has no military service, but has held a secret clearance since 2007.<sup>1</sup>

The SOR alleges Applicant was indebted on a collection account in the amount of over \$38,600 (SOR ¶ 1.a), short sold two rental properties in 2011 and 2012 (SOR ¶¶ 1.b-1.c), and had one rental property foreclosed in May 2012 (SOR ¶ 1.d). The debts were listed on credit reports dated September 2011 and December 2012. Applicant denied the debt listed in SOR ¶ 1.a, but admitted the remaining allegations. Those admissions are incorporated into these findings of fact.<sup>2</sup>

Between 2003 and 2008, Applicant bought two investment properties and a personal residence. The first property (SOR ¶ 1.c) (P1) was bought in Dec 2003 for about \$86,000. Once obtained, he had a difficult time keeping this property rented. From 2004 to 2011, he estimated that he had paying renters in P1 only about fifty percent of the time. He also incurred significant costs when he used the legal process to evict nonpaying tenants. Additionally, he had a variable rate mortgage on P1, which began to rise and increased his costs. In 2011, he could no longer maintain the payments and defaulted. He negotiated a short sale of P1 where the lender was willing to take less than the amount owed on the property to avoid foreclosure. P1 sold for about \$27,000 and Applicant received a Form 1099-C indicating a cancellation of debt in the amount of over \$49,000, which was reported on his 2011 federal tax return. Applicant has no further obligations on P1.<sup>3</sup>

In 2004, Applicant purchased a second property (P2) that was secured by a first and second mortgage (SOR ¶¶ 1.a (second mortgage) and 1.d (first mortgage)). He bought P2 initially as a personal residence for about \$194,000 and lived in it for about seven years making all the necessary monthly mortgage payments. In April 2011, he purchased a new residence (P4) and attempted to rent P2, but was unsuccessful. As a result of the real estate recession, the value of P2 declined significantly. Applicant attempted to negotiate a short sale with the lenders, but they ultimately declined and the property went to a foreclosure sale where it brought a price less than what a short sale would have received. He has no further liability on the first mortgage regarding P2. He

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<sup>1</sup> Tr. at 55-57; GE 1.

<sup>2</sup> GE 3-4; Ans.

<sup>3</sup> Tr. at 65-66, 78, 82, 114-115; GE 2; AE A; Ans.

negotiated a settlement with the holder of the second mortgage by paying \$6,000 in March 2013 and was released from any further liability concerning this debt.<sup>4</sup>

In 2006, he purchased another investment property (P3) at the suggestion of his real estate agent (SOR ¶ 1.b). The purpose was to rent P3 to a previously identified family who were in need of a residence. He bought P3 for about \$255,000. The family moved in and paid the required rent through 2011. The lease ended and the family moved out during the same time that Applicant was going through financial difficulties with his other properties. His real estate agent advised him to short sell this property as well. In October 2012, he successfully negotiated a short sale of P3 for about \$215,000. He has no further obligation concerning this property.<sup>5</sup>

Applicant is current on his existing home mortgage (P4) and has not missed a payment. He has no new investment properties and indicated that he learned a great deal from his bad investment experience. Namely, that it was not wise to borrow money to fund his investments. He is current on all federal and state taxes, his student loans, and car payments. He has no delinquent debts and closed all of his credit cards.<sup>6</sup>

Applicant was supported by the testimony of his first and second line supervisors. Both have worked with him for eight years and know him professionally and personally. They both characterized him as a highly trustworthy person with great integrity. They gave concrete examples of Applicant living up to those principles. Both recommended that Applicant keep his security clearance.<sup>7</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 that 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, administrative judges apply the guidelines 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>4</sup> Tr. at 58-62, 67, 83-86, 99; GE 2; AE A-B; Ans.

<sup>5</sup> Tr. at 89, 92, 95; GE 2; AE A, C; Ans.

<sup>6</sup> Tr. at 67-68, 99, 102, 112-115.

<sup>7</sup> Tr. at 27-37, 41-50.

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, the 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.” The applicant has the ultimate burden of persuasion to obtain a favorable 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 about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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* Executive Order 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 as follows:

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 under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant had multiple delinquent real estate debts that resulted in short sales and a foreclosure sale. The evidence is sufficient to raise the disqualifying conditions stated in AG ¶¶ 19(a) and 19(c).

Several Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

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

The short sales and foreclosure sale attributed to Applicant were recent. He paid the second mortgage debt on P2 through a negotiated settlement and he has no further liability on the mortgages for P1, P2, or P3. Since he is current on his home mortgage and has no other delinquent debts in other areas of his life, it is reasonable to conclude that these types of debts will not recur, nor do they cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

Although Applicant's decision to invest in real estate was a financial decision within his control where he must accept the inherent risks of investing, the national recession affecting real estate and nonpaying tenants were conditions beyond his control. He acted responsibly by negotiating short sales on the properties and settling a second mortgage. AG ¶ 20(b) applies.

Applicant received financial counseling from his real estate agent on how to proceed with his investment properties. He followed that advice and successfully negotiated short sales for two properties and settled a second mortgage. He has no further liability on any of these previous investment properties. There are clear indications that all the debts have been resolved. He made good-faith efforts to resolve

all the debts listed on the SOR. He supplied documentary evidence showing payment or resolution of those debts. AG ¶ 20(c) and ¶ 20(d) 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 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 relevant 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.

I found Applicant to be honest and candid about the circumstances that led to his debt liability. He used the means available to resolve his delinquent real estate debts. He also learned from his mistakes and has established a sound financial record since his investment collapse. He is well thought of by his supervisors and was described as trustworthy and a man of integrity. I found nothing to indicate a likelihood that Applicant would find himself in a similar future situation.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the financial considerations security concerns.

### **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.d:	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.

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Robert E. Coacher  
Administrative Judge