



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-03925
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel  
For Applicant: *Pro se*

02/26/2014

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**Decision**

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O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, the Government's File of Relevant Material (FORM), and Applicant's Response, I conclude that Applicant has mitigated the security concerns raised under the financial considerations guideline. Accordingly, his request for a security clearance is granted.

**Statement of the Case**

On September 19, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) (Item 1), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006. The SOR listed security concerns addressed in the Directive under Guideline F (Financial

Considerations) of the AG. In his undated Answer to the SOR, Applicant admitted the single allegation, and requested a decision without a hearing. (Item 4)

Department Counsel for the Defense Office of Hearings and Appeals (DOHA) prepared a presentation of the Government's case in a FORM dated November 29, 2013.<sup>1</sup> It contained the Government's argument and documents to support its preliminary decision to deny Applicant's request for a security clearance. Applicant received the FORM on December 11, 2013. He submitted a timely response (Response). The case was assigned to me on February 10, 2013.

### **Findings of Fact**

Applicant's admission in response to the SOR is incorporated as a finding of fact. After a thorough review of the pleadings and the evidence, I make the following additional findings of fact.

Applicant is 41 years old. He married in 2000, and has two children 8 and 11 years of age. He served as an enlisted member of the Navy from 1992 until his honorable discharge in 1996. Between 1997 and 2002, Applicant completed his certificate as a journeyman wireman. Applicant is an electrician. He was laid off from his job because of lack of work for ten months in 2005, and for nine months in 2007. Since 2011, he has been employed by a defense contractor as a construction electrician. (Items 5, 6, 10)

In 2000, Applicant purchased a house with a \$99,000 mortgage loan from Lender 1.<sup>2</sup> In 2006, he obtained a home equity loan of \$28,000 from Lender 2 to finance extensive improvements to the property (SOR allegation 1.a). Also in 2006, he moved to another house while he continued to renovate the first house. He spent approximately \$30,000 renovating the existing rooms and adding additional rooms, doing most of the construction himself. Applicant was able to rent it intermittently to friends who did not object to his remodeling while they lived there. Applicant made timely payments on both mortgage loans between 2006 and 2009. (Response; Items 1, 4, 5, 6)

Applicant expected the house would sell quickly. However, it lost significant value because of the real estate market crash in 2007 and 2008. In addition, his wife was diagnosed with cancer in 2007. She was unemployed during her treatment and recovery. Applicant tried unsuccessfully to sell the house by himself for three years while he did the renovations. When they were complete, he hired a real estate agent, but with no results for another year. When he received an offer of \$80,000, Lender 1 would not approve a short sale. Applicant provided a letter from his realtor. It stated that the primary loan was insured by the Veteran's Administration for the full amount of the

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<sup>1</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included ten documents (Items 1 - 10) proffered in support of the Government's case.

<sup>2</sup> The Lender 1 loan is not alleged in the SOR.

loan; therefore, Lender 1 would not agree to a short sale for less than the full amount. (Response; Items 4-6)

By 2009, Applicant could no longer afford the two loan payments. When he stopped making payments in July 2009, he owed approximately \$68,000 on the Lender 1 mortgage. In July 2009, he also stopped making payments on the home equity loan. At that point, Applicant had paid about \$12,000, or almost half of the home equity loan. He did not seek financial counseling. (Response; Items 4, 6)

Lender 1 foreclosed in July 2010 and sold the home for approximately \$45,000. In August 2010, Lender 1 informed Applicant that the deficiency balance of \$22,495 would be forgiven, and that the amount forgiven would be reported to the Internal Revenue Service (IRS). Lender 1 sent him an IRS form 1099.<sup>3</sup> In 2011, Applicant paid the tax on the deficiency. Applicant fully disclosed the status of his primary and home equity loans on his security clearance application. (Items 5, 6)

After working with Lender 1 in August 2010, Applicant believed he no longer had any outstanding debt related to the house. Between 2009 and 2011, he did not receive calls or correspondence from Lender 2 about the home equity loan. However, when he returned from an overseas assignment in October 2011, Applicant learned that Lender 2 had sued him for \$24,987. Applicant believed he owed less than that on the home equity loan, because he had already paid \$12,000 of the debt. Applicant retained an attorney to handle the case and make arrangements to pay the debt. However, the attorney received no response from the law firm handling Lender 2's suit. Applicant stated in his Response,

I hired a lawyer who received zero feedback in his efforts to reach out to the lawyers this was turned over to. I tried doing the same thing myself with no success. (Response)

Applicant stated in his Response, "I will gladly negotiate with whomever it is I owe. . . ." He also noted that he has put money aside to pay the debt. (Response; Items 4, 6)

Applicant completed a personal financial statement in July 2013 (PFS). He and his wife have a joint net monthly income of \$8,061. Their monthly expenses total \$2,530.<sup>4</sup> He listed one monthly debt payment on a loan of \$75,000. He pays \$800 per month on the account, which is up to date. He has a monthly net remainder (MNR) of \$4,731. He also has savings and investments worth \$105,000. (Item 6)

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<sup>3</sup> Applicant did not specify if he received a 1099-A or a 1099-C, but noted that Lender 1 informed him that ". . . we would be penalized on a 1099 for the difference between the money we owed and the selling price. The 1099 would serve as our forgiveness for the remainder of the loan." His comment implies the form was a 1099-A. (Item 4)

<sup>4</sup> Due to a mathematical error, Applicant listed monthly expenses of \$2,350. (Item 6)

The home equity loan alleged in the SOR appears in Applicant's December 2011, June 2013, and November 2013 credit reports. All three credit reports show numerous accounts in "pays as agreed" status. Applicant stated in his Response that he does not live extravagantly: his house is 40 years old, both his and his wife's cars are more than 10 years old, and each has more than 100,000 miles. The home equity loan is the only delinquent debt in his credit reports. (Items 7-9)

In his Response, Applicant stated that his coworkers would give positive evaluations of his performance, but he did not include statements from his coworkers, or performance evaluations by his supervisors. (Response)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.<sup>5</sup> Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the guidelines, commonly referred to as the "whole-person" concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (financial considerations).

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>6</sup> for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to applicant to refute, extenuate, or mitigate the Government's case.

Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.<sup>7</sup> A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard

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<sup>5</sup> Directive. 6.3.

<sup>6</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>7</sup> See *Egan*, 484 U.S. at 528, 531.

compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.<sup>8</sup>

## 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. . . .

Applicant admits that his home equity loan has been delinquent since 2009. AG ¶ 19(c) (*a history of not meeting financial obligations*) applies. Applicant was originally unable to pay the debt because of several financial setbacks in his family circumstances and in the real estate market. Later, he was unable to pay it because of lack of response from the creditor. AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) applies. The record contains no evidence that Applicant's debt stems from gambling, alcohol abuse, drug abuse, or frivolous and irresponsible spending.

Under AG ¶ 20, the following conditions can potentially mitigate the security concerns:

(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; and

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

Applicant is responsible for the balance on a home equity loan from Lender 2, secured by the property he bought in 2000. The debt is recent because it remains

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<sup>8</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

unpaid. With no other outstanding debts, and Applicant's substantial monthly remainder, recurrence is unlikely. His current reliability and trustworthiness are not in question. He receives partial credit under AG ¶ 20(a).

Several factors beyond Applicant's control caused his home equity loan to become delinquent. The primary factor was the nationwide real estate market crash, which substantially decreased the value of the property. He was unable to sell it and obtain the funds to repay the loan. He had three periods of unemployment, two of which lasted close to one year. In 2007, when he was trying unsuccessfully to sell the house, he was unemployed for about 10 months. In addition, his wife was diagnosed with cancer in 2007. She was unemployed during the treatment and recovery period, which also negatively affected the family budget. Applicant had no way to foresee these events. For AG 20(b) to fully apply, an applicant must act responsibly. Applicant made efforts to overcome his financial problems: he renovated the house extensively to increase its market appeal; he rented it when possible to defray the mortgage expense; and he hired a realtor to assist in selling the house. He also hired an attorney to assist him in reaching Lender 2 and arranging payment. AG ¶ 20(b) applies.

After paying timely for three years, Applicant was unable to meet his two mortgage payments in 2009 because unforeseen circumstances affected him financially, including the market crash and his wife's serious illness. After the foreclosure, the communications with Lender 1, and his payment of income taxes on the mortgage deficiency, he mistakenly thought the house-related debts had been satisfied. When he learned that the home equity loan was not resolved, he hired an attorney to arrange payments. However, the creditor has not responded to either Applicant's or his attorney's efforts. With his substantial monthly remainder, and the funds he has set aside, Applicant will have no difficulty with a repayment plan. However, because the debt remains unresolved, Applicant receives partial credit under AG ¶ 20(d).

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited Guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

Applicant is a mature and responsible married man. He has served honorably in the Navy. He met his monthly payments on his primary mortgage and his home equity loans for three years, despite financial and family hardships. He paid a total of about \$12,000 to Lender 2, or almost half the original home equity loan amount. However, unforeseen events affected his ability to continue making his loan payments. When his primary loan was forgiven, Applicant mistakenly thought that both the house-related loans were resolved.

Lender 2 did not contact him for two years. Applicant only learned the home equity loan was outstanding when Lender 2 filed suit. The amount alleged did not include the \$12,000 Applicant had already paid, and the debt may be significantly less than the alleged balance. Applicant and his attorney have made efforts to resolve the debt by trying to contact the lender to set up a payment arrangement. Although the creditor has failed to respond, Applicant has shown responsibility and his intent to meet his obligation by setting aside the funds to pay it. He is willing and able to pay the debt when the creditor responds. His credit reports for the past two years list no other delinquent debts, showing that he has been financially responsible. He and his family live a modest lifestyle and he has a substantial monthly remainder. He is not subject to coercion based on his finances.

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guideline.

### **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

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 allow Applicant access to classified information. Applicant's request for a security clearance granted.

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RITA C. O'BRIEN  
Administrative Judge