



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



In the matter of: )  
)  
) ISCR Case No. 12-04171  
)  
Applicant for Security Clearance )

**Appearances**

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

09/17/2013

**Decision**

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 June 3, 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 June 15, 2013, and requested a hearing before an administrative judge. The case was assigned to me on August 9, 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 29, 2013. The Government offered exhibits

(GE) 1 through 5, and they were admitted into evidence without objection. Applicant and three witnesses testified. Applicant offered exhibits (AE) A through G, and they were admitted into evidence without objection. The record was held open until September 4, 2013, to provide Applicant the opportunity to present additional exhibits, which he did. They are marked AE H through K. They were admitted into evidence without objection.<sup>1</sup> DOHA received the hearing transcript (Tr.) on September 10, 2013.

### **Findings of Fact**

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

Applicant is 36 years old. He earned a bachelor's degree in 1999, a master's degree in 2009, another master's degree in 2010. He married in 2010, and he has an infant daughter. He has worked for his present employer since 2009.<sup>2</sup>

In 2004, Applicant was a graduate student and decided to invest his money in the purchase of his first home. He was able to pay the mortgage payments with the salary he was earning. He lived in the home for about three and a half years and paid his mortgage. In 2007, after advice from friends who worked in the real estate business, he decided to purchase a condominium (condo) for investment and eventually sell it at a profit. He was able to secure a loan for 80% as a first mortgage and 20% as a second mortgage. He made a down payment of about \$7,000 on the condo. His intention was to sell the property after a year.<sup>3</sup>

Applicant rented the condo for the first year, but had difficulty finding renters after the first lease expired. He ended up moving into the condo and renting his primary residence. He then moved in with friends when he was able to rent the condo for a short period of time. In 2009, he was offered a new job in a different city. His salary increased. He was having difficulty paying the mortgages on both premises. His primary home remained rented, but he could not find renters for the condo. At this time, he began to aggressively pay off other debts he had, such as credit cards and his student loans. He began discussions with the mortgage company to resolve the debt for his primary residence first by way of a short sale. Despite having respectable offers on the short sale, the mortgage company rejected them. He then began to pursue resolution by a deed-in-lieu transaction. He has been frustrated by the process because he is repeatedly passed to a new person and each provided conflicting information. The most recent information he received is that he must put the property on the market for 90 days before a deed-in-lieu transaction can move forward. Before doing that he must contact a realtor to assist him. He has been moving forward to accomplish the different

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<sup>1</sup> Hearing Exhibit I is Department Counsel's memorandum.

<sup>2</sup> Tr. 65, 69.

<sup>3</sup> Tr. 36, 50-55.

requirements for a deed-in-lieu transaction. The mortgage company has agreed not to pursue foreclosure because Applicant is going through the deed-in-lieu process.<sup>4</sup>

Applicant also had a home equity line of credit on the home, which he obtained in 2007 or 2008 for approximately \$60,000. He paid approximately \$20,000 on it and received an Internal Revenue Service (IRS) 1099-C form for cancelation of debt in the amount of \$61,016. He filed it with his federal income tax return and paid the taxes.<sup>5</sup>

The condo Applicant owned went through the foreclosure process and the county eventually took the property. Applicant had a second mortgage on the property for about \$20,000. Applicant paid this mortgage for two to three years before he defaulted on it. The debt was sent to collections. He was advised by his lawyer to stop paying the loan while the property was going through foreclosure. When the foreclosure was completed, Applicant concentrated on repaying the second mortgage loan. He had difficulty finding the right department that dealt with the debt. He negotiated a settlement for \$6,000 and provided proof of payment and resolution.<sup>6</sup>

Applicant is now earning approximately \$99,000. In 2010, he began aggressively paying all of his credit card debts and both his wife's and his student loans. He no longer has any credit card debt. His wife's student loans are completely paid. He does not have student loans from graduate school, but has two from undergraduate school in the amounts of approximately \$16,000 and \$15,000. He is aggressively paying these loans. He has been following a financial program to systematically become debt-free.<sup>7</sup>

Applicant admitted that he was young and ambitious and not fully informed of the potential risks of investing and reselling real estate. He entered the real estate market right before it experienced a severe economic downturn. He admitted it was the worst financial decision he could have made and getting out of debt has been stressful. However, he also acknowledged that this experience has helped him to focus on becoming debt-free. He has been paying off his debts for the past four years. He intends on teaching his family to live a debt-free life style.<sup>8</sup>

Three character witnesses who have known Applicant personally and professionally testified on his behalf. He is described by the witnesses as a person of high moral character. He is considered honest, hardworking, trustworthy, dependable, responsible, loyal, and forthright. He has worked with sensitive information and was always conscientious to protect it and obeyed all of the security rules. Applicant also

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<sup>4</sup> Tr. 36, 39-43, 45, 49, 58; AE C.

<sup>5</sup> Tr. 43-44; 62-64; GE 3; AE I and J.

<sup>6</sup> Tr. 39, 45-49, 64; AE A and H.

<sup>7</sup> Tr. 39-40, 56-58, 66.

<sup>8</sup> Tr. 70-71.

provided character letters that reinforced his reputation for professionalism, loyalty and integrity.<sup>9</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.

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.

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<sup>9</sup> Tr. 20-35; AE D and E.

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:

- (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.

AG ¶ 20(a) is established because Applicant only has one remaining debt that he is actively resolving. It is obvious that he now recognizes the risks associated with real estate investment, and he is unlikely to put himself in such a position again. His actions do not cast doubt on his current reliability, trustworthiness, and good judgment.

The conditions that resulted in Applicant's financial problems were not largely beyond his control. Applicant chose to invest in real estate hoping to make a profit. He could not anticipate the magnitude of the national economic crisis, but he was naïve in failing to understand the risks of investing in real estate. I find Applicant has acted responsibly in resolving his debts and AG ¶ 20(b) partially applies.

Applicant is actively resolving the debt associated with his primary residence by seeking a deed-in-lieu transaction. The delays, confusion, and misinformation that Applicant is frequently confronted with appear to be the standard in the mortgage and real estate industry. Applicant has kept copious notes about differing information provided to him and advice he has acted upon. I am confident he will resolve the mortgage associated with his primary residence. He settled the remaining debt on his condo. Applicant has no other delinquent debts. I find 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 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 36 years old. He became involved in the real estate market at a time when it was poised for collapse. He learned a valuable life lesson and has taken it to heart. He has plotted a course to become debt-free and has followed through by paying off credit cards and student loans. He is resolving the remaining debt associated with his house. Applicant's 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