



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



In the matter of:

ISCR Case No. 15-00072

Applicant for Security Clearance

**Appearances**

For Government: Andrew H. Henderson, Esquire, Department Counsel

For Applicant: *Pro se*

01/30/2017

**Decision**

WHITE, David M., Administrative Judge:

Applicant voluntarily defaulted on two recent mortgage debts and falsely denied the existence of resulting financial issues on his security clearance application. Resulting security concerns were not mitigated. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information denied.

**Statement of the Case**

Applicant submitted a security clearance application (SF-86) on April 23, 2014. On August 28, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (Answer) on September 24, 2015, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 19, 2016. The case was assigned to me on May 11, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on May 13, 2016, setting the hearing date for June 3, 2016, and I convened the hearing as scheduled. The Government offered Exhibits (GE) 1 through 7, which were admitted without objection. Hearing Exhibits I and II were also entered into the record. Applicant offered Exhibit (AE) A, which was admitted without objection, and testified on his own behalf. I granted Applicant's request to leave the record open until June 17, 2016, to permit him to submit additional evidence. On June 9, 2016, he submitted an email to Department Counsel stating that he had decided he would not submit a personal financial statement. (HE III.) He submitted nothing further while the record remained open, and it closed as scheduled. DOHA received the transcript of the hearing (Tr.) on June 13, 2016.

### **Findings of Fact**

Applicant is a 63-year-old employee of a defense contractor, where he has worked since February 1979. He is a high school graduate who has completed some college courses without earning a degree. He served on active duty in the U.S. Navy from 1972 to 1975, and was honorably discharged. He has held a security clearance for many years in connection with his employment, and is seeking to renew it. He is divorced, for the second time, with three adult children. (GE 1; GE 2; Tr. 7-9, 31-32.)

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.c concerning his debts. Concerning each of those allegations he stated, "I did not intentionally by any means forget to address this issue on the Questionnaire." These statements are interpreted as a denial of the SOR ¶ 2.a allegation that his "No" response to the SF-86 questions asking about foreclosures, collection or charged-off accounts, and delinquencies exceeding 120 days during the preceding seven years constituted deliberate failure to disclose his two defaulted mortgage loans described in SOR ¶¶ 1.a and 1.b.

Applicant filed for, and was granted, discharge of his debts through Chapter 7 bankruptcy proceedings in 1980 and 1999, shortly after each of his divorces. He also filed for Chapter 13 bankruptcy relief in 2003.<sup>1</sup> He was questioned about, and explained, these financial issues to investigators, working for the Defense Investigative Service and Defense Security Service, in connection with security clearance investigations conducted in 1986 and 2004. (GE 2; GE 3; GE 4; Tr. 54.)

Applicant accepted an assignment working overseas for his company from August 2005 to December 2008. In July 2005, he purchased a residential property as an investment, with a conventional mortgage loan for \$156,400. His daughter and her family

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<sup>1</sup> These bankruptcies are not alleged as disqualifying information in the SOR, and will not be independently considered as such. However, they may and will be considered as evidence of Applicant's knowledge, when completing his most recent SF-86, that financial issues can raise security concerns, and in evaluating potential mitigating conditions and whole-person factors.

initially lived in this home while Applicant was living and working overseas. In June 2007, Applicant refinanced the mortgage on this property by obtaining a \$167,500 FHA loan from a different lender. Also during 2007, his daughter and her family moved to the other property, discussed below, and he rented the home to a family under the Section 8 Housing Choice Voucher program. In October 2009, he refinanced the mortgage with another FHA loan from the original lender in the amount of \$170,000. By early 2012, the property had fallen into severe disrepair and Applicant had to evict the Section 8 tenants. He could not rent the property in its condition, so he allowed his unemployed elder son to live there without paying rent. When Applicant could no longer afford this arrangement, while also paying rent for the apartment where he lived, he stopped making the mortgage payments in November 2012. The property was eventually sold in foreclosure proceedings in March 2015. As alleged in SOR ¶ 1.a, and admitted by Applicant, this loan was past due in the amount of \$32,218 (24 monthly payments) with a total balance due of \$162,940 when it went into foreclosure. (Answer; GE 2; GE 5; GE 6; GE 7; Tr. 32-40, 45.)

In January 2007, Applicant bought another house, in a remote area, with a mortgage loan for \$324,500. He thought it would be a good investment at the time, although he realized that he would have a hard time making the adjustable rate mortgage payments even with the low initial interest terms. His daughter, her family, and Applicant's younger son moved to this property and lived there without paying rent. In early 2009 Applicant decided he no longer wanted to own this house, and stopped making the required payments to the lender. This property was then sold in foreclosure proceedings during January 2010. As alleged in SOR ¶ 1.b, and admitted by Applicant, this loan was past due in the amount of \$26,464 (12 monthly payments) with a total balance due of \$315,460 when it went into foreclosure. (Answer; GE 2; GE 5; GE 6; GE 7; Tr. 39-45.)

The September 23, 2015 credit bureau report that Applicant submitted with his Answer reflects the status of both of these defaulted mortgages as, "Foreclosure redeemed," in the Remarks section. Under the state law where these properties are located a non-judicial foreclosure proceeding is permitted, but it precludes the lender from pursuing a deficiency judgment for any balance due in excess of the amount recovered by resale of the property after repossession by the lender. In the absence of any other record evidence, I conclude that the foreclosure proceedings extinguished any remaining debt that Applicant otherwise owed to either lender under these mortgage loans. Record credit reports show current zero balances due for both debts. (Answer; GE 6; GE 7; AE A.)

SOR ¶ 1.c alleges a \$177 collection account that arose from an unpaid parking ticket issued to a car that Applicant bought for his daughter. He is the registered owner, but was unaware of the ticket until he signed up to receive a credit report. When he learned of the debt, he asked his daughter to take care of it. He subsequently challenged the credit report entry and was successful in having it removed from his credit report. This debt was not Applicant's responsibility and is resolved. (Answer; GE 2; GE 5; Tr. 47-49.)

During and after the time Applicant stopped paying his mortgage debts and his homes were going into foreclosure, he purchased a series of vehicles for himself and his

children on credit. In 2009 he purchased one vehicle for about \$17,000. In 2011 he purchased three vehicles, incurring loans totaling about \$44,000. In 2012 he purchased three more vehicles, incurring loan debts totaling about \$93,000. All of those vehicles were either sold or traded in. Applicant currently owns two vehicles that he purchased for himself and his daughter in 2013, incurring loan debts totaling over \$77,400; and one car that he purchased for his son in 2015 with another loan for more than \$27,300. He has consistently made timely payments toward his vehicle loans. (AE A; Tr. 55-56.)

When Applicant completed and certified the truthfulness of his answers on his April 23, 2014 SF-86, he responded, “No” in response to Section 26 questions about delinquencies in the past seven years involving routine accounts. He specifically denied having any property repossessed or foreclosed; having any accounts suspended, charged off, or cancelled for failing to pay as agreed; or having been over 120 days delinquent on any debts not previously disclosed. These denials were false in that he was well over 120 days delinquent on the two mortgage loans involved in SOR ¶¶ 1.a and 1.b, and the foreclosure and debt cancellation concerning the latter property had been finalized four years earlier. (GE 1; GE 5; GE 7; AE A; Tr. 50-53.)

Applicant provided no evidence from supervisors, colleagues, associates, or family members concerning his character, trustworthiness, work performance, or track record with respect to following regulations and procedures relating to protection of sensitive information. He declined to provide a financial statement describing his present income, expenses, assets, and liabilities, despite having requested that the record be left open after the hearing in order to do so. (HE III.)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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 avoided drawing 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, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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 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.

## **Analysis**

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

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.<sup>2</sup>

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<sup>2</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant chose to default on two large mortgage loans that he had voluntarily entered into within the preceding two or three years. One of these loans involved the second refinancing of a mortgage debt first obtained less than five years earlier, with about \$13,600 in equity withdrawn. At around the same time, he took on significant additional secured debt to purchase a series of vehicles, toward which he devoted his available funds. This evidence casts doubt on his reliability and trustworthiness, raising both of the above disqualifying conditions and shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's mortgage delinquencies have been redeemed through the foreclosure process. He chose not to provide budget information showing whether he has sufficient funds to meet his ongoing financial obligations, but his credit reports reflect no new delinquencies. However, his recent unwillingness or inability to meet two major financial obligations remains of concern. The evidence does not establish mitigation under AG ¶¶

20(a) or 20(b), since these choices were recent, voluntary, and not isolated to unique circumstances. There is no evidence that the financial problems are attributable to circumstances beyond his control, or that he has responsibly handled his financial obligations, which would be necessary to establish mitigation under AG ¶ 20(b).

Applicant has not participated in financial counseling, and did not submit budget information to demonstrate that his financial problems are under control. He did not initiate a good-faith effort to resolve his mortgage debts, but instead chose to stop paying those obligations in favor of other consumption expenditures. This evidence establishes no mitigation under AG ¶¶ 20(c) or (d).

Applicant provided a reasonable basis to dispute the legitimacy of the \$177 debt alleged in SOR ¶ 1.c, which was not his responsibility and is now resolved. Accordingly, mitigation was established under AG ¶ 20(e) with respect to that minor debt.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes a condition that could raise a security concern and may be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant falsely denied having any property repossessed or foreclosed; having any accounts suspended, charged off, or cancelled for failing to pay as agreed; or having been over 120 days delinquent on any debts not previously disclosed during the preceding seven years, on his April 2014 SF-86. Having undergone substantial questioning about his previous financial delinquencies and three bankruptcies during his last two security reinvestigations, he certainly knew that his recent financial issues would raise relevant and material security concerns. His various explanations for not disclosing these financial problems are not credible. The evidence establishes a deliberate falsification as to this allegation.

AG ¶ 17 includes two conditions that could mitigate the security concerns arising under this guideline in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

AG ¶ 17(a) does not provide mitigation because Applicant did not make a prompt effort to correct the omission before being confronted with the facts. Intentionally withholding information from the Government is not a minor offense and does cast doubt on an individual's judgment, so AG ¶ 17(c) does not apply to this recent falsification.

### **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 pertinent facts and circumstances surrounding this case. Applicant has a lengthy history of financial irresponsibility. His three past bankruptcies were attributed to divorces from his former wives, but his recent defaults on two major mortgage obligations represented voluntary choices to abrogate voluntarily undertaken legal obligations. He falsely denied the existence of these financial issues on his most recent SF-86, seeking renewal of his security clearance. His actions neither eliminated the potential for pressure, coercion, or duress, nor made the continuation or recurrence of security concerns unlikely. He did not



demonstrate rehabilitation or remorse concerning these irresponsible and dishonest decisions. Overall, the record evidence creates significant doubt as to Applicant's present eligibility and suitability for a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE  
Administrative Judge