



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-01294  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Candace Garcia, Esq., Department Counsel  
For Applicant: *Pro se*

09/23/2016

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant's financial problems were caused by circumstances beyond his control, and he is taking responsible steps to resolve them. Clearance is granted.

**Statement of the Case**

On September 14, 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. 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) implemented by the DOD on September 1, 2006. On April 10, 2015, Applicant answered the SOR, denying all of the allegations except subparagraphs 1.c and 1.g. He requested a hearing, whereupon the case was assigned to me on June 6, 2016. DOHA issued a notice of hearing on June 23, 2016, scheduling the hearing for July 21, 2016. The hearing was held as scheduled. At the hearing, I received four Government exhibits (GE 1 - GE 4), and three Applicant

exhibits (AE A - AE C). At the close of the hearing, I extended the record at Applicant's request, without objection, to allow him to submit additional exhibits. Within the time allotted, he submitted six additional exhibits that I incorporated into the record As AE D through AE I. DOHA received the transcript (Tr.) on July 28, 2016.

### **Findings of Fact**

Applicant is a 32-year-old single man. He graduated *cum laude* from college in 2005, double majoring in electrical engineering and computer engineering, and he earned a master's of science degree in technical management in 2010. (Tr. 13) Since 2006, he has worked for a defense contractor as a systems engineer. He has held a security clearance since 2005. (Tr. 14)

In 2006, Applicant purchased a condominium for \$234,000, financing it with an adjustable rate mortgage. That year, he also started an investment company with some friends. Through this company, he purchased a franchise. (Tr. 15) Over the years, the venture proved to be unsuccessful. As Applicant spent more money trying to keep the business afloat, he began struggling to pay the mortgage on his residence. By 2009, he began falling behind on the mortgage payments, and by 2013, the mortgage was delinquent in the amount of \$25,000, as duplicately alleged in subparagraphs 1.a and 1.b. (Tr. 27)

Applicant obtained a loan modification in 2013, but was unable to make the payments. (Tr. 36) He then successfully applied for another loan modification in April 2015.<sup>1</sup> (AE F) Since the second refinance, Applicant has been current on the mortgage payments. (AE I)

In 2008, Applicant purchased a house for \$227,000. He relocated there, and allowed his brother to move into his condominium. Shortly after moving into the new property, Applicant discovered that it had a mold problem so severe that it compelled him to move back to the condominium. (Tr. 25) Applicant retained a contractor who inspected the home and estimated that mold remediation would cost \$10,000. (Tr. 17) While Applicant was considering the estimate, burglars removed the front door and stole all of the appliances.

Applicant then "made a conscious decision to let the property go," and stopped making mortgage payments, triggering a delinquency, as alleged in subparagraph 1.c. (Tr. 18) In an effort to resolve this problem, Applicant, after consulting with an attorney, contacted a non-profit organization dedicated to restoring dilapidated properties in distressed communities. In January 2014, he transferred the property to this non-profit organization through a court receivership process, whereupon it was resold at auction in 2016. (Tr. 18; AE C, AE G)

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<sup>1</sup>After the modification, the mortgagee referenced in subparagraph 1.b transferred the mortgage to the creditor referenced in subparagraph 1.a for servicing. (Tr. 42; AE D, AE I)

By the time this process was completed, Applicant's delinquency had increased to \$227,000, as alleged in subparagraph 1.c. Applicant's attorney told him that his debt was not extinguished through the receivership process, but that the statute of limitations on its collectability had expired. (Tr. 18) Applicant called the creditor approximately a year ago and was informed that they would not discuss the matter. (Tr. 32)

Subparagraphs 1.d through 1.f are parking tickets collectively totalling \$325. Applicant satisfied them on July 20, 2016. (AE A) The debt alleged in subparagraph 1.g, totalling \$145, is for a wireless hotspot card Applicant purchased from a cell phone provider several years ago. After the card infected his laptop with a virus, he stopped paying the bill. Since the SOR was issued, he has contacted the creditor, and it has been unable to locate the account. Applicant suspects that the account is no longer in their system because the technology is obsolete. (Tr. 21)

Applicant incurred a delinquency with the homeowner's association for his condominium at or about the time he began struggling with the mortgage payments. The association sued him, obtaining a judgment for \$19,176.<sup>2</sup> (AE H) Since then, he has paid the creditor \$6,000 in \$350 monthly increments. (AE H at 1-2)

Applicant earns \$104,000 annually. (Tr. 53) He has approximately \$200 in savings, and \$167,000 invested in his pension. (Tr. 54)

### **Policies**

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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."

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 applicant or proven by department counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

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<sup>2</sup>This debt is not alleged in the SOR.

## Analysis

### Guideline F, Financial Considerations

Under this guideline, “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.” (AG ¶ 18) Applicant’s delinquent debt triggers the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

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;
- (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.

Applicant did not incur his delinquent debt as the result of profligate or irresponsible spending. Instead, he incurred it after a business failed, and a home he had purchased was devastated by a mold problem, and later, by a burglary. He has successfully obtained a loan modification of his home, and is now current on the modified loan payments. As for the distressed property with the mold problem, he consulted an attorney. Consistent with the attorney’s advice, he transferred it to a non-profit organization specializing in restoring blighted homes. He has paid the delinquent parking tickets and made good-faith efforts to pay the wireless hotspot card delinquency.

The property transfer to the non-profit organization did not satisfy the delinquent debt, which exceeds \$200,000. Per Applicant, his attorney advised him that the statute of limitations governing its collectability has expired. Typically this has minimal probative value in security clearance assessments. However, when considered together with the circumstances of the delinquency, which were out of Applicant’s control, his innovative manner of addressing the problem, his track record of resolving delinquent debts, as exemplified by his adherence to the payment plan of the non-alleged judgment, his ample discretionary income, and his reserve savings, I conclude that there are clear indications that Applicant’s financial problems are under control. All of the mitigating conditions apply.

## **Whole-Person Concept**

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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 did not incur his delinquent finances as the result of irresponsible spending. Moreover, his real estate problems did not occur as the result of foolish, speculative investment, and he did not sit inactive for several years waiting for the statute of limitations on the delinquent debt's collectability to expire. Instead, he actively worked to resolve the problem, by taking a step beneficial to the community - transferring it to a non-profit with the goal of eliminating neighborhood blight. Upon considering this case in the context of the whole-person concept, I conclude Applicant has mitigated the security concern.

## **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.g:	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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MARC E. CURRY  
Administrative Judge

