



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



In the matter of: )  
)  
) ISCR Case: 15-02090  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Benjamin R. Dorsey, Esquire, Department Counsel  
For Applicant: *Pro se*

06/21/2017  
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**Decision**  
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WHITE, David M., Administrative Judge:

Applicant failed to make monthly mortgage payments between March 2012 and July 2014, without apparent justification. He filed for Chapter 13 bankruptcy protection in order to stop the resulting foreclosure proceedings. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

**Statement of Case**

On November 11, 2013, Applicant submitted a security clearance application (SF-86). (Item 3.) On November 24, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD 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 DoD after September 1, 2006.

Applicant answered the SOR on December 21, 2015, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On March 30, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 11 Items, was mailed to Applicant on March 31, 2016, and received by him on April 7, 2016. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not submit additional information in response to the FORM, did not file any objection to its contents, and did not request additional time beyond the 30-day period he was afforded to respond.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions<sup>1</sup> issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new SEAD 4 AG.

### **Findings of Fact**

Applicant is 63 years old. He never married, and has one adult child. He has held his present employment with a defense contractor since October 2013. He served for two years in the Air Force, and was honorably discharged in September 1976. He has previously held security clearances without incident while holding various positions in the defense industry. (Item 3.)

Applicant purchased his home with an \$81,431 first mortgage loan that was opened in February 2002. In January 2005, he refinanced the remaining balance on that loan with a new \$78,200 first mortgage. In April 2006, he took out a \$60,000 second mortgage loan. He did not explain the purpose for which he used those equity funds. In January 2008, he paid off his outstanding first and second mortgage loan balances, and withdrew further equity, with a new \$142,858 first mortgage loan requiring monthly payments of \$1,361. (Item 5; Item 6; Item 7.)

Applicant worked as a technician for a defense contractor for about 29 years until April 2009, when he was laid off. He remained unemployed until March 2011, when he was hired by another company. He was laid off again in April 2013, and remained

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<sup>1</sup> SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

unemployed until beginning his present employment as a technician in October 2013. (Item 3.)

Applicant bought a used car with a secured \$19,262 automobile loan in February 2012. His monthly payments on that loan were \$333. In March 2012, Applicant stopped making his mortgage payments, although he had been employed for a year at the time. He offered no explanation for this decision. By November 2013, his mortgage lender had initiated foreclosure proceedings against him with a past-due amount of \$29,943. By July 2014, his mortgage loan delinquency had grown to \$41,256. (Item 2; Item 3; Item 5; Item 6; Item 7; Item 8.)

Applicant stated that he, “had to file bankruptcy to stop foreclosure on my house.” (Item 2.) His initial Chapter 13 bankruptcy petition was filed on June 26, 2014. It listed only his home mortgage and automobile loan as secured debts, and the two delinquent medical collection accounts, totaling \$693, as unsecured debts. His income and expense schedules reported a net monthly surplus of \$440 after making required mortgage and automobile loan payments. On August 22, 2014, Applicant filed an amended Chapter 13 bankruptcy plan, which was confirmed by the bankruptcy court judge on August 29, 2014. The confirmed plan required Applicant to pay \$450 per month for 36 months, and then \$1,375 per month for 24 months to the trustee in order to fully repay his mortgage arrearage and bankruptcy costs. The plan also required him to continue making future payments toward the mortgage and automobile loans outside the plan. Record credit reports show that he remains current on the automobile loan and started making his \$1,361 monthly mortgage payments again in July 2014. The two medical debts, last reported to be in collection in October 2013, have been paid and do not appear on Applicant’s more recent credit reports. (Item 2; Items 5 through 11.)

Applicant completed the mandatory bankruptcy financial management course in October 2014. He offered no evidence to support findings concerning his good character or trustworthiness, the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

### **Policies**

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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. 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 national security eligibility 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "[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." 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 concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

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

- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant had been employed for a year, and had just purchased a \$19,000 used car, when he stopped making payments toward his mortgage loan in March 2012. He made no further mortgage payments until July 2014, when required to do so by bankruptcy proceedings he filed to stop the foreclosure initiated by his mortgage lender. He offered no justification for his failure to make required mortgage payments for more than two years despite the apparent ability to do so. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's failure to make his required monthly mortgage payments lasted for more than two years from 2012 to 2014. It began more than a year after he regained employment, and a month after he borrowed more than \$19,000 to buy a car. His absence of a reasonable explanation for this conduct precludes a finding that it is unlikely to recur or does not cast doubt on his current trustworthiness. Mitigation was not established under AG ¶ 20(a).

While Applicant experienced about six months of involuntary unemployment in 2013, he did not demonstrate how that affected his overall financial situation. He had already failed to make his mortgage payments for more than a year at the time of that lay off. The evidence does not sufficiently establish causation, or show that he acted responsibly under the circumstances, as required for mitigation under AG ¶ 20(b).

Applicant has been making his mortgage payments since July 2014, as well as the required \$450 monthly bankruptcy payments since his Chapter 13 plan was confirmed in August 2014. However, those monthly payments are scheduled to more than triple (from \$450 to \$1,375) for the last 24 months of the plan beginning in the summer of 2017. The record budget information showed only a \$440 monthly surplus of available income over Applicant's living expenses, and is devoid of evidence that he will be able to make the new higher payments. Accordingly, Applicant failed to establish mitigation of financial security concerns under the provisions of AG ¶¶ 20(c) or 20(d).

### **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(d):

(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.

According to 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 applicable 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 is a mature adult, who is accountable for his choices. After failing to make required mortgage payments

for more than two years, he filed for Chapter 13 bankruptcy protection to stop the pending foreclosure action by his mortgage lender. Without evident change in his income, he resumed making regular mortgage payments and started making \$450 monthly bankruptcy payments in August 2014. However, in the absence of a reasonable explanation for two years of non-payment, or of evidence that he will be able to comply with significantly larger bankruptcy payments during the final 24 months of the plan, recurrence is not unlikely.

The potential for pressure, exploitation, or duress remains undiminished. Should Applicant successfully complete his ongoing bankruptcy plan, he will have alleviated that potential and demonstrated rehabilitation. However, the record evidence does not currently support a conclusion that he is likely to do so. Overall, the evidence creates doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

### **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
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraphs 1.c and 1.d:	For 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 Applicant national security eligibility and a security clearance. National security eligibility is denied.

DAVID M. WHITE  
Administrative Judge