



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



In the matter of:

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) ISCR Case No. 15-03610  
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Applicant for Security Clearance

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: Jim Green, Esquire, J. Green Group

September 7, 2017

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

On August 28, 2014, Applicant submitted a security clearance application (SF-86). On March 24, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 April 22, 2016, and requested a hearing before an administrative judge. The case was assigned to me on July 19, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 15, 2016, scheduling the hearing for September 15, 2016. The hearing was convened as scheduled. The Government offered seven exhibits, referred to as Government Exhibits 1 through 7, which were admitted without objection. The Applicant offered thirteen exhibits, referred to as Applicant's Exhibits A through M, which were admitted without

objection. He also testified on his own behalf. The record remained open until close of business until September 27, 2016. Applicant submitted one Post Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A. Applicant's Post Hearing Exhibit was admitted without objection. DOHA received the transcript of the hearing (Tr.) on September 21, 2016.

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*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions 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 by 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 AG.

### **Findings of Fact**

Applicant is 41 years old. He is married a second time, and has one son. He has a Bachelor's degree in Medical Technology. He is employed with a defense contractor as an Instructor for the U.S. Navy. He is seeking to retain a security clearance in connection with his employment.

### **Guideline F - Financial Considerations**

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information. The SOR identified the fact that the Applicant has five delinquent debts. Applicant admitted each of the allegations in the SOR. (See Answer)

Applicant was born in the Philippines. His family returned to the United States when he was a baby. He lived in the United States for 11 years and then moved back to the Philippines with his family. Applicant attended middle school, high school, and then college in the Philippines, where he obtained a Bachelor's degree. In 1996, Applicant returned to the United States. He joined the U.S. Navy in 1997, where he served honorably for ten years until 2008. He began his employment with a defense contractor, as a civilian, two days after retiring in 2008. He has held a security clearance during his military career and throughout his civilian employment.

Among other things, Applicant is a real estate investor. In 2006, he strategically defaulted on a rental property in the United States because it became a bad business

investment. The majority of the debts listed in the SOR are related to the strategic default, and became delinquent and owing:

1(a) In 2006, Applicant purchased a rental property for investment purposes. In the beginning he was receiving enough rent to cover the mortgage cost. By 2009, the rental market became more difficult, and he could not find a renter. There was damage to the property, and Applicant decided that he could not afford to continue to maintain the property and pay the mortgage without a renter. Applicant stopped paying the mortgage, and allowed the house to be foreclosed upon in 2015. Applicant received a letter from the lender dated May 30, 2013, indicating that they have agreed to forgive all of the balance on his first mortgage lien in the amount of \$150,239.09. (Applicant's Exhibit M.) That same month, Applicant purchases another property in the Philippines.

1(b) A debt to the city for an account placed for collection in the amount of \$28 has been paid. (Applicant's Exhibit B.) This was a fix-it ticket Applicant received for having tint on his front car windows.

1(c) A debt to Navy Federal Credit Union on a home equity loan account was 120 days or more past due in the approximate amount of \$4,326 with a principal balance of \$51,089. Applicant explained that he used these funds to compensate his ex-wife during their divorce settlement. (Tr. p. 37.) This loan pertains to Applicant's primary residence at the time. As a result of the divorce, he eventually had to short sale the property. Since 2009, Applicant has been making payments of \$75 monthly toward the payment of the debt which was agreed upon by the lender. At this point, Applicant has reduced the debt to about \$3,975. (Applicant's Exhibit A, and Tr. p. 39.)

1(d) and 1(e) A debt owed to a CLC CONSUMER/DITECH on a home equity loan account was charged off in the approximate amount of \$18,962. Applicant explained that this was the second lien on the rental property that was foreclosed upon in allegation 1(a) of the SOR. This equity loan or second mortgage was originally for \$25,000 and was sold to another lender which is NLO Funding, the same lender set forth in allegation 1(d) of the SOR. (Tr. p. 42.) When the rental house was sold by the lender holding the first lien, about \$20,000 was used to pay the second lien holder. He states that after the proceeds were used to pay down the second, Applicant believes that he owes about \$27,000 which include later fees, reasonable attorney fees, costs, election demands, receivership and the like. Applicant states that he has not been contacted by the lender, but has reached out to their attorneys. Applicant was informed by e-mail that the lender has no intention of pursuing the collection account. Applicant is willing and capable of paying the debt if the lender contacted him and told him to do so. (Tr. pp. 45-46.)

Applicant testified that his current total monthly income is \$5,300. His total monthly expenses are about \$4,400. He provided a month budget. (Applicant's Exhibit C.) He is able to build a savings. In 2011, when his mother died, Applicant inherited significant property in the Philippines which includes a five unit apartment building in the Philippines worth \$50,000; a parcel of land in the Philippines worth \$30,000; and a single family home in the Philippines worth \$60,000. (Tr. p. 52.) He also purchased a

house in the Philippines for \$80,000. His assets in the Philippines are worth approximately \$230,000. (Tr. p. 54.)

Applicant admitted that he made a strategic business decision not to pay the mortgage on the rental property in the United States, when the housing market declined. The property had damage and was difficult to rent. Applicant admitted that he could have afforded to pay the mortgage on this rental property instead of allowing it to be foreclosed upon. Applicant obviously had plenty of assets in the Philippines worth between \$250,000 and \$300,000 and he sold a home in the United States in 2011 and received profits of about \$60,000. Any of those profits could have been used to pay the mortgage on the rental property in 1(a) of the SOR. However, that was not the business decision he made. Applicant also testified that since his mother died in 2011, when he inherited the properties, he has been trying to sell them and has had them on the market with a realtor. Since the downturn in the real estate market, there have been no buyers for the property. Applicant states that from all of his properties in the Philippines, Applicant receives a total of about \$500 monthly. Since 2013, he has been using that profit to purchase another property in the Philippines.

Applicant further testified that he, his wife, and a childhood friend, are currently trying to set up a construction business in the Philippines. They began the business in 2010 which provides maintenance and build-out services for buildings. Applicant has not discussed this business with his employer.

Numerous letters of recommendation from his supervisor, professional colleagues, coworkers, and friends attest to Applicant's outstanding work performance as an exceptional instructor and mentor, as well as his commitment and dedication to excellence, his professionalism and his ability to complete all tasks with skill and pride. Applicant is further described as respectful of privacy, classified information, and rules and restrictions. He is recommended for a security clearance. (Applicant's Exhibits D, E, F, G, H, I, J, K, and L.)

## **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 and mitigating conditions, 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, administrative judges apply the guidelines 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), 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.

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

A person who applies 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.

Section 7 of EO 10865 provides that adverse 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 relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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 personnel 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Four are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so, and
- (c) a history of not meeting financial obligations.
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust.

Applicant is a real estate investor who strategically allowed a rental property in the United States to be foreclosed upon because it became a bad business investment. Applicant had the money and or the assets available to pay the mortgage, but instead, for his benefit, he intentionally and deliberately allowed it to be foreclosed upon. The evidence is sufficient to raise the above disqualifying conditions. AG ¶ 19 (b), (c) and (d) are applicable here.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

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

Applicant was remarkably relieved off his financial obligation in relation to the foreclosed rental property without understanding why. He is making regular monthly payments toward his line of credit. He has either paid or is satisfying his other creditors. However, it cannot be said that he has addressed his financial indebtedness in a reasonable and responsible manner. AG ¶ 20(a) and (b) were considered.

### **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.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Applicant has proudly served our country in the Navy. In his civilian position, he has worked hard to exemplify dedication and commitment to his job for the defense department. He has the trust and respect from his professional colleagues, management, coworkers, and friends.

However, Applicant strategically allowed his rental property to be foreclosed upon so he did not have to continue to pay the lender as agreed. As a result, the lender holding the first mortgage, and the lender holding the second mortgage were not paid under the contract. At best, Applicant can be considered lucky to be relieved of his financial obligation pertaining to the first mortgage, but he cannot be said to have shown good judgment as it would relate to his moral character, reliability and trustworthiness. He intentionally committed a breach of contract and a breach of trust. Strategic defaults are looked upon unfavorably by the DoD. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations security concerns.

### **Formal Findings**

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

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge