



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



In the matter of:	)	
	)	
	)	ISCR Case No. 16-01448
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel  
For Applicant: Ryan C. Nerney, Esq.

May 18, 2017

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On October 15, 2015, Applicant submitted a security clearance application (e-QIP). On September 16, 2016 the Department of Defense issued a Statement of Reasons (SOR) to Applicant 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; 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 September 1, 2006.

Applicant answered the SOR on October 18, 2016 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on March 29, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 30, 2017, scheduling the hearing for April 17, 2017. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 5, which were admitted without objection. Applicant offered Exhibits (AppXs) A through P, which

were admitted without objection. Applicant testified on his own behalf. The record then closed. DOHA received the transcript of the hearing (TR) on April 25, 2017.

### **Findings of Fact**

Applicant is 43 years old. He has been employed with a Government contractor for about 12 years. He has held a security clearance for about 20 years. He is married and has three children. (TR at page 16 line 6 to page 18 line 4.)

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 one mortgage debt totaling approximately \$275,000. Applicant admits the allegation, explaining that it has been resolved through a foreclosure. (TR at page 18 line 15 to page 28 line 19, at page 35 line 1 to page 36 line 6, at page 37 line 23 to page 38 line 17, at page 39 line 15 to page 40 line 9, and at page 47 line 18 to page 48 line 11.) The alleged debt was listed as past due on a credit report (CR) dated October 24, 2015, but is not listed as past due on the Government's most recent December 2016 CR. (GXs 3 and 4.)

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

1.a. Applicant purchased his first home in 2005. However, the neighborhood turned out to be a bad neighborhood; and as a result, Applicant started building a house in the more desirable "suburbs" in 2007. (TR at page 18 line 15 to page 21 line 2.) Soon thereafter, in 2008, the housing "market crashed." (TR at page 21 lines 2~5.) He tried to restructure the loan with the creditor, but to no avail. (TR at page 21 lines 11~19.) He and his wife "finally met with a real estate attorney who advised . . . [them] to let the home go under foreclosure." (TR at page 21 line 19 to page 22 line 2.)

Applicant tried to rent their first home, but because of the less than desirable neighborhood there was a monthly shortfall of \$1,000. (TR at page 23 lines 10~20.) After years of trying to work with the lender, the house was foreclosed on in 2016. (TR at page 26 lines 3~20.) As a result, the creditor "sent a 1099-C Form that included, not only the difference in the foreclosure sale and what . . . [Applicant] owed, but on top [of that] taxes and attorney's fees," as evidenced by that Internal Revenue Service (IRS) Form 1099-C. (TR at page 26 line 23 to page 27 line 1, and AppX N.) Most recently, in April of 2017, Applicant filed his Federal taxes with the IRS, declaring the amount from his IRS Form as income, as evidenced by the filing. (TR at page 26 line 21 to page 28 line 8, and AppX P.) Applicant has no past-due indebtedness.

## 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(a) describing 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 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, 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." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 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 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 under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant had a past-due mortgage debt. The evidence is sufficient to raise the above disqualifying conditions.

Three Financial Considerations 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;
- (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.

The evidence shows that Applicant was a victim of the crash of the real-estate market in 2008. Following the advice of legal counsel, he opted to have his first home foreclosed. Applicant's foreclosure debt has been satisfied with the inclusion of his IRS Form 1099-C on his 2016 income tax filing. His behavior happened so long ago, and occurred under such circumstances, that it is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a), 20(c), and 20(d) provide mitigation.

## 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 relevant 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 well respected in his workplace, as evidenced by his performance evaluations and eight letters of recommendation. (AppXs I and L.) Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated Financial Considerations security concerns.

### 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
Subparagraph 1.a:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Richard A. Cefola  
Administrative Judge