



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



In the matter of: )  
)  
) ISCR Case No. 16-03786  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

01/09/2018  
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**Decision**  
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GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the financial considerations security concerns, and the Government did not establish that he intentionally falsified his security clearance application when he failed to list his charged-off debt and home foreclosure. Clearance is granted.

**Statement of the Case**

On January 5, 2017, the Department of Defense (DOD) 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 (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 (AG) implemented by the DOD on September 1, 2006.<sup>1</sup>

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<sup>1</sup> I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Applicant responded to the SOR on January 20, 2017, and elected to have his case decided on the written record in lieu of a hearing. The Government's written case was submitted on June 19, 2017. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on June 29, 2017. He did not respond to the Government's FORM. The Government's documents identified as Items 1 through 8 are admitted in evidence without objection. The case was assigned to me on October 17, 2017.

### **Findings of Fact**

Applicant admitted the SOR allegations.<sup>2</sup> He is a 41-year-old aircraft mechanic employed by a defense contractor since September 2014. He obtained his high school diploma in 1995, and received an airframe and power plant certificate from a community college in 1998. He has worked either as an aircraft mechanic for various companies or a state police officer since March 1998. He has never held a security clearance.<sup>3</sup>

Applicant is married and he has three minor children. He owned his first home from February 2005 to March 2009, and he owned his second home from March 2009 to August 2014. As of April 2015, he owned his third home since August 2014.<sup>4</sup>

The SOR alleges a \$57,854 charged-off home equity account and a March 2009 home foreclosure. It also alleges that Applicant falsified his May 2015 security clearance application when he failed to disclose, in response to section 26, the account and home foreclosure. A credit report from May 2015 verifies Applicant's charged-off home equity account and home foreclosure. The report does not list any other outstanding accounts. Credit reports from October 2016 and March 2017 reflect that Applicant does not have any outstanding accounts.<sup>5</sup>

Applicant obtained a first mortgage loan for \$325,000, for which his monthly payment was \$2,000 for 30 years. The charged-off home equity account listed on his credit report was a second mortgage loan from the same creditor, which he was required to obtain because he did not qualify for 100% financing on his first mortgage. His second mortgage was \$65,000, and his monthly payment was \$450 for 30 years.<sup>6</sup>

Applicant stopped making his mortgage payments in early 2008. His income was reduced when he was laid off by his employer in December 2007 and he subsequently worked as a state police officer. Simultaneously, he stated that the real estate crash caused the market value of his home to drop to \$150,000, when he owed \$300,000 on

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<sup>2</sup> Item 3.

<sup>3</sup> Items 1, 3, 4, 8.

<sup>4</sup> Items 1, 3, 4, 8.

<sup>5</sup> Items 1, 3, 5-7.

<sup>6</sup> Item 8.

his primary mortgage. He indicated that the creditor refused to work with him to short sell the home. In March 2009, he told the creditor that he could no longer afford to pay his delinquent mortgage, he returned the home to them, and he walked away. He indicated that he did not thereafter receive from the creditor any correspondence notifying him of any outstanding liability for his delinquent mortgages, he was unaware of the status of both of the mortgage loans, and he was unaware when the home was foreclosed. As such, he did not feel responsible for the mortgage loans and he did not realize he was required to list them on his security clearance application.<sup>7</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 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 national security eligibility will be resolved in favor of the 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security 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 of potential, rather than actual, risk of compromise of classified information.

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<sup>7</sup> Items 4, 8.

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 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. The following are potentially applicable in this case:

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

Applicant was unable to pay his mortgage loans. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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; and
- (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, a death, divorce or separation,

clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances.

Applicant's layoff and the consequent reduction in income, and the real estate crash, constitute conditions beyond his control that contributed to his delinquent mortgages and home foreclosure. When the creditor did not work with him to short sell the home, he notified them that he was returning it to them and he walked away. Thus, he failed to show that he acted responsibly under his circumstances. AG ¶ 20(b) does not apply.

However, Applicant did not receive from the creditor any correspondence notifying him of any outstanding liability for his delinquent mortgages. While the charged-off account and home foreclosure are listed on the May 2015 credit report, they are not listed on his recent credit reports from October 2016 and March 2017. All three credit reports reflect that Applicant does not have any other outstanding accounts. Subsequent to the March 2009 home foreclosure, Applicant owned a second home from March 2009 to August 2014. As of April 2015, he owned a home since August 2014. There is sufficient evidence to conclude that his financial problems are unlikely to recur, and they do not continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) applies.

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

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

While Applicant admitted ¶ 2.a, he stated during his interview that he did not realize he was required to list his charged-off account and home foreclosure. He had not received any correspondence from the creditor since March 2009, he was unaware of the status of both of the mortgage loans, and he was unaware when the home was foreclosed. In light of his statements, I conclude that Applicant did not deliberately falsify his application. AG ¶ 16(a) does not apply and I find SOR ¶ 2.a for Applicant.

## **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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and Guideline E in this whole-person analysis.

The record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F, financial considerations, and the Government did not establish disqualifying conduct under Guideline E, personal conduct.

## **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.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

## **Conclusion**

In light of all of the circumstances, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Candace Le'i Garcia  
Administrative Judge