



# Applicant for Security Clearance

## Appearances

For Applicant: *Pro se*

07/12/2018

## Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

## Statement of the Case

On November 13, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to 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 (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on December 14, 2017, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on February 2, 2018. He was afforded an opportunity to file objections and submit material in refutation.

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 8. Applicant submitted a timely response and his exhibits are marked as Applicant's Exhibits (AE) A through P.<sup>1</sup> There were no objections by Applicant or Department Counsel and all Items and exhibits are admitted into evidence. After the deadline, Applicant's attorney submitted an additional exhibit. It is marked as AE Q.<sup>2</sup> There was no objection, and it is admitted into evidence. The case was assigned to me on June 11, 2018.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 51 years old. He earned a bachelor's degree in 1989 and a master's degree in 1991. He participated in ROTC and was commissioned upon his college graduation. He was granted a delayed entry to complete his master's degree and served on active duty from 1994 until 2001. From 2001 until the present he has served in the National Guard as an inactive reserve. He married in 1996 and has two children, ages 17 and 14 years old. He has worked for his present employer since 2001.<sup>3</sup>

Applicant began purchasing real estate investment properties in approximately 2000. He joined the city's real estate association. He continued to purchase properties in diverse neighborhoods. In 2007, the properties he purchased were in neighborhoods where property values had severely declined, and he was "underwater" in terms of the value of his property and the amounts owed on the mortgages. He had difficulty meeting his financial obligations. He attempted to rebound financially, but could not. In 2014, he sought assistance from a local realtor and an attorney.<sup>4</sup>

In Applicant's answer to the SOR, he said his attorney advised him to protect his personal financial interests. He said his financial situation was improving, and he was reducing his exposure to properties that have been a financial burden. He said that based on his attorney's advice he had negotiated settlements for some of his unsecured debt and a second mortgage on a property. He also had settlements that he was in the process

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<sup>1</sup> Applicant's attorney submitted a brief arguing his case. In the brief are attachments that I have marked as evidence as stated above. For simplicity, I have marked the brief as Hearing Exhibit I and have not separated the attachments.

<sup>2</sup> After the record closed, Applicant's attorney's provided a cover letter with an additional exhibit. The cover letter is marked as Hearing Exhibit II. Department Counsel had no objection and the additional exhibit was marked as AE Q.

<sup>3</sup> Item 5.

<sup>4</sup> Items 4; HE I.

of following through to pay down his debt. He said he continued to fully fund his 401(K) retirement account.<sup>5</sup>

In July 2016, Applicant completed a security clearance application. In it he disclosed he had numerous debts associated with his rental properties. He stated that he obtained the services of an attorney due to his “financial challenges.” He said he worked with the attorney and the mortgage holders to obtain loan modifications, deeds-in-lieu, short sales, and sheriff’s sales as possible alternatives. He disclosed he had two properties that were foreclosed and were sold back to the mortgage holder, and he had two properties “under possible foreclosure.”<sup>6</sup>

Applicant provided information in his SCA about the two properties that were foreclosed. He pursued loan modification, short sale, and a deed-in-lieu that were unsuccessful on both properties. One mortgage was \$36,000 and the property was sold at a sheriff’s sale in May 2015. Applicant disclosed he received an IRS form 1099C cancellation of debt from the creditor, and it did not pursue further collection action. The other property’s mortgage was \$50,600 and was sold at a sheriff’s sale in December 2014. He disclosed he also received an IRS form 1099C cancelation of debt, and the creditor did not pursue further action.<sup>7</sup>

Applicant disclosed another delinquent mortgage on his SCA that was not alleged. He stated that the amount owed was \$46,500. He applied for a loan modification, but a determination by the mortgage company was never made. The company started foreclosure processing, but then discontinued it. Applicant received a letter in October 2014 advising him that the mortgage company retained the lien and reserved the right to collect the debt. He disclosed he still owned the property and was maintaining it pursuant to the directions of the letter he received. He continued to pay the property taxes as required. He disclosed that the mortgage company suggested the possibility of a negotiated settlement and that he was looking into it.<sup>8</sup>

Applicant disclosed on his SCA another mortgage (\$20,043) that he had negotiated a loan modification with the lender. This debt was not alleged in the SOR. It was a two-year scheduled pay back of the amount in arrears, which was \$20,043 on a loan balance of \$105,087. He was making payments to cover both the arrears and the monthly mortgage payments. He indicated he was current on the payment plan and anticipated completing the plan in late 2016.

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<sup>5</sup> Items 4, 5; HE I.

<sup>6</sup> HEI. The two properties that were foreclosed are not alleged in the SOR. Any derogatory information that is not alleged will not be considered for disqualifying conditions, but may be considered in the application of mitigating conditions and in a whole-person analysis.

<sup>7</sup> Item 5.

<sup>8</sup> Item 5.

Applicant disclosed on his SCA a credit card debt (\$24,831) and that he had reached a settlement agreement with the creditor to pay 45% of the debt. He was required to make monthly payments of \$100 from May 2016 to March 2017 and a lump sum payment of \$10,176 in November 2016. In his SCA, he indicated he was current with the payments. Applicant's credit reports reflect numerous accounts with the same creditor. This payment plan is for an account (#9164) that was not alleged in the SOR. He provided documents to show he has a settlement agreement with the creditor for this account. He also provided a document for another account (#7176) with the same creditor that he resolved. This debt was also not alleged, but both accounts are reflected on his credit reports. Applicant's answer to the SOR states that the debt in SOR ¶ 1.e (#1431) was settled and resolved. The documents he provided are for different accounts. In his FORM response, he stated that he had completed a payment plan for the debt in SOR ¶ 1.e. The document provided is an IRS form 1099C cancellation of debt in the amount of \$13,657. This document does not reflect the debt was paid, but it was written off by the creditor and had tax consequences to Applicant. He did not provide documents of other payments he may have made regarding this debt.<sup>9</sup>

Applicant disclosed on his SCA a debt for a second mortgage (\$78,375). This debt is reflected in SOR ¶ 1.c. He reached a payment plan with the lender to pay 40% of the debt. He was required to make a lump sum payment of \$10,000 and monthly payments of \$608 for four years with payments to begin in July 2015. He stated in his FORM response that the balance is now \$48,308. He provided documentary proof that he has been making consistent payments on this debt as required.<sup>10</sup>

Applicant disclosed in his SCA the mortgage debt alleged in SOR ¶ 1.a (\$71,290, past due \$17,058). He indicated that he and his attorney were negotiating with the mortgage company on a possible short sale or deed-in-lieu to resolve the debt.<sup>11</sup>

In Applicant's answer to the SOR, he stated the following regarding the debts in SOR ¶¶ 1.a, 1.b, and 1.d. In approximately February 2014, he recognized he needed financial and legal counseling, and he sought the services of a realtor and an attorney. He was advised by his attorney to stop paying the mortgage lenders, stop using any retirement funds for expenses and to begin negotiating a loan modification, a deed-in-lieu, or a short sale of the properties. He was advised the process would be lengthy and in the end the properties might be foreclosed. His real estate agent investigated the possibility of a short sale. After consultation with both his attorney and accountant he decided against pursuing a deed-in-lieu resolution because "it would incur a considerable tax liability due to the debt forgiveness being considered ordinary income." He was advised to avoid the deed-in-lieu option and pursue a loan modification.<sup>12</sup>

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<sup>9</sup> Item 4, 5; HE I, AE A, F.

<sup>10</sup> Item 4, 5; HE I, AE D.

<sup>11</sup> Item 5.

<sup>12</sup> Item 4.

Applicant stated in his answer that he recently received an offer for the debt in SOR ¶ 1.a and was reviewing it. In his response to the FORM, his attorney indicated that Applicant had requested a reduced principal loan modification from the lender, but had not made recent payments on the advice of his other attorney. The current delinquent balance is \$23,170. A response from the lender had not been received, but if not accepted, Applicant and his realtor and attorney had alternative strategies for resolving the debt. SOR ¶ 1.a is unresolved.<sup>13</sup>

Applicant stated in his answer for the debt in SOR ¶ 1.b that he could not obtain a loan modification and using a short sale was challenging, so the property was foreclosed in December 2014. He stated he initiated a good-faith effort to resolve this debt and continued to do so. In his FORM response, he indicated that the loan was sold and he and his attorney are in the process of discussing available options for resolution.<sup>14</sup> This debt is unresolved.

Applicant disclosed on his SCA the debt alleged in SOR ¶ 1.d (balance \$52,033, past due \$37,481). He disclosed that he was working with his attorney and the mortgage company to attempt a short sale or deed-in-lieu to resolve it. During Applicant's July 2017 interview with a government investigator, he was confronted with the debt in SOR ¶ 1.d and told the investigator that at that time he had no intention to pay the mortgage per his attorney's advice. He planned on allowing the mortgage company to foreclose the property and to cut his losses. In his answer to the SOR, he said he attempted a short sale that was unsuccessful. He pursued a loan modification, but said it did not make financial sense. He said the mortgage company proposed a reduced mortgage settlement that he was considering, and he was looking into it. In his FORM response, he said that he believed this property would proceed as a short-sale. If this was unsuccessful he had an alternative proposal or as a final option he would do a deed in lieu.<sup>15</sup> The debt is unresolved.

Applicant's admissions and credit reports from September 2017 and August 2016 corroborate the debts alleged in the SOR.<sup>16</sup>

Applicant provided information about his current finances. He and his wife have a gross income of approximately \$170,000. He earns additional income when he is on active duty. His wife also receives substantial bonuses that increase their income another \$25,000. He said they live within their means.<sup>17</sup>

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<sup>13</sup> HE I, AE A, C.

<sup>14</sup> Items 4, 5; HE I, AE A.

<sup>15</sup> Items 4, 5; HE I, AE A, E.

<sup>16</sup> Items 4, 5, 6, 7, 8, 9.

<sup>17</sup> HE I, AE A.

Applicant provided a letter from his attorney who provided him advice on resolving his real estate debts. He confirmed the strategy they were pursuing and that it is a time consuming process. His security manager for his military duty stated that Applicant has kept the command informed and updated regarding his financial situation.<sup>18</sup> Applicant provided numerous character letters. He is described as trustworthy, honest, reliable, professional, responsible, and dependable. He is a valued employee. He is an active volunteer in his community and involved in charity events. He has received numerous awards and recognition.<sup>19</sup>

Applicant also provided a letter from his commanding general addressed to his military service requesting Applicant be retained in the service past his mandatory separation date.<sup>20</sup>

## **Policies**

When evaluating an applicant's suitability for national security eligibility, 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 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, these guidelines are applied 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." 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. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision."

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<sup>18</sup> AE G, J.

<sup>19</sup> AE H, I, K, L, M, N, O, P.

<sup>20</sup> AE Q.

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 that an 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 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (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.

Applicant has unresolved delinquent debts that that he is unable or unwilling to pay. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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;
- (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;
- (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 began investing in real estate in 2000. He purchased properties in diverse neighborhoods. In approximately 2007 and 2008 the real estate market declined. He has a settlement payment plan on a second mortgage debt that he has been paying since 2015. (SOR ¶ 1.c). He is still resolving several large debts. AG ¶ 20(a) does not apply.

Applicant began purchasing properties in 2000 and continued to do so for several years increasing his inventory. He became a member of the local real estate association and enjoyed the rewards of a robust market at the time. He chose to obtain numerous mortgage loans, so he could make his purchases. Although he could not have predicted that the market would have a drastic downturn in 2007, he willingly took the risk when he continued to purchase properties. Eventually, he could not pay all of the mortgages that were owed. Some of the properties were foreclosed. The SOR allegations reflect other mortgages and debts that have not been resolved. Applicant's attorney advised him to stop paying the mortgages he was obligated to pay. In his July 2017, he said he did not intend to pay one mortgage because he was cutting his losses. He also chose not to pursue the option of a deed-in-lieu at the time because of the tax liability he would incur. Later, he stated he may pursue this option. Strategically, Applicant's actions on the advice of his attorney may likely help him reduce the amount he may pay to his legitimate creditors, but it does not reflect his actions are trustworthy or reliable. He and his wife



earn a significant income, and he continues to contribute to his pension plan, showing he is solvent. He has not completely ignored his financial obligations to resolve his delinquent debts, but based on the information he provided, it has already been a long process and he continues to wait for more advantageous offers. From a strategic financial standpoint, this is likely a good thing for his personal obligations. However, it does not reflect positively regarding complying with contracts he is obligated to pay. I find AG ¶ 20(b) partially applies.

Applicant participated in financial counseling and has followed his attorney's advice, but he still has large debts that he is hopeful to resolve in the future, but does not yet have payment agreements. AG ¶ 20(c) does not apply.

Applicant has a settlement payment plan for the debt in SOR ¶ 1.c that he has been consistently paying since 2015. AG ¶ 20(d) applies to this debt. He did not offer sufficient evidence to show he made payments to resolve the credit card debt in SOR ¶ 1.e. He receiving an IRS form 1099C cancellation of debt for this debt. Although he may no longer have a legal obligation to this creditor, it does not mean that he paid the debt, but rather the creditor wrote off the debt and it created a tax consequence for Applicant. AG ¶ 20(d) does not apply.

### **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 the 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 the 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(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 51 years old and well educated. He has served on active duty and as a reservist in the military. He began investing in real estate during a time when the economy was prosperous. His financial problems began with the downturn of the real estate market. He had several properties foreclosed and still has real estate debts that are not resolved. He took the advice of his attorney to protect his personal finances and stop paying mortgages he was obligated to pay. This strategy may make sense from a personal standpoint, but it does not reflect that he has acted responsibly towards legitimate debts. Applicant has not met his burden of persuasion. 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 failed to mitigate the security concerns arising under Guideline F, financial considerations.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge