



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



In the matter of:	)	
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	)	ISCR Case No. 14-04702
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government:  
Andrew Henderson, Esquire, Department Counsel  
For Applicant:  
Catie E. Young, Esquire  
Griffith, Young & Lass, APC

April 26, 2016

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on April 4, 2014. (Government Exhibit 1.) On January 16, 2015, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. The action was taken under Executive Order 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 within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on March 3, 2015 (Answer), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 28, 2015. The case was assigned to an administrative judge on June 8, 2015. This case was reassigned to a second administrative judge on June 18, 2015. It was reassigned to me on September 8, 2015. The Defense Office of Hearings and

Appeals (DOHA) issued a notice of hearing on September 15, 2015. I convened the hearing as scheduled on October 19, 2015. The Government offered Government Exhibits 1 through 4, which were admitted without objection. Applicant testified on his own behalf, and he submitted Applicant Exhibits A through R, which were also admitted without objection. DOHA received the transcript of the hearing (Tr.) on October 27, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

Applicant is 45 and married. He is employed by a defense contractor and seeks to retain a security clearance in connection with his employment.

#### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted the sole allegation in the SOR under this Paragraph. He also submitted additional information to support his request for a security clearance.

The single allegation in the SOR (1.a) alleges that Applicant owes \$158,012 to a mortgage company on a foreclosed house. This house was one of four that Applicant owned, or co-owned, during the period from 2001 to 2008. Three he owned by himself, and one he co-owned with his brother. Applicant's brother eventually bought out Applicant's interest in one house, two were foreclosed on (one of which is the subject of the SOR), and he has kept the fourth house, which is located in another city. (Tr. 28-36.)

Before 2008 Applicant lived in one of his houses, and successfully rented out the other two for several years. The financial market crashed in 2008-2009 and the city where Applicant owned two houses, including the subject house, was particularly hard hit. By 2010 the properties were worth half of what he paid for them. (Tr. 36-37.)

Applicant contacted the mortgage company on the subject property and attempted to obtain a loan modification. The mortgage company was unwilling to modify his mortgage. Applicant stated, "I was pretty scared at the time. I mean, I had a lot of debt. I was upside down to the tune of, you know, around \$250,000 on all my property, and I thought, well, I need some, some financial guidance." (Tr. 37-39, 51.)

Applicant first consulted a financial planner in April 2010. In order to make sure that he was getting appropriate advice Applicant next consulted with an attorney who specialized in debt relief issues in May 2010. He also received advice from a second attorney. (Answer at 3-4; Applicant Exhibits B and R; Tr. 39-42.)

After consulting the two attorneys Applicant came to a decision to follow their advised course of action. He stated, "With no option to restructure the debt or recover the increasing loss in equity and rental income, foreclosure became the first step toward regaining stability in my real estate portfolio and toward creating a more profitable long-term financial solution." (Answer at 4.) (See Applicant Exhibit P at 3; Tr. 43-44, 49, 52-53.)

As stated, the mortgage company foreclosed on this house in 2011. The allegation in the SOR is actually in reference to a reported delinquency owed to a collection agency before the foreclosure proceedings concluded. Applicant contacted them and was informed that the account should have been closed and there was no past-due amount. The most recent credit report in the record confirms that the account was closed in 2011 with no past-due amount. (Applicant Exhibit D at 11; Tr. 54-60.) Applicant does not owe anything to the mortgage company, or the collection agency. This debt is resolved.

Applicant's current financial situation is stable, as shown by the most recent credit report in the file. He is able to pay his monthly debts. Applicant stated that as a result of his financial issues he is more aware of his finances. Applicant and his wife paid off her student loans in the amount of \$118,000 in a little over two years. He has taken financial counseling courses. Applicant and his wife have approximately \$300,000 in various retirement and investment accounts. They have recently purchased another house. (Applicant Exhibits B, D, E, and G through N; Tr. 60-69.)

## **Mitigation**

Applicant submitted documentation showing that he is a respected employee and person. Applicant's supervisor has known and supervised Applicant for twelve years. He provided a letter that states, "[Applicant] will stand out as one of those that exhibited the highest reliability, honesty and integrity." The three other letters in this exhibit are from current or prior co-workers and are of a similar nature. (Applicant Exhibit P.)

## **Policies**

Security clearance decisions are not made in a vacuum. 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 as appropriate 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 AG ¶ 2 describing the adjudicative process. The administrative judge's over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any 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. 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, and has the ultimate burden of persuasion as to obtaining 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Paragraph 1 (Guideline F, Financial Considerations)**

The security concern relating to the guideline 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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant, by his own admission, and supported by the documentary evidence, had a mortgage that was foreclosed upon. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions may be mitigated where “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.” In addition, AG ¶ 20(b) states that disqualifying conditions may be mitigated where “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), and the individual acted responsibly under the circumstances.”

The evidence shows that both of the above mitigating conditions apply to Applicant. The housing crisis made Applicant concerned about his ability to continue to pay this mortgage. He obtained legal and financial advice. Based on that advice, Applicant allowed the mortgage company to foreclose upon and sell the property. Based on the particular facts of this case, I find that Applicant acted as a reasonable person would in similar circumstances and “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d).

Applicant has received financial counseling. In addition, as found above, his current financial situation is stable. I find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c). Paragraph 1 is found 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 the relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline F, above, applies here as well. While Applicant has had financial problems in the past, they are resolved, and he has the knowledge and ability to avoid such problems in the future.

Under AG ¶ 2(a)(2), I have considered the facts of Applicant's debt history. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a low likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial situation. Accordingly, the evidence supports granting his request for a security clearance.

### **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:                   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 Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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WILFORD H. ROSS  
Administrative Judge