



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 07-08332  
SSN: )  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Stephanie C. Hess, Esquire, Department Counsel  
For Applicant: *Pro se*

March 6, 2008

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**Decision**

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MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA), on October 16, 2006. On September 16, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted his answer to the SOR on October 11, 2007. DOHA issued a notice of hearing on December 3, 2007, and the hearing was held on December 17, 2007. At the hearing, five exhibits (AE 1 through 5) were admitted in evidence without objection to support the government's case. Applicant's six exhibits (AE A through AF) were received in evidence without objection. Applicant testified. In the time allowed for post-hearing submissions, Applicant submitted 37 documents that have also been

received in evidence without objection. (AE G through AE I). The exhibits address (1) Applicant's deficiency agreement (SOR 1.g., 1.h.) he entered into with State X bank on December 26, 2007,<sup>1</sup> (2) performance evaluations and character references, (3) and a five-year debt plan, including his plan to pay off the other SOR debts. DOHA received a copy of the hearing transcript on January 7, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Rulings on Procedure**

During the hearing, Department Counsel made a motion to amend the SOR by re-lettering the last two allegations. Applicant had no objection. Pursuant to E3.1.17. of the Directive, the motion was granted, and the last two allegations of page two of the SOR were re-lettered to read "1.l." and "1.m." (Tr. 35-36)

### **Findings of Fact**

The SOR alleges financial considerations. Applicant admitted SOR 1.a., 1.f., 1.h., 1.l. and 1.m. He denied SOR 1.b., 1.c., 1.d., 1.e., 1.g., 1.i., and 1.j. Applicant's interview in January 2007 (GE 2) and his credit bureau reports reflect that all debts are his responsibility. He is 59 years old, divorced, and has been employed as a senior cost engineer with a defense contractor since September 2005. GE 1 reflects that Applicant was a senior cost engineer (with a security clearance) for a defense contractor in State Y from October 1974 to February 2000, and from October 2002 to December 2004, with a second defense contractor. He seeks a security clearance.

From February 2000 until October 2003, Applicant formed a real estate partnership with another realtor. He continued to sell real estate part-time for about a year after he began working for the second defense contractor in October 2002.

Having made a decision in December 2004 that he needed to take a respite from the defense contractor field, he resigned his employment with the second defense contractor, and resumed his real estate career in a foreign country (FC). Before his resignation, he entered into a purchase agreement with a buyer and State Y bank to buy his home and another parcel of land. The two parcels of land are listed in SOR 1.g. and 1.h. respectively. See also GE 2. On one of the parcels of land was a mobile home that Applicant valued at \$10,000.00, and a truck and an office trailer he valued at \$2,000.00, for a total of \$12,000.00.

Applicant entered into a second agreement with State Y bank for money to be taken out of his private account for the payment of bills, e.g., credit cards and utilities, while he was in FC selling real estate.

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<sup>1</sup> The agreement was signed by an official of State Y bank on January 3, 2008. (AE G)

Within four months of his departure from the second defense contractor to sell real estate in FC, Applicant was notified by State Y bank in March 2005 that the buyer had defaulted on the purchase agreement for both properties. After receiving delinquency notices in April 2005 for nonpayment of several of the SOR debts, Applicant discovered the bank had exhausted his private account (created by the second agreement he had with State Y bank) to pay the mortgage following default.

Applicant returned to State Y in September 2005<sup>2</sup> to weigh his options (including bankruptcy) for his properties, that were about to go into foreclosure. Initially, Applicant was advised by an attorney not to address the other SOR debts because this action could constitute a waiver of the bank's potential liability for withdrawing funds for the mortgage rather than the other SOR debts. He provided this explanation during the hearing. (Tr. 40) After learning in late 2005 he had no redress against the bank for taking funds to pay the mortgage, and concluding he had insufficient funds to pay off the arrearage on the mortgage (GE 2, e-mails in September 2006 between Applicant and the bank), the property was foreclosed on. On October 18, 2006, the property securing the bank's mortgage went on sale through a public auction.

The actual sale of Applicant's property on December 7, 2006 resulted in a deficiency judgment of \$29,717.00.<sup>3</sup> (Tr. 26) Applicant told the government investigator in January 2007 that he did not intend to address the other SOR creditors until he completed his negotiations with the bank regarding the deficiency judgment. Applicant and State Y bank presented offers and counter offers until November 28, 2007, when the bank proposed a compromise that became the stipulated deficiency agreement. (AE G) Under the terms of the deficiency judgment agreement, Applicant agreed to pay the bank \$300.00 a month for 60 months, with payments beginning in January 2008. Another term of the agreement is that if Applicant does not make all required payments on or before the scheduled due dates, "the amount of the deficiency will revert back to the full amount awarded under the deficiency judgment, plus accrued interest, less any amounts received from [Applicant]." (AE G)

There are 12 delinquent accounts in the SOR, including the deficiency judgment agreement. The total sum of the delinquency is \$49,300.00. The deficiency judgment (SOR 1.g. and 1.h., \$29,717.00) amounts to more than half of the SOR debt. Almost all of the debts became overdue between September 2004 and February 2005. Applicant has incurred no new debt since February 2005 (GE 3), not 2004 as he testified. (Tr. 44) Save for the government credit card, he has no credit cards currently. He officially contacted all creditors on November 28, 2007 for delinquent debt information and plans to pay the outstanding balance on the other debts by June 2008. (Tr. 28; AE G)

Applicant has been using a budget in handling his finances since January 2007. (GE 2) The budget reveals a monthly net remainder of \$1,265.00. (AE E)

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<sup>2</sup> Applicant was unable to return to State Y immediately due to his employment obligations in FC.

<sup>3</sup> The judgment includes interest, fees, costs and expenses. (GE 2)

Applicant submitted a character questionnaire to seven supervisors and coworkers (AE F) The questionnaire asks a series of questions about Applicant's character on the job. All indicated they recommended him for a position of trust.

The manager of Applicant's division stated that Applicant mentioned his financial problems when he was hired in September 2005. The manager recalled Applicant was very active in several community projects in finding shelter and food for the homeless after the hurricane passed through the area in September 2005. Another cost engineer admires Applicant's contributions in reestablishing critical connections between his employer and the local military installations after the hurricane. The Director of a major local youth organization commended Applicant for organizing renovation efforts in the community after the hurricane in September 2005. Applicant's job ratings for the last two years show he has met performance expectations.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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 ¶ 2b. 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. 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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

is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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.

### **Financial Considerations (FC)**

Failure to live within one's means, and inability to pay bills on time places the individual debtor at risk of committing illegal acts to generate funds.

### **Analysis**

When the SOR was published in September 2007, Applicant was over \$49,000.00 in debt, with more than 50% of the debt attributed to his defaulted mortgage and other property. On hindsight, he should have returned to State X to confront his growing debt much sooner than he did. FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*) and FC DC 19.c. (*a history of not meeting financial obligations*) apply. FC DC 19.a. applies due to Applicant's inability to address the debt. Applicant's "unwillingness" to satisfy all but two of the remaining debts is a reasonable inference that is drawn from his statement in January 2007 that he was unwilling to deal with the other SOR creditors. However, the reason for his unwillingness was his concern over how to address the large deficiency judgment of \$29,717.00 that was entered against him in December 2006. FC DC 19.c. applies based on a history, albeit short, of not paying the delinquent debts.

The circumstances of this case potentially raise the first four mitigating conditions (MC) under the FC guideline. FC MC 20.a. (*the behavior happened so long ago, was so infrequent, or occurred under the such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*) applies in part. The 12 listed debts fell delinquent in a short time span in 2004 and early 2005, without any additional debt showing up since February 2005. The deficiency agreement between Applicant and State Y bank is now in place, allowing Applicant to implement the second portion of his plan to eliminate his remaining, delinquent creditors by June 2008.

Applicant receives limited mitigation under FC MC 20.b. (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*) because Applicant had no way of knowing the purchaser was going to default on the mortgage only four months after the purchase agreement was signed. However, the timing of the default suggests Applicant should have devoted more effort in selecting a qualified candidate to purchase the properties. Notwithstanding the default after only four months, Applicant is entitled to limited mitigation under FC MC 20. b.

FC MC 20. c. (*the individual has received or is receiving counseling for the problem and/or there are clear indications the problem is being resolved or is under control*) applies in part even though Applicant has received no financial counseling. He located all of his listed creditors, and executed a plan for paying off the deficiency judgment. Putting the five-year plan in place on January 3, 2008 will allow him to expedite his second plan to resolve the remaining debts, hopefully by June 2008.

FC MC 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debt*) also applies on a limited basis due to Applicant's action in resolving the deficiency judgment with State Y bank. Rather than succumbing to the temptation of a bankruptcy discharge of all of his debts, Applicant chose to negotiate with State Y bank in 2006 until November 28, 2007. He realizes a breach of one of the terms of the deficiency agreement will mean he will have to pay the original deficiency judgment of \$29,717.00, rather than \$18,000.00 under the agreement. The limited mitigation Applicant receives under all four conditions satisfies his ultimate burden of persuasion under each factual allegation and the FC guideline.

### **Whole Person Concept (WPC)**

My finding for Applicant under the FC guideline must still be evaluated in the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors: (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 the participation was 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. Applicant was 55 years old when he resigned his job as a cost consultant for a defense contractor, and moved to FC to sell real estate. He also viewed the career change as a chance to take some time off. It is obvious the mortgage default and foreclosure on the properties would not have occurred had he selected a more qualified purchaser. Rather than yielding to the Chapter 7 route of eliminating the deficiency judgment and his SOR debt delinquencies, he negotiated with the bank over a year and successfully worked out an agreement that obligates him for the next five years. In that period, I am confident he will also meet the remainder of his obligations under the SOR. He is 59 years old with almost 30 years in the defense contractor industry. He has successfully met his job performance standards with his current employer since September 2005. He is highly regarded by his coworkers, supervisors, and friends, for his productivity on the job, as well as his work to revitalize the community after the hurricane in September 2005. The FC guideline is resolved in Applicant's favor.

## 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 (Financial Considerations, Guideline F): FOR APPLICANT

Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	For Applicant
Subparagraph 1.c.	For Applicant
Subparagraph 1.d.	For Applicant
Subparagraph 1.e.	For Applicant
Subparagraph 1.f.	For Applicant
Subparagraph 1.g.	For Applicant
Subparagraph 1.h.	For Applicant
Subparagraph 1.i.	For Applicant
Subparagraph 1.j.	For Applicant
Subparagraph 1.k.	For Applicant
Subparagraph 1.l.	For Applicant
Subparagraph 1.m.	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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Paul J. Mason  
Administrative Judge