



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-04597
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah A. Minster, Esq., Department Counsel  
For Applicant: *Pro se*

06/13/2013

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**Decision**

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ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings and exhibits in this case, I conclude that Applicant failed to mitigate security concerns under Guideline F, Financial Considerations. Her eligibility for a security clearance is denied.

**Statement of the Case**

On November 25, 2011, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On January 17, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. The DOD acted under Executive Order 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 for SORs issued after September 1, 2006.

Applicant provided a notarized answer to the SOR, which she signed and dated on March 20, 2013. She declined a hearing and requested a decision on the record.

The Government compiled its File of Relevant Material (FORM) on March 29, 2013. The FORM contained documents identified as Items 1 through 9. On April 3, 2013, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on April 9, 2013. Her response was due on May 9, 2013. Applicant timely filed additional information in response to the FORM. Department Counsel did not object to the information submitted. On May 24, 2013, the case was assigned to me for a decision. I marked Applicant's response to the FORM as Item A and entered it in the record.

### **Findings of Fact**

The SOR contains one allegation of disqualifying conduct under Guideline F, Financial Considerations (SOR ¶ 1.a.). In her answer to the SOR, Applicant admitted the allegation. Her admission is entered as a finding of fact. (Item 1; Item 2.)

The facts in this case are established by the record provided by the Government and the Applicant. In addition to Applicant's response to the FORM and her answer to the SOR, the record evidence includes Applicant's 2011 e-QIP; her responses to DOHA interrogatories;<sup>1</sup> and her credit reports of December 3, 2011; July 27, 2012; and January 4, 2013. The credit reports establish the debt alleged on the SOR. (See Items 4 through 9; Item A.)

Applicant is 64 years old, married, and the employee of a government contractor. Since 1985, she has served as president of a company that carries out government contracts. Since 2006, she has also owned a small carry-out restaurant. Applicant was first awarded a security clearance in 2001. (Item 5.)

Section 26 on the e-QIP Applicant completed in November 2011 asked if she was currently over 120 days delinquent on any debt. Applicant responded "No." Applicant's credit report of December 2011 showed she was over 120 days past due on her home equity account and owed \$23,271 on a total balance of \$214,330. When she was asked about this delinquency by an authorized investigator in December 2011, Applicant stated that she was not aware of the debt because her husband handled all financial matters relating to their business and their home. (Item 5; Item 6; Item 9.)

The SOR alleges that, as of January 17, 2013, Applicant was over 120 days past due on her home equity line of credit account and owed \$64,128. Applicant's credit report of January 4, 2013 confirms the delinquency. (Item 1; Item 7.)

In her answer, Applicant explained that her husband was pursuing a new business venture, lacked sufficient capital, and used the home equity account and credit

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<sup>1</sup>Applicant was interviewed under oath by an authorized investigator from the U.S. Office of Personnel Management (OPM) on January 30, 2012. On December 11, 2012, in response to DOHA interrogatories, Applicant signed a notarized statement in which she agreed that the investigator's summary accurately reflected the information she provided in her interview. She also provided additional information (Item 6.)

cards to pay the company's key employees. She stated that three years ago, her husband found a potential investor who had expressed a willingness to invest ten million dollars in his venture, but the investor had not followed through and provided the money. Applicant stated she had faith in her husband and hoped for a good resolution in the future. She stated that she and her husband were seeking to lower their monthly mortgage payments and applying for a reverse mortgage to increase their cash flow. (Item 4.)

Applicant's husband provided a letter, dated December 11, 2012, stating that he was applying for a reverse mortgage. He stated that he had a mortgage on his home of \$231,772 with one creditor; owed \$153,061 on another mortgage account; and owed \$22,171 in credit card debt. He reported that his house was valued at \$800,000. (Item 6.)

Applicant's husband also provided a copy of settlement offer from the creditor holding his home mortgage. The creditor identified the amount currently due on the home mortgage as \$437,319. The creditor offered to settle the debt for a one-time payment of \$153,061, provided it was paid by September 20, 2012. (Item 6.)

Applicant was asked to respond to DOHA's financial interrogatories by providing information on a form identified as a personal financial statement. However, she failed to provide the information requested on the form. As a consequence, the record is devoid of information on Applicant's monthly family income, her monthly living expenses, her financial obligations and the amounts paid on them each month, and her assets such as savings, stocks and bonds, and real estate. The record does not reflect that Applicant has had financial counseling. (Item 6.)

In response to the FORM, Applicant provided a letter, dated May 2, 2013, stating that she and her husband had applied for a reverse mortgage, and she anticipated the reverse mortgage agreement would go into effect before the end of June 2013. She attached to the letter a Form 1099-C showing that on October 11, 2012, her mortgage debt of \$429,805 had been discharged. (Item A.)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant's suitability for a security clearance, an 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 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, the administrative judge applies these 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 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.

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 in seeking 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 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.

Section 7 of Executive Order 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 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 two conditions that could raise security concerns in this case. 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.

The record reflects that Applicant is responsible for a home equity line of credit debt that was over 120 days past due in the amount of \$64,128. This evidence is sufficient to raise security concerns under AG ¶¶ 19(a) and 19(c).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquency. Unresolved financial delinquency might be mitigated if it "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." (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if "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." (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include evidence that "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" (AG ¶ 20(c)) or "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts" (AG ¶ 20(d)). Finally, security concerns related to financial delinquencies might be mitigated if "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue." (AG ¶ 20(e)).

Applicant has a history of financial delinquency. She provided information showing her mortgage debt of \$429,805 had been discharged, but she failed to show

how paying that debt impacted a delinquency of over \$64,000 on her home equity line of credit. Moreover, she failed to provide information about her current family income, living expenses, debt payments, and assets. Without this information, it is not possible to assess the impact of the discharge of her mortgage debt on Applicant's total financial situation. I conclude that Applicant has failed to demonstrate that her financial obligations have been addressed and her financial vulnerability resolved. Accordingly, I conclude that none of the mitigating conditions under the financial considerations adjudicative guideline apply to the facts of Applicant's case.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an 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. Applicant has a history of unresolved debt. She failed to complete a personal financial statement. The record does not demonstrate that she has sufficient resources to avoid financial delinquency in the future.

As the president of a firm that carries out government contracting, Applicant has a duty to ensure the stability and financial integrity of her company. Her assertions that she has no knowledge of the company's financial status and obligations reflect poorly on her credibility. Applicant failed to show that she possesses the reliability, judgment, and trustworthiness of a person who can be trusted with classified and sensitive information.

Overall, the record evidence leaves me with serious doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude that Applicant failed to mitigate security concerns about her financial considerations.

