



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



In the matter of:	)	
	)	
	)	
	)	ISCR Case No. 12-06721
Applicant for Security Clearance	)	

**Appearances**

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

03/24/2014

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**Decision**

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LYNCH, Noreen, A., Administrative Judge:

On November 26, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns arising under Guideline F (Financial Considerations). The action was taken 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) implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on February 12, 2014. A notice of hearing was issued on February 21, 2014, scheduling the hearing for March 11, 2014. Government Exhibits (GX) 1-4 were admitted into evidence, without objection. Applicant testified, and submitted Applicant Exhibits (AX) A-B, which were admitted without objection. The transcript (Tr.) was received on March 19, 2014. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

## Findings of Fact

In her answer to the SOR, Applicant admitted the factual allegations under Guideline F (Financial Considerations), with explanations.

Applicant is a 58-year-old defense contractor. Applicant graduated from high school in 1975 and attended college courses, receiving a diploma in 2000. She has been with her current employer since 2007. (GX 1) She has held a security clearance for about 14 years. (Tr. 17)

In 2006, Applicant and her husband purchased two rental condominiums in another state. She believes the purchase price for the two units was about \$300,000. They did so based on a fellow church member's advice. Applicant made a deposit on the unseen properties. She relied on the friend's description of the property as a good business opportunity. The friend was a real estate agent. Applicant was told that the developer would pay the mortgage, keep the properties rented, and pay the management fees for two years. After two years, Applicant would sell the properties. (Tr. 14) She had no intention of renting them. She believed there would be about a \$5,000 profit. After about one year, the developer of the condominiums went bankrupt.

When the properties reverted to Applicant, she tried to contact the property management company. She learned that it was her responsibility and that the condominium had no current renters. She was paying her home mortgage and did not have sufficient income to pay the mortgages for the condominiums. Applicant recalls that she paid for about two months, which was about \$9,000. (Tr. 15) Applicant received a letter that stated the properties would go to foreclosure. She stated that there was nothing that she could do at that time. Applicant testified that she does not believe the two defaulted mortgage loans are her burden. (Tr.20) Applicant has not had any contact with the banks.

The SOR alleges three delinquent debts which are mortgage loan defaults and home foreclosures totaling approximately \$373,000. The credit reports reflect the delinquent debts. (GX 3,4 )

The account alleged in SOR 1.a for \$171,000 is the result of the first mortgage account. The condo went to foreclosure. The account is unpaid. Applicant has no plans to resolve the debt. (Tr. 37)

The account in the amount of \$162,000 alleged in SOR 1.b is the result of a first mortgage account. The home went to foreclosure. The account is unpaid. Applicant has no plans to resolve the debt.

The past-due account on a second mortgage alleged in SOR 1.c for approximately \$40,126, has been satisfied. Applicant submitted a form 1099-C, which documents that the debt has been forgiven. (AX A,B)

When Applicant purchased the investment properties, she earned about \$40,000. Her husband earned about \$60,000. They had the ability to pay for their home mortgage of \$2,100. There was no contingency plan in place if the investment properties did not work out.

Applicant acknowledged that she has been in this country for about 30 years. She is a naturalized U.S. citizen and has never had any financial or legal difficulty. She stated that she does not live extravagantly or beyond her means and abides by all rules and regulations. The mortgages were for investment purposes and she has no history of not paying her bills. She does not believe she has poor self-control or lack of judgment. Her credit was in good shape before the unfortunate incident with the rental properties. She acknowledged that this was a poor business decision.

Applicant's husband held a security clearance and he lost that clearance due to the financial problems that arose from the investments. He became unemployed for a period of time in 2010. (Tr. 42) He found new employment in June 2012. (Tr. 43)

### **Policies**

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”<sup>1</sup> The burden of proof is something less than a preponderance of evidence.<sup>2</sup> The ultimate burden of persuasion is on the applicant.<sup>3</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”<sup>4</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>5</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>6</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

## Analysis

### Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds.

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<sup>1</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>2</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>3</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>4</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>5</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>6</sup> *Id.*

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

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

Applicant acknowledges that she has delinquent debts. Her credit reports confirm the debts. Consequently, the evidence is sufficient to raise the disqualifying conditions in ¶¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate security concerns. The following are potentially relevant:

- (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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems began when the two investment properties that she purchased from a realtor friend did not succeed. She and her husband willingly entered into the contract to purchase the two condominiums without researching the area. When the developer went bankrupt, Applicant paid the mortgages for about two months. However, she was unable to maintain the payments. While the bankruptcy of the developer was beyond their control, Applicant did not have a contingency plan if something went wrong with the investments. She did not have sufficient funds to maintain her own home and the two properties, although she tried. The second mortgage has been satisfied and the debt forgiven. However, the first two mortgage loans have not been resolved. Applicant has no plans at this time to resolve the debts. Applicant did not produce documentation to show the current status of the two mortgage loans. Moreover, she does not believe that she has an obligation to pay the mortgage accounts since the condominiums went to foreclosure. Applicant has not shown mitigation under the guidelines.

## 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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the whole-person factors. Applicant is a 58-year-old professional with a history of employment in the defense arena. She has held a security clearance for more than ten years.

Applicant is an honest, credible person, who has no criminal record. She wanted to invest in properties, but did not take sufficient steps to research her investment. She and her husband had always been able to pay their bills, but when the investment properties went bankrupt, Applicant did not have sufficient funds or a contingency plan in place to address the situation. Applicant does not believe she has the obligation for these two mortgage accounts because they went to foreclosure. However, she signed the contracts and has provided no information that the two first mortgage debts have been forgiven. Applicant has not met her burden to mitigate the financial considerations security concerns.

Any doubts about Applicant's judgment must be resolved in favor of the Government. She has not acted reasonably under the circumstances. Clearance is denied.

## 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant

## Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

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NOREEN A. LYNCH.  
Administrative Judge