



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



In the matter of: )  
 )  
 ----- ) ISCR Case No. 12-11430  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Ray Blank, Jr., Esq., Department Counsel  
 For Applicant: Jerome. S. Sepkowitz, Esq.

02/17/2016  
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**Decision**  
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WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns regarding her financial considerations. Eligibility for access to classified information is granted.

**Statement of Case**

On May 29, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DoD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 (AGs) implemented by DoD on September 1, 2006.

Applicant responded to the SOR on June 10, 2015, and requested a hearing. The case was assigned to me on July 14, 2015. The case was scheduled for hearing on

August 5, 2015. At the hearing, the Government's case consisted of six exhibits (GEs 1-6). Applicant relied on one witness (herself) and six exhibits (AEs A-F). The transcript (Tr.) was received on August 14, 2015.

### **Procedural Issues**

Before the close of the hearing, Applicant requested the record be kept open to permit her the opportunity to supplement it with documented information about Applicant's foreclosure and whether there is any money owing on the first mortgage. She also asked for a post-hearing opportunity to provide a personal financial statement. For good cause shown, Applicant was granted 30 days to supplement the record. In September 2015 she asked for additional time to supplement the record. Within the extended time approved to supplement the record, Applicant supplemented the record with a cover letter from her counsel, a summary of the creditor 1.b note, a creditor 1.a notice to accelerate, loan modification communications, a foreclosure report, correspondence from creditor 1.b regarding monies owed to creditors 1.b and 1.c, and a summary of pertinent state law governing foreclosures in State A. Applicant's post-hearing submissions were admitted as AEs G-N. Applicant's furnished State A statute governing the availability of foreclosure deficiency actions was admitted as HE 1 for legal guidance purposes.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accrued delinquent mortgages: a first mortgage in the amount of \$185,400 and a second mortgage with delinquent mortgage payments totaling \$8,096. Allegedly, these mortgage debts remain outstanding.

In her response to the SOR, Applicant denied being indebted to any of the listed creditors in the SOR. She claimed that correspondence from creditor 1.b confirmed she is no longer personally liable to the creditor. She claimed that creditor 1.b was formally known as creditor 1.c. She claimed she tried working with the primary lender (creditor 1.a) and the collection companies to obtain an adjustment on her payments, or resolution of her debt by other means. She claimed she contacted local realtors to explore short sale possibilities. And she claimed that her home was sold in 2011 for more than the amount of the creditor 1.a debt and claimed she reported her portion in the sale as income from the sale in the tax document she was provided by creditor 1.a.

### **Findings of Fact**

Applicant is a 43-year-old program analyst of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant married in June 1996 and divorced her spouse in July 2003. (GE 1) she has no children from this marriage. After earning her high school diploma in May 1990, Applicant attended college classes between August 1990 and May 1996 (earning an

associate's degree in May 1996), and a local university between August 1996 and December 2009 (earning a bachelor's degree in December 2009). (GE 1) She claimed no military service.

Applicant has been employed by her current contractor since June 2011. (GE 1) Previously, she worked for another firm (2005-2011) as a senior security clerk and for another firm between November 2004 and April 2005 as a security clerk. (GE 1) Applicant reported periods of unemployment between August 2003 and November 2004, and between October 1999 and November 2000. (GE 1)

### **Applicant's finances**

Applicant jointly purchased a home with another party in June 2006 and financed her purchase with a 15-year \$185,400 first mortgage and a \$46,350 second mortgage, both with creditor 1.a. (GEs 3-5 and AEs B-C and G-H; Tr. 30, 50, 55-56, and 60-63) Creditor 1.a, in turn, sold its second mortgage to creditor 1.b in June 2011. (GEs 3-5 and AE F; Tr. 63) Applicant's mortgage payments for both mortgages totalled around \$3,500 a month, paid in one lump sum split between Applicant and her co-purchaser, with each borrower having joint and several liability on the loans. (Tr. 30-32)

Credit reports document that in July 2011, creditor 1.c became a servicing agent for creditor 1.b. (GEs 3-5 and AE D) The same month, creditor 1.c issued a notice of transfer of servicing rights to notify Applicant of its recent service transfer from creditor 1.b. (AE D) This transfer affected only the servicing rights of the second mortgage and did not change the loan balance.

In July 2006, Applicant and her co-purchaser became cohabitants. For the first three years, Applicant was able to manage her share of the mortgage. Keeping up with her mortgage payments became a problem for her, though, in February 2009 when her co-purchaser began to receive lower child support payments from her ex-husband. By October 2009, Applicant was struggling to meet her monthly payments on her mortgages without much help from her roommate. (GE 2; Tr. 46-48, 51-54) Applicant tried numerous times to refinance her first mortgage at a lower affordable rate, but was told consistently by her lender that there was nothing they could do until she was late in her mortgage payments. (GE 2; Tr. 29 and 34-38, 92)

With counseling assistance from the Department of Housing and Urban Development (HUD), Applicant tried working with her lender throughout 2009 and 2010 in obtaining refinancing and short sale approvals. (GE 2; Tr. 35-36, 65-66) In preparation for an expected short sale approval, she rented a nearby home for manageable rental payments of \$1,000 a month and notified both the lender and her supervisor of her actions. (GE 2; Tr. 64-67)

In January 2010, Applicant received a notice from creditor 1.a of its intent to accelerate the first trust deed if Applicant did not cure her default by February 2016. (AE I) Applicant, in turn, made contact with the creditor in an attempt to cure the \$790 default.

Between January 2010 and May 2011 (GE 2), she maintained regular contact with creditor 1.a, exploring available options. (AEs J-K) She was offered a new second mortgage at high rates, which she turned down in June 2011. (GE 2 and AEs J-K; Tr. 36-38)

Contemporaneously with her attempts to work with her creditor 1.a lender on loan modification approvals, Applicant explored the sales market for properties like her own in her community. Convinced that there was no market for her property at a price sufficient to satisfy both mortgages, she never listed her property for sale. (Tr. 91-92)

Unable to find any local buyers for her property in the 2010-2011 time period, Applicant contacted a local realtor about short sale possibilities and learned that her home had been sold at auction in 2011 for \$220,000 (documented). (GE 2 and AEs A and L; Tr. 39-40, 66-67) This surprised Applicant, as she had never been notified of any pending foreclosure sale. (Tr. 68, 90) Subsequently, she was sent an IRS 1098 form for the same \$220,000 sale amount. (GE 2) In June 2011, after learning of the sale of her house, Applicant moved to her current residence, located near the site of her current employer.

Believing her mortgage debt with creditor 1.a had been settled, Applicant learned from her OPM investigator in October 2012 that a collection agency (creditor 1.b) was pursuing a \$145,000 deficiency against her. (GE 2) She was never informed of this collection action (Tr. 63-64, 68-69) and has never been pursued by either creditor 1.a or creditors 1.b and 1.c for collection of any deficiency balance.

Applicant has since received a \$792 settlement from a class action suit against creditor 1.a and is in the process of cleaning up her credit reports. And in June 2015, she received a letter from creditor 1.b that she is no longer personally liable on her second mortgage account with creditors 1.b and 1.c. (AEs C-D) Creditor 1.b's June 2015 letter covers the listed second mortgage of creditor 1.b and 1.c, but does not address any potential loan balances owing creditor 1.a following its foreclosure sale. (AEs C-D; Tr. 45-46)

Both the Government's most recent credit report and Applicant's most recent credit reports reveal no outstanding balances owed either creditor 1.a or creditors 1.b and 1.c. (GE 5 and AEs C-D and M) Inferentially, Applicant's listed delinquent debts with each of these creditors have been fully satisfied from the public auction of Applicant's foreclosed residence and resold by creditor 1.a to a third party in March 2012. (AE N). Credit reports and real estate sales reports confirm that Applicant's foreclosed property produced a sale price sufficient to cover the remaining loan balances.

Applicant maintains excellent credit and lives within her means with reduced reliance on credit cards. (AE B; Tr. 48-49) In her most recent financial statement, she lists net monthly income of \$3,789, monthly debt payments of \$264, and monthly expenses of \$1,289. (AE B) This leaves Applicant with a monthly remainder of \$2,499. (AE B) Her

most recent credit reports reveal no other delinquent credit balances. (GEs 2 and 5 and AE C)

### **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns."

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following AG ¶ 2(a) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

### **Financial Considerations**

*The Concern:* 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. AG ¶ 18.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Executive Order 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Applicant comes to these proceedings as a skilled program analyst who struggled with her mortgages after her co-purchaser and roommate incurred child support losses and could no longer contribute her share of the mortgage. Ultimately, the mortgage on her residence was foreclosed by the first mortgagee (creditor 1.a) and sold at auction at a price, apparently enough to cover both outstanding mortgages.

Security concerns are raised over Applicant's accruing mortgage delinquencies on both of her mortgages and risking potentially enforceable account deficiencies following the public sale of her property. Applicant's potential accrual of a deficiency on her foreclosed first and second mortgages initially warrants the application of two of the disqualifying conditions (DC) of the AGs: DC ¶ 19(a), "inability or unwillingness to satisfy debts," and DC ¶ 19(c), "a history of not meeting financial obligations," apply to Applicant's situation.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are also explicit in financial cases.

Extenuating circumstances are present in connection with Applicant's accumulation of delinquent balances on her two mortgages on her former residence. deficiency balance with creditor 1.a following foreclosure of the first mortgage. The evidence is clear that but for the unfortunate reduction of child support payments to Applicant's co-purchaser and roommate, Applicant would have been able to continue managing her mortgage payments.

Through no fault of her own, Applicant continued to struggle in meeting her \$3,500 mortgage payments throughout 2009 and 2010 without any payment assistance from her roommate. Inability to obtain timely refinancing from her lender contributed, too, to Applicant's inability to avoid delinquency with her mortgages. When considered together, these circumstances, merit application of MC ¶ 20(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." Financial hardships associated with her income shortages his contributed to Applicant's problems with her two mortgages.

Before her roommate ceased contributing her share of mortgage payments, Applicant enjoyed good credit. With her reduced resources to make her mortgage payments, Applicant struggled to stay current with her two mortgages and ultimately defaulted on both of them. She sought assistance from her first mortgagee to no avail and tried for several years to market her property privately (never listing the property) at levels sufficient to pay off her two mortgages, but without success.

Not until Applicant consulted with a local real estate agent about the possibilities of a short sale did she learn of the public sale of the property following creditor 1.a's foreclosure of her residence in 2012. Ultimately, Applicant lost her home to foreclosure and exposed herself to the potential risk of an enforceable deficiency by one or both of her mortgagees.

On the important factual and legal question of whether Applicant owes any money to either or both of the listed creditors, documented credited reports, public records, and correspondence from the second mortgagee warrant factual inferences and conclusions that Applicant is debt-free with these listed lenders.

Even assuming that Applicant could be at risk to deficiency claims from either creditor based on any mistaken findings, state law controlling foreclosure procedures in the state of foreclosure of Applicant's property provides jurisdictional time limits on the filing of deficiency claims in non-judicial foreclosure proceedings (which is the case here). Section 33-814 of the controlling State A statutes permits an action to recover a deficiency balance after sale or foreclosure on property, so long as the action is brought within 90 days after the date of sale of the trust property in issue pursuant to Section 33-807 of State A's statutes. (HE 1)

Based on the documentation and testimony produced (both at hearing and in post-hearing submissions), neither creditor 1.a nor creditor 1.b-1.c filed any court claims seeking a deficiency within the prescribed 90-day time lime for pursuing deficiency claims. Applicant, accordingly, is free and clear of any potential legal challenges seeking deficiencies. Applicant's settlement efforts with creditors 1.a and 1.b-1.c entitle her to the mitigating benefits of MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

With the satisfaction of the only listed debt in the SOR and her excellent credit standing, Applicant is able to demonstrate the level of financial progress required to meet the criteria established by the Appeal Board for assessing an applicant's efforts to rectify her financial condition with responsible efforts considering his circumstances. See ISCR Case No. 08-06567 at 2-3 (App. Bd. Oct. 29, 2009).

Here, Applicant showed sustained efforts to save her property from foreclosure before the burdens of unsuccessful attempts with her first mortgagee to modify her loan and market her property through an approved short sale became too much to sustain. Ultimately, though, she satisfied her mortgage debts with creditor 1.a, and with creditors 1.b-1.c. Applicant's actions represented good faith efforts to address her mortgage debts.

From a whole-person perspective, Applicant's demonstrated repayment efforts are substantial and enough to overcome security concerns associated with her 2012 foreclosure and resulting risks of deficiency enforcement. Considering all of the circumstances surrounding Applicant's resulting foreclosure with the potential for deficiency enforcement, her actions taken in trying to avert foreclosure, resolve any deficiency risk, and achieve an overall positive credit standing are sufficient to meet mitigation requirements imposed by the guideline governing her finances. Favorable conclusions are warranted with respect to the allegations covered by subparagraphs 1.a through 1.c of Guideline F.



## **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

**GUIDELINE F (FINANCIAL CONSIDERATIONS): FOR APPLICANT**

Subparagraphs 1.a-1.c:

For Applicant

## **Conclusions**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

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Roger C. Wesley  
Administrative Judge

