



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-05216
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline H. Jeffreys, Esquire, Department Counsel  
For Applicant: Pro Se

April 8, 2009

**Decision**

HOGAN, Erin C., Administrative Judge:

Applicant submitted an electronic questionnaire for investigations processing (e-QIP), on January 21, 2008. On November 7, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, for 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On November 20, 2008, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 8, 2009. The case was assigned to me on January 22, 2009. On February 6, 2009, a Notice of Hearing was issued, scheduling the hearing for March 4, 2009. The case was heard on that date. The Government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5. Applicant testified and offered 34 exhibits which were admitted as Applicant Exhibits (AE) A – HH. Appellant and her husband testified. The

transcript was received on March 23, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In her Answer to the SOR, Applicant admits to all SOR allegations.

Applicant is a 60-year-old budget assistant employed with a Department of Defense contractor seeking a security clearance. She has worked for this company since December 2007. In 2006, she earned a bachelor's degree in business administration. She previously worked as a budget analyst at a local military command, retiring after 24 years of service. She held a SECRET security clearance during her entire civil service career. She is married and has five adult children and one adult stepson. (Tr at 7-12; Gov 1)

On January 21, 2008, Applicant completed an electronic questionnaire for investigations processing (e-QIP), in order to apply for a security clearance. (Gov 1) In response to section 28, she listed three properties that are in the process of foreclosure. (Gov 1) All three mortgages are located in other parts of the country far from where Applicant lives. One mortgage is in the amount of \$247,000 and is delinquent in the amount of \$37,948. (SOR ¶ 1.a: Gov 1, section 28; Gov 2; Gov 4 at 2; Gov 5 at 6; AE F at 2; AE I; AE R; AE BB) One mortgage is in the amount of \$249,000 and is in foreclosure. (SOR ¶ 1.b: Gov 1, section 28; Gov 2; Gov 4 at 2; Gov 5 at 12; AE F at 2; AE I; AE BB) Another delinquent mortgage is for \$261,000 and is over 120 days delinquent. (SOR ¶ 1.c: Gov 1, section 28; Gov 2; Gov 5 at 11; AE F at 1; AE I; AE BB)

Credit reports obtained during her background investigation revealed the three mortgage foreclosures and indicated that Applicant and her husband had filed for Chapter 7 bankruptcy on October 1, 1998. (Gov 4; Gov 5)

Applicant and her husband filed for bankruptcy due to Applicant's husband's unsuccessful property management and remodeling business. In 1996, Applicant quit her civil service job at the military command in order to help her husband with the business and to develop a real estate business. She is a licensed real estate agent. The business did not do as well as anticipated. They did not have enough capital. In 1997, Applicant returned to her civil service job at the military command. Around the same time, Applicant's husband hurt his back and was unable to work for several years. They attended credit counseling but decided they had no other option than to file for bankruptcy. Their debts were discharged on January 29, 1999. (Tr at 18-20; Gov 3; AE C; AE D; AE E) Their financial situation has been stable since the bankruptcy discharge.

In January 2006, Applicant was surfing the Internet for business opportunities. She discovered a web-site titled "30KPERYEAR.COM" advertising the opportunity to make \$30,000 per year. The web-site advertised "We do all the work, you get paid!" The web-site also claimed that potential participants help save families' home-ownership

and partner with established financial companies. All that was required was for the participant to sign paperwork. (Tr at 31; AE M)

Applicant understood that the company, 30KPERYEAR.COM purchased distressed properties prior to foreclosure. The agreement was that a straw buyer (Applicant) would provide their credit information and identity and the company would purchase the property in the straw buyer's name. The property would go into a trust holding company for a year to allow the original owners to repair their credit in order to qualify for additional financing. The original owners would stay in the property and pay rent. The trust holding company would collect the rent, pay the mortgage, including insurance and taxes. The straw buyer would profit from the arrangement by receiving \$5,000 per property upon the transfer of the property to the trustee. The agreement was for six properties per year totaling \$30,000 per year. In the summer of 2006, Applicant signed a contract to purchase three properties over a period of two months. (Gov 2) Applicant did not pay any money in conjunction with these agreements. She was essentially allowing the company to use her identity and good credit rating to obtain mortgages in her name. Pursuant to the agreement, Applicant received \$5,000 for one of the homes. She did not receive the other \$10,000 that was owed to her for the other two homes. (Tr at 31-33, 68-70, 74; AE I at 8-12)

By the fall 2006, the FBI was investigating 30KPERYEAR.COM and the trust holding company for tax evasion and mortgage fraud. The scheme targeted homeowners across the nation who had distressed mortgages with substantial equity in the home who were unable to refinance due to their poor credit rating. Applicant unwittingly became involved in an "equity stripping" scheme which netted approximately \$5.9 million in stolen equity from 68 homeowners in states across the nation. The mastermind of this scheme received 97% of the stolen equity. His "sales agents" and employees would receive the remaining 3% of equity or a salary from the fraudulently obtained funding. Straw buyers such as the Applicant were recruited over the Internet. Through material misrepresentations and omissions, victim homeowners would be offered what appeared to be their last best chance to save their homes. (AE K at 2)

The company informed the homeowners that the straw buyers would act as "investors." These "investors" would often replace the homeowners on the titles of the properties without the homeowner's knowledge. Once the straw buyer had title to the home, the company immediately applied for a mortgage to extract the maximum available equity from the home. Company employees would share the proceeds of the ill-gotten equity and "rent" being paid by the victim homeowner. When the company ultimately sold the home, stopped making the mortgage payments, and/or pursued an eviction proceeding, the victim homeowner was left without their home, equity, or repaired credit. The straw buyers were left with a mortgage or mortgage(s) that were pending foreclosure. (AE K at 1)

On March 13, 2008, a federal grand jury indicted seven employees of the company. Applicant had direct communication with several of the employees who were indicted. (Tr at 70; AE J; AE K) The person who she worked with the most sent a letter

to all of the straw buyers indicating the status of the company pending indictment and how it affects them. He recommended that the straw buyers seek legal and financial advice from qualified, licensed professionals. (AE I)

Applicant found herself responsible for payment of the three mortgages because the loans were in her name. When Applicant discovered that she was responsible for the mortgages, she unsuccessfully attempted to collect rent from the individuals living in the house, the former homeowners. She hired a realtor to assist her and consulted an attorney. Her attorney advised her that the transactions were illegal. Although a licensed real estate agent, Applicant claims she did not have training in this area and was not aware that it was illegal. (Tr at 35-36; 68, 69; AE V)

Applicant states that she made a bad choice and is very sorry that people were hurt in the process. She is upset that she is involved in something very wrong even though she did not know it at the time. She should have been more cautious and less trusting. Applicant is trying to work with each bank holding the mortgages to resolve the issue. She is hoping each bank will allow a deed in lieu foreclosure or a short sale. (Tr at 20-21, 35-36, 59-60, 68)

Applicant's husband testified that his wife is an honest and trustworthy person. He has been married to her for over 17 years. He stated that they tried their best to avoid filing for bankruptcy but when he hurt his back and could not work they could not prevent it. He says that his wife would not do anything to hurt anyone and was scammed by the company when she entered into an agreement to purchase mortgages. She believed that she was earning money but was also helping distressed homeowners to stay in their homes. (Tr at 71-76.)

Aside from the mortgages, Applicant and husband's financial situation is stable. Their combine net monthly income, including Applicant's civil service retirement check is \$6,000. Their total monthly bills are approximately \$4,000. They have \$2,000 in discretionary income each month. (Tr at 62-67)

Applicant is highly thought of by her superiors, former superiors, and co-workers. (AE A) Her former supervisor, the Director of Operations of the military command, where Applicant retired from civil service met Applicant in August 1999. She was his secretary/administrative assistant until she accepted a higher level position within the command budget office. Aware that she was a licensed realtor, he arranged for her to represent him in the sale of his home. He is impressed with the professional manner that she carries out her responsibilities both in her full-time and part-time jobs. After his retirement from the military, he accepted a job with the defense contractor Applicant currently works for. He recruited her to come work for them based on his knowledge of her duty performance, honesty, and integrity. There is no one whom he has greater respect for. (AE A at 1-2)

Applicant's immediate supervisor over the past year has known Applicant for eight years. She states Applicant is extremely diligent and conscientious in her work

ethic. She trusts her with any information required to complete her assigned tasks. (AE A at 3.) Other friends and co-workers describe her as “honest,” “trustworthy,” “professional,” and “hardworking” among other positive attributes. (AE A at 4-15) Her performance reports rate her as meeting or exceeding standards. She has received numerous awards and letters of appreciation throughout her career. (AE G; AE H)

### **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 not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge’s over-arching adjudicative goal is a fair, impartial and common sense 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 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 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 several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c) (a history of not meeting financial obligations) apply to Applicant’s case. Applicant’s financial history includes a Chapter 7 bankruptcy filed in 1998 and discharged in 1999. While she is able to pay her monthly expenses, her poor judgment in entering into the real estate investment agreement with an Internet company without exercising proper due diligence resulted in her becoming responsible for three mortgages totaling \$757,000.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 20(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) is not applicable. While Applicant claims that she was unaware that the contract she entered into involved mortgage fraud, she should have conducted more due diligence before entering into the agreement. Even before the fraud was disclosed, she should have been aware of the incredible risks involved in using your good credit history in an agreement that involved individuals (distressed homeowners) with poor credit.

At the very least, Applicant should have consulted a reputable real estate attorney prior to entering into this agreement to discuss its validity and legality. She admits that she was unfamiliar with these real estate transactions even though she had been a licensed realtor for years. Although Applicant is a victim of the mortgage fraud scam, her judgment appears to have been swayed by the temptation of easy money. A little due diligence upfront would have prevented her present situation. At the close of

the record, the status of the three mortgages and what affect, if any, the mortgage fraud case will have on Applicant is unknown. Doubts remain about Applicant's reliability, trustworthiness, and good judgment.

FC 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) does not apply. After the 1999 bankruptcy discharge, Applicant's financial situation has remained relatively stable. At the time she entered into this agreement, Applicant was not facing financial problems that were beyond her control. She was looking for investment opportunities. She entered into an agreement which she should have known carried tremendous risks to her financial situation and credit rating. With proper due diligence, she could have avoided entering into such a risky agreement.

FC MC ¶ 20(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) is partially applicable. Applicant received financial counseling in the late 90s in conjunction with her bankruptcy filing. Her financial situation remained stable after bankruptcy. However, her recent issues involving the three mortgages are unlikely to be resolved in the near future.

FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. Applicant is attempting to get the banks that hold the mortgages to agree to a short sale and/or a deed in lieu of foreclosure. However, at the close of the record, the status of the mortgages remains uncertain.

### **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 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 common sense 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. I considered Applicant's 24 years of

service as a civil servant. I considered all of her favorable performance reports, her awards, and the glowing references provided by her superiors, co-workers, and friends. While I believe Applicant was remorseful and forthcoming about the issue with the three mortgages, questions remains about her judgment. Having several years experience as a licensed real estate agent, she should have understood the risks associated with entering into this investment agreement. The lure of easy money clouded her judgment. The same lure could cloud her judgment in protecting and handling classified information. While she has made some attempt to either sell the properties or submit a deed in lieu of foreclosure on each property, she provided no definitive resolution at the close of the hearing. Applicant has not met her burden to mitigate the concerns raised under financial considerations.

### **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:	Against Applicant
Subparagraph 1.d:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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ERIN C. HOGAN  
Administrative Judge