



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-08007
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: John B. Glendon, Esq., Department Counsel  
For Applicant: George H. Bowles, Esq.

June 19, 2009

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations), arising from past due mortgage payments totaling about \$26,166. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application on March 20, 2008. On January 16, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her application, citing security concerns under Guideline F. 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 adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

Applicant received the SOR on January 29, 2009; answered it on February 11, 2009; and requested a hearing before an administrative judge. DOHA received the request on February 13, 2009. Department Counsel was ready to proceed on March 13, 2009, and the case was assigned to me on March 16, 2009. DOHA issued a notice of hearing on March 30, 2009, scheduling the hearing for April 21, 2009. Applicant retained an attorney, who entered his appearance on April 13, 2009. On April 16, 2009, Applicant, acting through her attorney, requested a continuance until May 16, 2009. I granted the request, and DOHA issued a second notice of appearance on the same day, scheduling the hearing for May 16, 2009. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified, presented the testimony of three witnesses, and submitted Applicant's Exhibits (AX) A through O, which were admitted without objection. The record closed upon adjournment of the hearing on May 16, 2009. DOHA received the transcript (Tr.) on May 28, 2009.

### **Procedural Ruling**

On June 11, 2009, after the record had closed, Applicant's attorney requested that the record be reopened for the purpose of admitting evidence that Applicant had entered into a contract to sell the house on which the mortgage payments were past due. I granted the request, with no objection by Department Counsel. Applicant's motion and the sales contract were admitted as AX P. Department Counsel's comments are attached to the record as Hearing Exhibit I.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted the delinquent debt alleged in the SOR. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 70-year-old security assistant employed by a federal contractor. She has worked for her current employer since December 2000. She was a federal civil service employee from June 1963 to September 1993, when she retired. She received a security clearance in April 2003.

Applicant was married in July 1960 and divorced in December 1981. She remarried on March 1990. Her second husband died in February 1991. She has three adult sons.

In August 2007, her youngest son, age 44, asked Applicant to help him buy a home, because he was unable to obtain a loan by himself. He is divorced and has custody of his two children. Applicant agreed, assuming that she would be a cosigner on the loan. Her son promised to make the payments. He was employed at the time and assured Applicant he was earning enough to make the payments (Tr. 47). He testified his monthly take-home pay at the time he purchased the home was about \$3,300. The monthly loan payment of \$2,751 left him only \$500 or \$600 per month for all other living

expenses (Tr. 74). He testified he did not know how much the monthly payments would be until after the loan closed (Tr. 74).

Applicant's son had lived in another state for years, and Applicant was not aware that he had previous financial problems (Tr. 57). She did not read the documents carefully at closing and did not realize that, although she and her son are listed as co-owners on the deed, she was solely responsible for the loan (Tr. 27).

Applicant's son purchased the property for about \$253,000, with no down payment (Tr. 45). The property was assessed at \$257,900 for tax purposes (AX M; Tr. 36), and was recently appraised at \$230,000 (AX N; Tr. 41).

Applicant learned from a security investigator that the payments on the mortgage were delinquent. She questioned her son, who told her he was "a couple of payments behind," and that he would take care of it. She was unaware that her son's payment check in October 2007 was dishonored for insufficient funds, and that notices of default had been mailed to him in November 2007, December 2007, January 2008, February 2008, and August 2008 (AX B through F). The notices were addressed to Applicant but mailed to her son's address (Tr. 32).

When Applicant responded to DOHA interrogatories in September 2008, she was still under the impression that her son was the primary borrower and she was a cosigner (GX 4 at 4; Tr. 51-52). As of the date of the hearing, her son had been laid off for about a month and was unemployed. He testified he was in the process of opening a teen club, but the club had not yet opened (Tr. 50, 61-62). He testified he did not tell Applicant the loan was in default because he was ashamed and embarrassed (Tr. 64).

When Applicant received the SOR in January 2009, she realized that the loan payments were about \$26,000 in arrears (Tr. 29). Her credit report dated May 19, 2008, reflected that the account was more than 180 days past due (GX 3 at 3). Applicant contacted the lender, who agreed to not foreclose on the property. She listed the property with a realtor, and the lender agreed to permit a short sale. Applicant testified that, if the property did not sell, she would find a renter for the property, try to refinance the loan, or move into the house and live there while making the payments (Tr. 35-36).

Applicant's net monthly income from her current employment, Social Security, and civil service retirement totals about \$4,321. She lives in a rental property and pays monthly rent of \$1,299. Her total monthly expenses, including rent, are about \$2,672, leaving a remainder of about \$1,649 (AX H through K).

On June 6, 2009, after the record had closed, Applicant entered into a contract to sell the house for \$210,000. The contract is contingent on the buyer obtaining financing and "bank approval." The closing date is on or about July 30, 2009 (AX P).

Applicant's current supervisor considers her trustworthy, totally dedicated and an outstanding performer (Tr. 79). Applicant informed her supervisor of the problem arising

from the delinquent loan, and she kept her informed of her dealings with the mortgage company and the realtor (Tr. 81-83).

A friend of Applicant for 65 years and a former coworker during Applicant's employment in civil service was aware of the problem with the delinquent loan. She considers Applicant one of the "most forthright, honest, trustworthy people" she had encountered in her personal life and professional career (Tr. 87).

## **Policies**

"[N]o 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 applicants 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 and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531.

“Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Guideline F, Financial Considerations

The SOR alleges a single delinquent debt of about \$26,166. The concern under this guideline is set out in AG ¶ 18 as follows:

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.

Two potentially disqualifying conditions are relevant. AG ¶ 19(a) is raised where there is an “inability or unwillingness to satisfy debts.” AG ¶ 19(c) is raised when there is “a history of not meeting financial obligations.” I conclude AG ¶ 19(a) is not raised, because Applicant has the financial ability and willingness to satisfy this debt. AG ¶ 19(b) is raised, however, by the multiple delinquent payments for which Applicant is liable.

Since the government produced substantial evidence to raise AG ¶ 19(b), the burden shifted to Applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns based on financial problems can be mitigated by showing that “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.” AG ¶ 20(a). The delinquent debt

is recent, but it is an isolated incident and occurred under circumstances that are not likely to recur. In the context of Applicant's long government service, her excellent reputation, and her responsible actions to resolve the debt, it does not cast doubt on her current reliability, trustworthiness, and good judgment.

Security concerns under this guideline also can be mitigated by showing that "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). Both prongs, i.e., conditions beyond the person's control and responsible conduct, must be established. The debt arose largely because of her son's loss of employment and his irresponsible and deceptive behavior, which were beyond her control. Applicant reacted responsibly by contacting the lender and taking steps to resolve the debt.

Security concerns under this guideline also can be mitigated by showing 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). Applicant has not sought or received financial counseling, but she has retained an attorney and the problem is being resolved.

Security concerns under this guideline also can be mitigated by showing that "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." AG ¶ 20(d). The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). Applicant promptly contacted the lender, obtained approval for a short sale, and listed the house with a realtor. She devised a realistic fall-back plan if the house was not sold quickly. On June 6, 2009, she entered into a contract to sell the house. Although the sale has not closed and the debt is not yet resolved, the contract shows Applicant's good-faith efforts to resolve the debt. It also shows she has established a realistic plan to resolve her financial problem and has taken significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). I conclude AG ¶ 20(d) is established.

Applicant did not submit documentary evidence of her negotiations with the lender, but her testimony was corroborated by the testimony of her son and her supervisor. There is no evidence that the lender has initiated foreclosure. Applicant submitted a copy of the appraisal she obtained in anticipation of selling the house and a copy of the recently-executed sales contract. She also provided documentary evidence of her financial situation, establishing her ability to pay the debt.

### **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 the applicant's

conduct and all the circumstances. An 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 have incorporated my comments under Guideline F in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a mature adult, with a long record of federal service. She is highly regarded by her current employer. She has held a clearance for more than six years, apparently without incident. She was candid, sincere, and credible at the hearing. In hindsight, her failure to question her son about his ability to pay the mortgage, and her lack of attention to the mortgage documents were poor decisions. On the other hand, this debt was a family matter, and not incurred in an arms-length transaction. Under the circumstances, Applicant's blind trust in her son does not cast doubt on her current reliability, trustworthiness, and good judgment.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on the debt alleged in the SOR. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to continue her eligibility for access to classified information.

### **Formal Findings**

I make the following formal finding on the allegation set forth in the SOR, as required by Directive ¶ E3.1.25:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraph 1.a:

For Applicant

## **Conclusion**

In light of all of the circumstances, it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman  
Administrative Judge