



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-09182
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: Michael D. Segler, Esquire

August 19, 2009

**Decision**

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HOGAN, Erin C., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on March 18, 2008. On April 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations. 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 May 15, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 5, 2009. The case was assigned to me on that same date. On June 18, 2009, a Notice of Hearing was issued, scheduling the hearing for July 14, 2009. The case was heard on that date. The Government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5. The Applicant testified and offered 14 exhibits which were admitted without objection as Applicant Exhibits (AE) A - N. The record was held open until July

28, 2009, to allow Applicant to submit additional documents. She timely submitted a five-page document that was admitted as AE O. Department Counsel's response to AE O is marked as Hearing Exhibit (HE) I. The transcript was received on July 30, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In her answer to the SOR, Applicant admits all of the SOR allegations.

Applicant is a 52-year-old systems engineer with a Department of Defense contractor seeking to maintain her security clearance. She has been employed with her company since January 1998. Her highest level of education is a master's degree in applied computer science. She has worked for various defense contractors during her career and has held a security clearance since 1980. She is married and has three adult children and three adult stepchildren. (Tr at 72, 100; Gov 1)

On March 18, 2008, Applicant completed an e-QIP as part of a periodic reinvestigation to maintain her security clearance. She listed that she was behind on a first and second mortgage on a home that she previously lived in. She and her husband were in the process of negotiating a short sale. (Gov 1, section 28(b)) The short sale was unsuccessful. On September 22, 2008, the home went to foreclosure. The two allegations in the SOR involve a \$90,734 debt owed to the mortgage company that held a second mortgage on the property (SOR ¶ 1.a) and a \$340,000 debt owed to the mortgage company that held the first mortgage on the property. (SOR ¶ 1.b)

Applicant married her current husband while both were working for a defense contractor in the southeastern part of the United States. They married in December 2004. Applicant's husband owned a home in the area. After their marriage, he added Applicant's name to the deed. Only his name is on the mortgage. Applicant's daughter and future husband lived with Applicant and her husband. The project that Applicant and her husband were working on terminated after 11 months. They were both transferred to a location in the mid-Atlantic region of the United States. They moved in late April 2005. (Tr at 15-19)

When they moved, they did not put the house on the market. Applicant's daughter and her husband continued to live in the house. They could not afford to pay the full mortgage payment. Applicant and her husband agreed to let them pay \$650 a month towards the mortgage. The mortgage payment was \$1,588. Applicant and her husband would pay the remainder. The plan was for Applicant's daughter and son-in-law to eventually buy the house. Applicant's son-in-law claimed that he had a lawsuit pending and would receive some money. They would then be able to buy the house. (Tr at 20)

From May 2005 to August 2006, Applicant's daughter and son-in-law paid no rent. Applicant and her husband initially did not push the issue because Applicant's

daughter had just had a baby. (Tr at 26) Applicant and her husband eventually put the house up for sale, but Applicant's son-in-law refused to let the real estate agent in the house or allow people to look at the house. Applicant's son-in-law and her daughter refused to move out of the home. On August 16, 2006, Applicant and her husband filed eviction proceedings against her daughter and son-in-law. (AE A) Their son-in-law countersued. Applicant and her husband hired an attorney. A court date was scheduled for April 3, 2007. Applicant and her husband appeared in court with witnesses. Applicant's daughter and son-in-law did not appear. Instead, they moved out of the home to another state. Prior to moving out, they caused significant damage to the home. On April 3, 2007, a judgment was awarded to Applicant and her husband in the amount of \$36,563 against her daughter and son-in-law. (AE B) They doubt that they will receive money as a result of the judgment. They repaired the home and put it up for sale. The home sold in November 2008. Applicant and her husband paid the mortgage payments from May 2005 to November 2008. They paid the utilities from April 2007 to November 2008, after Applicant's daughter and her husband moved out. They spent approximately \$67,000 to maintain the property from May 2005 to November 2008. (Tr at 20 – 36)

After transferring to their new job location, Applicant and her husband purchased a new home in June 2005. The house cost \$439,000. The first mortgage was for 80% of the purchase. The second mortgage was for 20% of the purchase price. The house payment on the new home was approximately \$4,000 a month. Applicant and her husband were able to pay the mortgage payments on both homes with their combined incomes. (Tr at 19, 31)

The situation involving Applicant's daughter and son-in-law caused a lot of stress. Applicant believed that she could deal with the situation better if she lived closer to where their former residence was located. She also did not like the area and the weather of her new job location. Applicant started to look for another job and eventually found one. In October 2006, she moved back to the southeastern part of the United States and accepted a job with another defense contractor. Her husband planned to stay behind until their new home sold or until he found a job in the area near Applicant's new job. He soon found a new job and moved in November 2006. (Tr at 36-37; Gov 2 at 3)

In October 2006, the house with the 80/20 mortgage was listed for sale. They did not receive sufficient offers on the home to cover both mortgages on the home. In June 2007, Applicant and her husband purchased a home near their new location. The mortgage payment was \$2,500. They paid the mortgages on three homes totaling approximately \$8,000 for one month until Applicant lost her job in July 2007. Applicant's salary at the time she was laid off was \$117,000 a year. She was unemployed for approximately seven months. She and her husband could not pay all three mortgages on his salary alone. After several attempts at a short sale, the home with the 80/20 mortgage went to foreclosure in September 2008. (Tr at 37 – 43, 81)

On February 11, 2009, Applicant and her husband's foreclosed home sold at a sheriff's sale. (AE F) Applicant and her husband were never contacted about a deficiency judgment after the sale. Local law requires that an action for deficiency shall be commenced within three months from the date of the sale. (AE O at 4) Applicant and her husband are not aware of the existence of any deficiency judgment. Applicant recalls that her real estate attorney told her that the obligation had been satisfied because the first mortgagor received the deed to the house. She does not believe she owes any more money on the first mortgage (SOR ¶ 1.b). (Tr at 84-85)

For the second mortgage (SOR ¶ 1.a), Applicant understands that references to the second mortgagor were deleted from the judgment, which means that she and her husband do not have a legal obligation towards the second mortgage. She is still contacting the second mortgagor to inquire about a possible settlement. On July 9, 2009, she offered a \$10,000 settlement on the \$90,000 mortgage. She intends to work with the second mortgage company if this settlement offer is not accepted. (Tr at 86-87; AE K)

Applicant's net monthly income is approximately \$5,146. (AE I; AE J) Her husband's net monthly income is approximately \$5,190. He retired from the United States Navy as a lieutenant commander and receives approximately \$2,083 in military retirement. (AE L at 4). Their total net monthly income is \$12,419. Their total monthly expenses are approximately \$7,246. Their total income left over after expenses are \$5,173. (Tr at 91; AE L)

Before their recent home foreclosure, Applicant and her husband had no problems with credit. They are current on their taxes. They regularly check their credit reports for any discrepancies. They have never had systemic financial problems. They have never filed for bankruptcy. They are current on their other financial obligations. (Tr at 92, 96-99; AE M; AE N)

## **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 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 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 was unable to pay the

mortgage payments on one of her three homes which ultimately led to foreclosure. The home has a first mortgage in the approximate amount of \$340,000 and a second mortgage in the amount of \$90,734.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to rebut, explain, extenuate, or mitigate the security concerns. (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. September 22, 2005))

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. The mortgage foreclosure happened within the past year. Although claims were made during the hearing that Applicant and her husband owe nothing further on the first and second mortgages on the foreclosed home, nothing was presented from both mortgage companies indicating that they have no further issues with Applicant and her husband.

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) applies in part. Applicant's and her husband's financial situation was complicated as a result of her daughter's and son-in-law's failure to follow through with the terms of their rental agreement. However, Applicant's decision to quit her job and move back to the southeastern part of the United States was out of choice rather than necessity. The decision to purchase a third home at their new location while still responsible for two mortgages demonstrated poor judgment. However, Applicant's seven-month period of unemployment resulted in Applicant and her husband being unable to pay all of the mortgages. A downturn in the real estate market adversely affected their ability to sell the house with the 80/20 mortgage. Attempts at a short sale were unsuccessful. Applicant and her husband took steps to prevent the foreclosure. Their mortgage problems were partially caused by circumstances beyond their control. However, FC MC ¶ 20(b) is given less weight because it was within Applicant's control to delay purchasing a third home until the issues with the other two mortgages were resolved.

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) does not apply with regard to counseling. However, Applicant's financial issues are being resolved. Applicant's daughter and son-in-law moved out of their home. They sold that home in November 2008. The second home was foreclosed and sold at auction in February 2009. Applicant and her husband both work full time. Aside from the mortgage issue, they have had no other financial issues. The problem appears to be under control.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies because Applicant and her husband attempted to sell the home as a short sale before the foreclosure. They hired a real estate attorney. They made a good-faith effort to prevent the home from going to foreclosure.

Applicant and her husband encountered financial trouble when they were unable to make the mortgage payments on their three homes after Applicant lost her job and was unemployed for seven months. They would have been able to sell their first home if Applicant's daughter and son-in-law had cooperated. Ultimately, they had to file eviction proceedings against their own family members to gain control of the residence. They attempted to sell the second home, but did not receive offers that would pay off the mortgages on the home. They unsuccessfully attempted to sell the home as a short sale, but eventually had to turn the home over to foreclosure. While Applicant and her husband's decision to purchase a new home while still responsible for two mortgages demonstrated questionable judgment, circumstances beyond their control contributed to their inability to pay all the mortgage payments. The fact that they pursued other avenues to prevent the foreclosure and have no other delinquent accounts aside from the mortgage foreclosure weighs heavily in their favor. Applicant has mitigated the concerns raised under Guideline F.

### **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 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. I considered Applicant's long career with various defense contractors. I considered that Applicant and her husband had no other financial issues aside from the mortgage foreclosure. I considered that circumstances beyond Applicant's control were a factor in the inability to meet all of their

mortgage payments. While it did not demonstrate the best judgment to purchase another home before the sale of two other homes, Applicant's seven-month period of unemployment contributed to her inability to pay all of her mortgage payments. During her security clearance application, Applicant provided detailed information as to the issues which led to her mortgage foreclosure. Based on her candor about the issues during her background investigation, her attempts to prevent the home from being foreclosed, and circumstances beyond her control, including a delicate situation involving her daughter and son-in-law, Applicant met her ultimate burden of persuasion to obtain a favorable clearance decision.

### **Formal Findings**

Formal findings 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, 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.

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ERIN C. HOGAN  
Administrative Judge