



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-11162  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: Kenneth M. Roberts, Esquire

September 24, 2009

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**Decision**  
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MOGUL, Martin H., Administrative Judge:

On March 10, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F 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 April 7, 2009, Applicant replied to the SOR (RSOR) in writing, and requested a hearing before an Administrative Judge. I received the case assignment on May 12, 2009. DOHA issued a notice of hearing on June 10, 2009, and I convened the hearing as scheduled on August 11, 2009, in La Vegas, Nevada. The Government offered Exhibits 1 through 5, which were received without objection. Applicant testified on her own behalf and submitted Exhibits A through P, which were also admitted without objection. Four additional witnesses testified on behalf of Applicant. DOHA received the transcript of the hearing (Tr) on August 19, 2009. Based upon a review of the case file,

pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant and the additional witnesses, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 64 years old. She is divorced and has four children, 14 grandchildren, and three great-grandchildren. Applicant is employed as a Tech Publisher by a defense contractor, and she has worked for this company and its previous owner since October 1979. Applicant has held a DoD security clearance since October 1980, and she seeks to retain her clearance in connection with her employment in the defense sector.

### **Guideline F, Financial Considerations**

The SOR lists 1 allegation (1.a.) regarding financial difficulties under Adjudicative Guideline F.

1.a. In the SOR, the allegation read "You are indebted to Countrywide on an account that has been foreclosed in the approximate amount of \$194,000.00. As of December 15, 2008, this debt has not been paid."

Based on evidence introduced at the hearing, the allegation was amended. The new allegation states, "You are indebted to Countrywide on an account that is in pre-foreclosure in the approximate amount of \$194,000.00. As of December 15, 2008, this debt has not been paid."

Applicant testified that she purchased the house, which is the sole cause of her financial difficulties, in December 1994. When she purchased the home, the neighborhood was very family friendly. It was her intention, at the time of purchase, to remain in the house for the rest of her life. Over the years, the area has become "drug and gang infested" with a substantial amount of violence and crime (Tr at 63-65). On October 1, 2008, Applicant moved out of her home, because of her fear of remaining in that area. Her son lives in the home until it can be sold, to protect it, because many empty houses in the area have been vandalized.

In 2006, at the suggestion of her real estate broker, Applicant refinanced the loan on her home by taking an Adjustable Rate Mortgage (ARM). He advised her that her payments would be lower, and in two years she could refinance again and the payments would be reduced even lower (Tr at 64). She subsequently learned that her house payments were going to double in late 2008, but despite her effort, she received a letter from her creditor, dated June 5, 2008, informing her that she would not be able to refinance again at that point because of "insufficient property value" (Exhibit G). She

thereafter consulted an attorney about possibly filing for bankruptcy, but was informed that she did not have enough debt to file.

Applicant was referred, by the security officer of her employer, to a real estate agent in an attempt to sell her home. The agent, who she had known previously, testified at the hearing. He stated that he had known her for a number of years, when she worked for a contractor and he was a Colonel and Base Commander in the United States Air Force. In 1992 he retired from the Air Force and became a real estate broker-salesman. In December 2008, he was contacted by Applicant to try and sell her house. At that time she owed approximately \$190,000 on a house that was worth no more than \$100,000. The agent recommended attempting a short sale, and at her authorization, he contacted the bank in an attempt to accomplish a short sale. The bank's position is that, if they receive an offer, they should present it to the bank, which will then decide if the offer is sufficient to accept.

The agent initially offered to sell the house at \$115,000, reduced it to \$99,000, reduced it again to \$80,000, and he currently has it listed for \$50,000. Exhibits E and F are the documents showing the history of the attempted sale of Applicant's house. While he has finally received a few telephone calls showing some interest in the house for the first time as a result of this latest reduction, he has yet to receive an offer on the property. The Witness testified that every time he has approached Applicant to reduce the sale price, she has always been very cooperative and reasonable. He reiterated that Applicant has done everything that she could to try to resolve the problem with her home (Tr at 48).

At this point Applicant has not paid the mortgage since October 2008 when she moved out of the house, but as yet the creditor has not filed a foreclosure for this property.

### **Mitigation**

In addition to the real estate agent, three additional witnesses testified on behalf of Applicant. These included the branch manager of Applicant's employer, who has known Applicant for 21 years. In addition to her testimony, she also submitted a character letter (Exhibit M) that she identified as still being true and correct at the time of the hearing. The second witness was a civilian branch chief of the U.S. Air Force, who has known Applicant for 17 or 18 years. She submitted a character letter (Exhibit K) that she identified as still being true and correct at the time of the hearing. The third witness was a civil engineer and the Deacon of Applicant's church, who has known Applicant for 12 years. He submitted Exhibit O, which was also true and correct. The testimony and the letters recommended Applicant in the most positive and laudatory fashion, describing her as "a person of the highest integrity . . . In all aspects and especially in regards to security, she is the most conscientious and trust-worthy person I know."(Exhibit M).

Applicant also submitted additional character letters that described Applicant in extremely positive terms (Exhibits L, N, and P).

### **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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 trustworthiness 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 conditions that could raise security concerns. Under AG ¶ 19 (a), “an inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19 (c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated one significant delinquent debt and has not yet been able to resolve it. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

Under AG ¶ 20 (b), “it may be mitigating where 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.” As noted above, Applicant’s one overdue debt resulted because Applicant has been unable to sell her home at anything near a reasonable price because of the house’s great reduction in the value. This occurred partly because of the general recession, and to a significant degree because of the deterioration of her neighborhood, certainly reasons beyond her control. Applicant’s refinancing of her loan also contributed to this overdue debt, but her bank would not let her refinance again. Applicant has done everything she could to try to resolve this debt, including consulting an attorney to explore the possibility of bankruptcy, and then engaging the services of a real estate agent, in an attempt to sell her home. She also has been extremely flexible in reducing the asking price in an attempt to make a sale. Therefore, I find that this mitigating condition is a factor for consideration in this case.

Applicant has made a good-faith effort to resolve her one overdue debt. I conclude that because of this effort and her otherwise excellent financial record, she has mitigated the financial concerns of the Government.

## **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. Based on all of the reasons cited above as to why Mitigating Condition 20 (b) applies under Guideline F, the very powerful, positive recommendations from the witnesses who testified on Applicant's behalf, the laudatory character letters submitted by Applicant, and her long and excellent record of employment, I find that the evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance under the whole person concept. For all these reasons, I conclude Applicant has mitigated the security concerns.

## **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:	FOR APPLICANT
Subparagraphs 1.a.:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul  
Administrative Judge