



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



In the matter of:

ISCR Case No. 08-11533

Applicant for Security Clearance

**Appearances**

For Government: Braden Murphy, Esquire, Department Counsel  
For Applicant: *Pro Se*

January 14, 2010

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, testimony, and exhibits, I conclude that Applicant mitigated the government's security concerns under Guideline F, Financial Considerations. Her eligibility for a security clearance is granted.

Applicant signed a security clearance application (SF-86) on or about June 10, 2008. On May 28, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing 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 July 1, 2009, Applicant answered the SOR in writing. She elected to have a hearing before an administrative judge. The case was assigned to me on September 9, 2009. A Notice of Hearing, setting Applicant's hearing for October 26, 2009, was issued on September 18, 2009. I convened the hearing as scheduled to consider whether it is

clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The government called no witnesses and introduced four exhibits, which were marked Ex. 1 through 4 and admitted to the record without objection. Applicant testified on her own behalf and called no witnesses. She introduced seven exhibits, which were identified and marked as follows: Ex. 1A, Ex. A, Ex. B, Ex. D, Ex. E, Ex. G, and Ex. H. Applicant's exhibits were admitted to the record without objection.

At the conclusion of the hearing, I left the record open until close of business on November 5, 2009, so that Applicant could, if she wished, provide additional information for the record. Applicant filed three additional exhibits. Department Counsel did not object to Applicant's post-hearing submissions. I marked the post-hearing submissions as Applicant's Ex. I, Ex. J, and Ex. K, and they were admitted to the record. DOHA received the transcript (Tr.) of the hearing on November 3, 2009.

### **Findings of Fact**

The SOR contains nine allegations of disqualifying conduct under AG F, Financial Considerations. Applicant admitted five allegations (SOR ¶¶ 1.a., 1.b., 1.e., 1.f., and 1.g.); denied four allegations (SOR ¶¶ 1.c., 1.d., 1.h., and 1.i.), and offered additional information. Applicant's admissions are admitted as findings of fact. (SOR; Answer to SOR.)

Applicant is 37 years old and employed as a network engineer by a government contractor. She is divorced and the custodial parent of two school-aged daughters. In 2004, she was awarded a Bachelor of Science degree in criminal justice. She is pursuing part-time studies and hopes to earn a master's degree in forensic science. She has held a security clearance since 1994. (Ex. 1; Ex. K; Tr. 43-47, 84-85.)

From 1994 until 2003, Applicant served on active duty in the U.S. military. She was honorably discharged in 2003 as an E-6. (Ex. 1; Tr. 45-46.)

Applicant married in 1996. Her husband was also in the U.S. military. Two daughters were born to the marriage, one in 1997 and the other in 2002. Applicant and her husband lived in a home they purchased near their military assignments. (Ex. 1; Ex. I, Tr. 32.)

In 2005, Applicant was offered a job in another state. The employer offered Applicant a salary of \$60,000 a year, an amount that doubled her existing salary. She and her husband discussed the job offer and decided that Applicant should accept it. She and the children moved to the other state, while the husband stayed behind to fulfill his military duties. In April 2005, Applicant and her husband purchased a home together in the new state. The property was secured by two mortgages: a first mortgage of approximately \$300,000 and a home equity loan of approximately \$75,000. The monthly payment on the first mortgage was \$1,734. The monthly payment on the home equity

loan was \$524. The mortgage loans and monthly payments were based on Applicant's and her husband's combined incomes. (Ex. 2; Ex. H; Tr. 32-34, 50-51, 81-83.)

Applicant's husband sold their home in State A, and the couple realized a profit of approximately \$146,000. Applicant used approximately \$11,000 from the sale as a down payment on the second home, which had a purchase price of \$375,000. Applicant's husband used the remaining proceeds for unidentified purposes. (Tr. 33-34.)

Applicant and her husband planned for him to join the family in the new home in January 2006. In July 2005, Applicant's husband came to visit her and the children in the new home. He stated that he had a new love interest, wanted a divorce, and had no intention to return in January 2006. He also refused to pay the mortgage on the new home. He returned to the state where he and Applicant had previously resided and filed for divorce. The divorce was final in July 2006. (Tr. 32-33, 51-52.)

Applicant's net monthly salary was approximately \$3,767. The two mortgage payments totaled approximately \$2,250 each month. Applicant made the required mortgage payments for approximately two and a half years, until December 2007. She did not receive child support during that time from her ex-husband. Applicant used her credit cards to pay for other household expenses. She listed the property for sale or rent, but received no responses. (Ex. H; Tr. 33-34, 52-54.)

In October 2007, Applicant contacted the creditor holding the first mortgage and asked to deed the house back to the creditor. As the creditor suggested, she provided a detailed list of her existing financial obligations. Applicant's ex-husband refused to cooperate in authorizing a quick or short sale of the property. The creditor moved to foreclose on the property. Applicant briefed her employer's security officers on her situation and provided them with documentation corroborating her communications with the creditor. By December 2007, Applicant could no longer pay the mortgages on the house and meet her other household and familial expenses. She vacated the property. (Ex. H; Tr. 53-55, 80-81.)

The SOR alleged at ¶ 1.f. that the home equity loan of \$73,000 had been charged off and, as of May 15, 2009, had not been paid. The SOR alleged at ¶ 1.h. that the first mortgage of approximately \$299,000 had been placed in foreclosure and had not been paid as of May 15, 2009. At her hearing and in post-hearing submissions, Applicant provided credible testimony and documentation to establish that the property had been foreclosed upon, sold at auction, and she did not owe a balance or remainder on the loan. Applicant's documentation established that the property was sold at auction on February 12, 2008, for \$311,000, and the first mortgage loan of \$300,000 was satisfied. The second mortgage, a home equity loan for \$73,000, remains unsatisfied. Applicant provided a court order, entered June 18, 2008, but applicable *nunc pro tunc* to February 6, 2008, establishing that the marital property "shall be sold and the parties [Applicant and her ex-husband] shall share equally (50/50) in the proceeds or loss as a result of the sale." (SOR; Ex. H; Ex. I; Tr. 60-63.)

Applicant has attempted to contact the holder of the home equity loan. Because her ex-husband is the primary debtor on the home equity account, the holder of the loan will not negotiate with her alone. She intends to continue her efforts to arrange a payment plan for her portion of the loan. If her efforts to arrange payment are not successful, she intends to seek tax advice about claiming the entire amount as taxable income. (Tr. 63-64.)

During the two and a half years that she was paying the home mortgages and was the sole support of her family, Applicant acquired approximately \$28,000 in delinquent debt. In response to DOHA interrogatories, she provided documentation to establish that she had consolidated her debts and made monthly payments to satisfy her creditors. In addition to the home mortgage and the home equity loan, the SOR alleged seven financial delinquencies that totaled approximately \$1,426. Five of the alleged delinquencies were medical debts (SOR ¶¶ 1.a., 1.b., 1.c., 1.d., and 1.e.) Applicant was not aware of the debts, which arose when her ex-husband dropped her from his health insurance. When made aware of the debts in March 2009, she followed through with payment, and she provided documentation to corroborate her statements that the debts alleged at SOR ¶¶ 1.a., 1.b., 1.d., and 1.e. had been satisfied. She was awaiting confirmation that the debt alleged at SOR ¶ 1.c. had been satisfied. (Answer to SOR; Ex. 1A; Ex. A; Ex. B; Ex. D; Ex. E; Tr. 35-37.)

Applicant provided documentation to corroborate her statement that the debt alleged at SOR ¶ 1.g. had been settled in full as of August 21, 2009. She asserted that she had disputed the \$154 debt alleged at SOR ¶ 1.i., and the creditor had told her the debt was old and closed. She was unable to provide corroborating documentation by the time the record closed. (Answer to SOR; Ex. 1A; Ex. G.)

In September 2008, Applicant was let go when her employer abolished her job. She was immediately hired by another government contractor. Her current gross annual salary is \$72,300. Her net monthly salary is \$3,900, and she receives \$752 each month in court-ordered child support from her ex-husband. Her total net monthly income is \$4,652. (Tr. 38, 49, 65, 78-79.)

Applicant's fixed monthly expenses include the following: rent, \$1,500; groceries, \$400; clothing, \$60; utilities, \$205; child care, \$400; debt consolidation payment, \$514; cable and cell phone, \$300; and gasoline, \$120. In addition, Applicant pays \$284 per month on her automobile loan, which will be paid in full in six months. (Ex. 3 at 6; Tr. 64-69.)

Applicant is current on her state and federal income taxes. She has a savings account, which contains about \$350, and she has established a 401K account to save money for her retirement. Each month she deposits approximately \$50 in each daughter's individual savings account. She has no credit cards. She estimates that she has a net monthly remainder of \$400. (Tr. 64-74.)

Applicant is close to her parents and her brother, who provide her and her children with strong emotional support. When she served in the military, Applicant received financial counseling and also provided financial advice to the individuals she supervised. She credited her parents with providing her with a strong sense of financial responsibility. (Tr. 74-77.)

Applicant provided a copy of her 2009 performance evaluation for the record. Applicant's manager noted that even though she was new to the program and a recent hire, her work quality, timeliness of delivery, use of resources, and work habits consistently exceeded expectations. (Ex. K.)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no 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 an applicant's 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.

When evaluating an applicant's suitability for a security clearance, an 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 used 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, the administrative judge applies these guidelines 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. 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 in 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 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 substantial delinquent mortgage debt and was unable to pay her creditors. This evidence is sufficient to raise these two potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies.

Unresolved financial delinquency might be mitigated if it “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)) Additionally, unresolved financial delinquency might be mitigated if “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)) Still other mitigating circumstances that might be applicable include evidence 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)) or “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” (AG ¶ 20(d)) Finally, if “the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of options to resolve the issue,” then AG ¶ 20(e) might apply.

Applicant admitted financial delinquencies related to a mortgage loan and a home equity loan on a home she and her husband purchased together in 2005. Additionally, she was responsible for a number of smaller medical and consumer loans which she acquired after her husband abandoned the marriage, refused to pay his share of the home mortgage and home equity loans, and failed to provide child support for his two young daughters who were living with Applicant.

Applicant tried to sell or rent the property. While she contacted the mortgage lender and requested assistance in meeting her mortgage obligation, her ex-husband refused to authorize a short or quick sale and the lender initiated foreclosure proceedings. Eventually, the property was foreclosed upon.

Applicant is 37 years old. She is resourceful and responsible. She sought assistance from her lender, and she kept her employer’s security officers fully informed of the financial difficulties arising from her inability to pay her home mortgage, her home equity loan, and her daily living expenses. Additionally, she sought to consolidate her consumer loans, and she has consistently made monthly payments to reduce the debt she acquired when her husband divorced her and failed to meet his financial obligations to her and their children.

Applicant has learned, through experience, some hard personal and financial lessons. She has also acknowledged her financial responsibilities and has made good-faith efforts to satisfy her creditors. She continues to work to resolve her financial obligations. When faced with an unexpected divorce and financial consequences that were largely beyond her control, she acted responsibly under the circumstances. The circumstances that caused Applicant’s financial delinquencies are unlikely to recur and do not cast doubt on her current reliability, trustworthiness, or good judgment. I conclude that AG ¶¶ 20(a), 20(b), 20(c), and 20(d) apply in mitigation to the facts of Applicant’s case. AG ¶ 20(e) does not apply in this case.

## 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 relevant 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. Applicant possesses skills and abilities that have been valued by her employers. She has held a security clearance, without incident, since 1994. Her financial problems began when her husband abandoned the marriage, filed for divorce, refused to pay his share of the mortgages on their joint marital property, and failed to fulfill his obligation to support his children. Applicant responded to this setback with energy and determination. She attempted to rent or sell the marital property. She realized the security implications of her financial difficulty, and she kept her employer's security personnel informed of her financial situation. She acted in good faith to meet her financial obligations. I observed Applicant carefully at her hearing, and I assessed her credibility. I have no doubt that she will honor any legal financial obligations that arise from the unsatisfied home equity loan for which she and her ex-husband are equally responsible. I believe it is highly unlikely that in the future she will fail to carry out any of the responsibilities of a person entrusted with a security clearance and the protection of classified information. I conclude that she is not a security risk.

Applicant is a serious and responsible person. She is currently living within her means and paying attention to her financial obligations.

Overall, the record evidence leaves me with no questions or doubts as to Applicant's judgment and eligibility and suitability for a security clearance, and I conclude Applicant mitigated the security concerns arising under Guideline F, 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: FOR APPLICANT

Subparagraphs 1.a. through 1.i.: 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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Joan Caton Anthony  
Administrative Judge