



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



In the matter of: )  
)  
) ISCR Case No. 08-11779  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Candace Le'i, Esq., Department Counsel  
For Applicant: William F. Savarino, Esq.

August 25, 2009

**Decision**

HEINY, Claude R., Administrative Judge:

Since March 2008, Applicant has failed to make her mortgage payments. She purchased a second home without first selling her home. She has been unable to sell either of the homes. Applicant owes approximately \$650,000 on her second home. She has taken reasonable steps to find a purchaser for both homes. She actively pursued alternatives with the mortgage holder including the possibility of a short sale and a deed in lieu of foreclosure. Applicant has rebutted or mitigated the government's security concerns under financial considerations. Clearance is granted.

**Statement of the Case**

Applicant contests the Defense Department's intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued a

<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance*

Statement of Reasons (SOR) on April 7, 2009, detailing security concerns under financial considerations.

On May 1, 2009, Applicant answered the SOR, and requested a hearing. On May 27, 2009, I was assigned the case. On June 4, 2009, DOHA issued a notice of hearing scheduling the hearing held on June 23, 2009. The government offered Exhibits (Ex.) 1 through 3, which were admitted into evidence. Applicant testified on her own behalf and submitted Exhibits A through J, which were admitted into evidence. On June 29, 2009, the transcript (Tr.) was received.

### **Findings of Fact**

Applicant, in her Answer to the SOR, admitted the factual allegations in SOR ¶¶ 1.a and 1.b. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, including pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 57-year-old senior systems engineer who has worked for a defense contractor since May 2007. She is seeking to maintain a security clearance. Applicant was in the United States Air Force for 14 years, having enlisted in 1978. (Tr. 21) She was enlisted before becoming an officer. (Tr. 83) She was a captain (O-3) when she retired due to a service drawdown of officers. (Tr. 21) She receives an annual retirement of approximately \$11,000. (Ex. 2, page 148)

In October 2003, Applicant was living in an apartment when she met and later married her partner. (Tr. 21, 51, 54) They purchased a home (House A) on an interest-only loan for \$476,000, with a monthly mortgage payment of approximately \$3,100. (Tr. 55, Ex. 1) Her partner was a real estate agent working for the company that sold them their home. She had been employed by that company since 2005. (Tr. 55) In December 2006, after having lived in their home for two and a half to three years, they learned of a larger home being sold by the same company that sold them their current home.

In June or July 2006, they purchased the larger home (House B) and closed on it in January 2007. (Tr. 23) The selling company told them the company would assist them in selling their home. (Tr. 24) Applicant's partner was still working for the company. Once the contract was signed, the company failed to remember the agreement and has taken no action to help Applicant sell her home. (Tr. 25)

The home was appraised at \$850,000. (Tr. 45, Ex. 1) The principal mortgage of \$650,000, which represented about 80% of the purchase price, required monthly interest only payments of \$4,642. (Ex. 2, page 220) Applicant had a second mortgage of \$200,000, representing approximately 20% of the purchase price, which required \$2,134 monthly interest only payments for 30 years and then a balloon payment. The

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*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.

balloon payment of \$175,000 was due in February 2022. (Ex. 2, page 221) Initially, Applicant was able to pay both mortgages and the new home and her mortgage on their other home. In March 2008, Applicant made her last monthly mortgage payment on House B. (Tr. 30, 77) The mortgage on House B is currently more than \$81,000 past due.

Applicant intended to sell House A after buying House B, but was unable to do so. In March 2007, House A was put on the market for the amount originally paid for the house. (Tr. 56) No offers were received on House A and in June 2007, it was taken off the market. (Tr. 27) Applicant changed realtors and still no offers were received. In April 2007, after having lived in the bigger house for 90 days, Applicant listed House B for sale and moved back into her original home (House A). (Tr. 26, 28)

In February 2008, Applicant began negotiations with her mortgage company to list House B as a short sale.<sup>2</sup> Applicant received a dozen offers on House B, but the mortgage company was slow in processing or negotiating on the offers. (Tr. 30, 31) As of September 2008, only one offer remained, which the mortgage lender did not accept. In October 2008, Applicant paid \$15,000 she obtained from her income tax refund to be released from her second mortgage of \$ 200,986. (Tr. 58, Ex. 2, page 155) With this payment, her account was "paid in full." (Ex. 2, page 154)

The creditor informed Applicant the short-sale was not accepted because the market value of the home was \$30,000 less than the creditor's minimum appraisal rate. (Tr. 33) In October 2008, Applicant elected to proceed with a Deed in Lieu of Foreclosure.<sup>3</sup> In December 2008, she was asked to commit to, but not to pay at that time, \$15,000. She made the commitment. (Tr. 79) She has set aside the funds so they are available should the mortgage lender accept the Deed in Lieu of Foreclosure.

In May 2009, Applicant received an offer of \$560,000 on House B, which was \$84,950 less than the \$659,000 owed by Applicant. (Tr. 63) The Deed in Lieu of Foreclosure was stopped and a short-sale agreement considered. (Tr. 34, 60) The purchasers were to be provided written evidence of the creditor's approval by June 5, 2009. (Tr. 59) Approval has not been received.

In January 2009, the mortgage lender ordered a title search of the property. The company that sold the house put three liens on the property for \$1 million, \$3 million, and \$4 million dollars. It took Applicant 90 days to have the liens removed and title

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<sup>2</sup> A short sale is a sale of real estate in which the proceeds from the sale fall short of the balance owed on a loan secured by the property sold. The mortgage lender agrees to allow the home owner to sell the mortgaged property for less than the outstanding balance of the loan. The lender has the right to approve or disapprove any proposed sale. A short sale typically is executed to prevent a home foreclosure and is based on the most economic way for the mortgage lender to recover the maximum possible amount owed on the property. A short sale is typically faster and less expensive than a foreclosure. It does not extinguish the remaining balance unless clearly indicated on the mortgage lender's acceptance offer.

<sup>3</sup> A creditor can not be forced to accept a Deed in Lieu of Foreclosure. (Tr. 47)

cleared. (Tr. 37, Ex. D) Two other liens on the property were also released. (Tr. 37, 38, Ex. E and F)

In February 2008, Applicant and her partner separated and her partner moved to the opposite coast. They are not divorced. (Tr. 51) Before she left, her partner's annual income was \$30,000. (Tr. 43) Applicant's and her partner's names were on both houses. Applicant has refinanced the mortgage on House A with the same creditor who holds the first mortgage on House B. (Tr. 78) Her partner provided a quit claim deed on the homes. (Tr. 42) Applicant has received no payment from her partner on either home. (Tr. 44)

Applicant's gross monthly income from her job with a defense contractor is approximately \$10,000. (Ex. 2) If Applicant was making payments on both mortgages, her monthly net disposable income (gross income less deductions and monthly expenses) would be a negative \$2,769. (Ex. 1) If she were no longer liable for the \$5,000 monthly mortgage payments on House B, her net monthly disposable income would be \$2,358. (Ex. 1) She has \$15,000 in stocks. She has sufficient funds to pay her mortgage lender should a Deed in Lieu of Foreclosure be accepted. Except for failure to pay her mortgages, Applicant has not been late on any other payments. (Tr. 53)

### **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. 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**

Revised Adjudicative (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations.

The record evidence supports a conclusion Applicant has a history of financial problems. Applicant is approximately \$81,000 behind on her mortgage payments having made her last payment in March 2008. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶19(c), “a history of not meeting financial obligations,” apply.

Five financial considerations mitigating conditions under AG ¶¶ 20(a) – (e) are potentially applicable:

(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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; or

(e) 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 actions to resolve the issue.

Applicant made a serious mistake in her real estate purchases. She purchased a second home before selling her first home. She did so, in part, relying on assurances from the selling company that they would help her sell her first home, which she had also purchased from them. Applicant's financial problems were contributed to by market factors beyond her control. Home prices greatly declined following a period of homes being over-valued.

Applicant has done what she can to eliminate this obligation. She knew she could not financially pay for the home without selling her original home. Market factors prevented the sale of that home. Until March 2008, Applicant was able to make the approximate \$10,000 monthly mortgage payments on the two homes; the \$3,100 interest only payment on the first home, the \$4,642 interest only payments on the \$650,000 mortgage, and \$2,134 interest only payments on the second mortgage on the second home. Escrow fees, including property tax and insurance, would have increased

these monthly amounts. Applicant was fortunate to be able to settle the \$200,000 second mortgage for \$15,000.

When she realized the real estate company would not help her sell her original home, she moved out of the second home and put it on the market for sale. She also had the first home on the market. In the few months she owned the second home, the market had changed. Homes had been over-valued when appraised. Her second home was appraised at \$850,000 and she has been unable to secure an offer on it at \$660,000. Additionally, Applicant and her partner separated and her partner moved out-of-state and provided no financial support.

The decline in the value of the real estate is not, of itself, the sole cause of Applicant's financial problems. The decline in value has prevented Applicant from liquidating the debt through sale of the properties at the amounts owed. However, it was the inability to sell her first home that that resulted in her inability to make her mortgage payments. Both are factors beyond her control.

Applicant made payments on both homes until March 2008. She actively pursued alternatives with the mortgage holder including the possibility of a short sale and a deed in lieu of foreclosure. She obtained offers on the second home, but each fell through due in part to her mortgage company taking too long to evaluate the offers and their unwillingness to accept reasonable offers based on decreased property values. In May 2009, Applicant obtained an offer of \$560,000 on the second home, which was approximately \$85,000 less than the \$659,000 owed. Her mortgage company has yet to act on the offer.

AG ¶ 20(a) does not fully apply. Although the behavior is infrequent, one debt remains unpaid. There are no other delinquent obligations. Her unpaid mortgage payments are "a continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 4 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). The debt was incurred under circumstances that are unlikely to recur. The downturn in the housing market does not cast doubt on Applicant's current reliability, trustworthiness, or good judgment.

AG ¶ 20(b) fully applies. The downturn of the market, the inability to sell either home, and the separation from her partner are actions beyond her control. Applicant did all she could to eliminate the debt. She obtained offers and forwarded them to her mortgage lender for action. She acted responsibly under the circumstances. She has held back \$15,000 in funds should her mortgage lender accept a Deed in Lieu of Foreclosure or some other offer of settlement as was made by the holder of the second mortgage.

AG ¶ 20(c) partially applies. There has been no showing Applicant has received financial counseling. However, except for this single debt, Applicant's finances are under control. If the second mortgage is eliminated, which is approximately \$5,100 per

month, Applicant's monthly net income (gross income less deductions and expenses) goes from a negative \$2,769 to a positive \$2,358.

### **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.

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. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

The mitigating evidence under the whole person concept is sufficient to warrant reinstatement of Applicant's security clearance. The debt incurred was not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. Applicant has only one outstanding debt. This debt cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all her debts are paid—it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(a)(1).) I have considered the unique circumstances surrounding the purchase of the second home. Applicant's reasoning in purchasing the larger home had merit at the time. Homes were increasing in value. She anticipated house prices would continue to increase or at least no decrease. The downturn in the housing market caught a large segment of the population by surprise.

The Appeal Board has addressed a key element in the whole person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an



applicant demonstrate that he has ‘ . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.’ The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (‘Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.’) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Having had a bad experience in purchasing a home without first selling the prior home, it is unlikely Applicant will repeat the conduct. Applicant was unable to make her monthly mortgage payments on two houses, but this does not indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. It does not raise questions about her reliability, trustworthiness, or ability to protect classified information. Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from her 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, Financial Considerations: 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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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CLAUDE R. HEINY II  
Administrative Judge