



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-01741
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Fahryn E. Hoffman, Esquire, Department Counsel  
For Applicant: *Pro Se*

December 15, 2009

**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 October 30, 2007, and she re-signed the SF-86 on August 28, 2009. On July 16, 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 August 5, 2009, Applicant answered the SOR in writing. She elected to have a hearing before an administrative judge. The case was assigned to me on August 31,

2009. A Notice of Hearing, setting Applicant's hearing for October 7, 2009, was issued September 9, 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 seven exhibits, which were marked Ex. 1 through 7 and admitted to the record without objection. Applicant testified on her own behalf and called no witnesses. She introduced six exhibits, which were identified and marked as Ex. A through Ex. F and admitted to the record without objection.

At the conclusion of the hearing, I left the record open until close of business on October 20, 2009, so that Applicant could, if she wished, provide additional information for the record. Applicant timely filed 13 additional exhibits. Department Counsel did not object to Applicant's post-hearing submissions. I marked the post-hearing submissions as Applicant's Ex. G through Ex. S, and they were admitted to the record. DOHA received the transcript (Tr.) of the hearing on October 15, 2009.

### **Findings of Fact**

The SOR contains two allegations of disqualifying conduct under AG F, Financial Considerations. Applicant admitted the two allegations and offered additional information. She denied that the allegations raised security concerns under AG F. Applicant's admissions are admitted as findings of fact. (SOR; Answer to SOR.)

Applicant is 39 years old and employed as a project manager by a government contractor. She is married and the mother of an infant daughter. In 1992, she was awarded an associate of applied science degree in electronic technologies. She has held a security clearance since 2002. Applicant's husband is a federal employee and also holds a security clearance. (Ex. 1; Tr. 53-58.)

In addition to her work as a project manager, Applicant also owns a part-time business which installs home security alarms and other electronic equipment in private homes. She has owned the business since 2003. She carries out all work by herself, with some help from her husband and her cousin. She estimated that in 2006, 2007, and 2008, she earned about \$5,000 to \$7,000 a year from her business. (Ex. 1; Tr. 59-60.)

Between 1999 and 2001, Applicant was employed as a field service engineer in a southern state. She was single and had no children. She decided to invest some of her income in rental properties in order to save money on her taxes. She bought three rental properties and successfully managed them. When she moved to take a job in another state, she sold the three properties quickly and without difficulty. (Tr. 98-99.)

Applicant's skills and abilities enabled her to advance in her profession. She took a position in a large metropolitan area, and, in 2003, she purchased a home secured by

a mortgage for \$344,000. Her monthly mortgage payment was \$2,100. In addition, she acquired a home equity loan for \$11,500 from a credit union. The home is the property identified at SOR ¶ 1.b. Applicant lived in the property until she married in September 2007 and moved into a home owned by her husband. She provided her local taxing authority with documents showing the property was no longer her personal residence and was being used as an investment property. After her marriage, she continued to pay her mortgage on the property but sought a tenant. (SOR; Ex. 1; Ex. F; Ex. P; Tr. 75-78, 93-94, 100.)

In 2006, Applicant purchased a second home, which she intended to rent as an investment property. She took out two mortgage loans to purchase the property. The mortgage payment on the second property was \$2,800 a month. Soon after acquiring the property, Applicant found a tenant, who paid \$2,200 in monthly rent. Applicant's investment property is identified at SOR ¶ 1.a. (SOR; Tr. 82-83.)

In September 2006, Applicant took a job as a technical security specialist with a federal contractor. Her annual income from her job as a federal contractor was approximately \$76,000 a year.<sup>1</sup> Her employer asked her to identify and recommend additional employees to carry out the company's contract work overseas. On December 21, 2007, as Applicant went to discuss her proposed new hires with management, she had good reason to think that her job was secure. However, at the meeting, there was no discussion of Applicant's recommendations. Instead, she was handed a letter telling her that her position as Senior Technical Survey Specialist had been eliminated in a headquarters reduction in force, effective immediately. She was advised that she would receive three weeks of severance pay. This management action came without warning and was a complete surprise to Applicant. (Ex. 1; Ex. A; Tr. 49, 60-65.)

When she lost her job, Applicant had not yet found a tenant for the property that had been her personal residence. Then, the tenant in her rental property lost her job in January 2008. She continued to reside on the property until August 2008, but did not pay rent after she lost her job. Applicant wrote to the tenant and requested that she pay her rent. The tenant responded by asking for more time. (Tr. 83-85.)

Applicant found a tenant to rent her personal residence in March 2008. The tenant paid rent for the month of March 2008, and then paid nothing else. Applicant paid a \$3,000 electric bill that the tenant refused to pay. The tenant did not vacate the property until September 2008. (Tr. 79-81.)

Applicant took preliminary action to evict one of her tenants, but she did not follow through with eviction proceedings. She explained that she obtained the legal papers necessary to bring an action and then spent some time observing proceedings in landlord-tenant court. She observed that even when the judge found for the landlord, collection of the debt was the responsibility of the landlord and was not assured. She concluded that pursuing legal action against her two delinquent tenants would be costly

---

<sup>1</sup> In addition, she earned \$5,000 to \$7,000 annually from her own part-time business.

and was not practical in her situation. Instead, she focused her efforts on trying to sell the two properties. (Tr. 81, 84-85.)

When she lost her job in December 2007, Applicant had approximately \$8,500 in her 401(K) plan and approximately \$2,500 in her savings account. She used her severance pay and drew money from her 401(K) and savings accounts to pay her two mortgages, which together totaled approximately \$5,000 a month. She also used tax refunds and drew money from her 401 (K) plan to make renovations and repairs to both properties in order to improve their marketability. Applicant was able to pay her two mortgages in January and February 2008. She lacked sufficient funds to make the two mortgage payments in March 2008 and thereafter. (Tr. 86-90.)

Applicant contacted her mortgage lenders and notified them of her job loss and inability to pay her mortgages. She learned from them and other lenders she consulted that she was not eligible for federal assistance because both properties were used for investment and neither was used as her primary residence. Additionally, she learned that to refinance an investment property, a borrower was required to put 20% down. She concluded that she did not have enough money to refinance the properties. (Tr. 99-100.)

After losing her job in December 2007, Applicant obtained part-time intermittent contract work at \$13 an hour in February 2008, and, in 2008, she earned \$22,000 from this work. Additionally, In July and August 2008, she was hired by a company for a temporary job that lasted three weeks. In September 2008, Applicant acquired her present full-time position, with a yearly salary of \$85,000.<sup>2</sup> (Tr. 55-59, 134.)

The SOR alleged at ¶ 1.b. that Applicant was indebted to a mortgage lender in the approximate amount of \$344,000. SOR ¶ 1.b. also alleged that the mortgage debt was 120 days past due as of June 11, 2009, and that Applicant owed the lender approximately \$35,981, which had not been paid. (SOR ¶ 1.b.)

At her hearing, and in post-hearing submissions, Applicant provided credible testimony and documentation to establish that, despite her efforts to arrange a short sale, the property had been foreclosed upon on May 22, 2009, the sale was ratified by the circuit court on June 6, 2009, the ratification order was signed on September 18, 2009, and she did not owe a balance or remainder on the loan. (Ex. E; Ex. Q; Tr. 91-93.)

Applicant also provided documentation to corroborate her statement that she had contacted the creditor from whom she had obtained the \$11,500 home equity loan when she purchased the property identified at SOR ¶ 1.b. Applicant also provided

---

<sup>2</sup> At the time of her hearing, Applicant had been on unpaid maternity leave since July 31, 2009, because of complications in her pregnancy. She was planning to return to her full-time job on November 2, 2009. Between August and November 2009, she received payments from private disability insurance of approximately \$5,800 every 42 days. In addition to her disability pay, she also received a net payment of \$2,100 each month from her part-time contract work. (Ex. I; Tr. 118-121.)

documentation that established she had a payment plan in place on the home equity loan debt, was current on her payments, and owed a balance of \$5,030. (Ex. F; Ex. P; Tr. 37, 93-97.)

The SOR alleged at ¶ 1.a. that Applicant was indebted to a mortgage lender in the approximate amount of \$222,000, and, as of June 11, 2009, the debt was over 120 days past due and Applicant owed the lender approximately \$29,488, which had not been paid. (SOR ¶ 1.a.)

At her hearing, Applicant reported that the lender had delayed foreclosure of the property in order to permit her to execute a short sale, which was pending. The short sale offer was \$162,000, and the deadline for completing the short sale was October 13, 2009. If the short sale was completed, Applicant would owe nothing further on the debt. In a post-hearing submission, dated October 19, 2009, Applicant reported that the short sale had failed because the seller had refused the offer and opted out of the contract. (Ex. C; Ex. D; Ex. G; Tr. 68-73.)

At her hearing, Applicant discussed her income and monthly budget. In a post-hearing submission, she provided a personal financial statement, based upon her disability and part-time income during her pregnancy, which included her monthly expenses and payment of debts. She reported a net monthly income of \$5,393, total monthly expenses of \$3,658, and monthly payments on seven debts of \$1,440. She reported a net remainder each month of \$295, savings of \$1,000, 401(K) assets of \$4,900, and a vehicle valued at \$7,500. (Ex. H; Tr. 101-110.)

Applicant reported that her husband's annual salary was approximately \$92,000 and her annual salary from her employer was \$85,000. Applicant also provided a monthly household financial statement that included her husband's income and her regular income as well as their joint household expenses. The couple's net household monthly income was \$10,243.<sup>3</sup> Their total joint monthly living expenses totaled \$9,764. These expenses included Applicant's car payment of \$600 each month and \$1,465 in credit card payments. Their monthly net remainder was \$480. (Ex. H; Ex. R; Tr. 134.)

When credit card interest rates were about to be increased, Applicant closed four of her accounts in order to freeze the interest charged on the accounts. She is not delinquent on these accounts, and she is making regular payments on them. She is also paying regularly each month on the home equity loan associated with the mortgage alleged at SOR ¶ 1.b. She makes regular monthly payments on a time share purchase with a balance of \$9,320. The two mortgage delinquencies alleged on the SOR are her only delinquent debts. ( Ex. J; Ex. K; Ex. L; Ex. M; Ex. N; Ex. O; Ex. P; Tr. 16-17, 47-48.)

---

<sup>3</sup> Applicant's husband paid the monthly mortgage of \$2,865 on their home.

## 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 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, 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 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 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 on two investment properties 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 mortgage loans on properties she purchased in 2003 and 2006. The delinquencies occurred after she was laid off, without notice, from her job in December 2007. Soon thereafter, a tenant in one of her rental properties lost her job and was unable to pay her monthly rent to Applicant. The tenant in her second rental property moved in, paid only one month’s rent, and refused to vacate the premises for six months. Applicant, who was herself unemployed, exhausted her savings in an attempt to pay the mortgages, but she was able to do so for only two months, until February 2008. She contacted the mortgage lenders and tried to work out plans to renegotiate her mortgages. However, because they were investment properties, assistance plans for home mortgages were unavailable to her. She persevered, upgraded the properties, and tried to sell them. When the mortgage lenders threatened foreclosure, she sought to negotiate short sales. Her efforts were not successful. Eventually, one property was foreclosed upon, and a proposed short sale on the second property fell through.

Applicant is 39 years old. She is resourceful and entrepreneurial. She established her own part-time business to add to her income, and while she was unemployed, she sought out part-time contract work when full-time work was not available to her.

When Applicant lived in another community, she successfully invested in real estate, owed three properties, and was able to sell them without difficulty when she moved to another location after accepting a new job. She attempted to repeat her success in another region of the country but was caught in a severe downturn in the real estate market and, unfortunately, rented her properties to irresponsible tenants who did not pay their rent. She has learned, through experience, some hard financial lessons. She has also acknowledged her financial responsibilities and has made good-faith efforts to satisfy her creditors. Her financial record reflects reasonable risk-taking and responsible financial behavior. She continues to try to resolve her financial obligations and to avoid repeating the same mistakes in the future. 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) is not relevant 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 2002. She is resourceful and has been successful in the sometimes uncertain world of government contractors. She purchased two houses as investment properties and took on two monthly mortgage payments that totaled approximately \$5,000 each month. Her financial problems began when she was summarily laid off, without notice and without cause, by her employer. Applicant responded to this setback with energy and determination. She attempted to sell her properties, and she continued to meet all of her other 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 ownership of her two investment properties. 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 has shown good faith in contacting her creditors and working with them to resolve or alleviate her indebtedness. 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. and 1.b.:	For Applicant

## **Conclusion**

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

---

Joan Caton Anthony  
Administrative Judge