



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



In the matter of:)	
)	
)	ISCR Case No. 09-05680
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: *Pro se*

September 27, 2010

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I grant Applicant's eligibility for access to classified information.

Applicant signed her Electronic Questionnaire for Investigations Processing (e-QIP) on June 23, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on September 25, 2009 detailing security concerns under Guideline F, Financial Considerations, that provided the basis for its preliminary decision to deny her a security clearance. 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 adjudicative guidelines (AG) implemented on September 1, 2006.

Applicant received the SOR, and submitted an answer to the SOR in writing on October 19, 2009. Applicant requested a hearing before an administrative judge. DOHA

received the request and Department Counsel was prepared to proceed in October 2009. DOHA initially assigned this case to another administrative judge on February 22, 2010, who proposed a hearing on April 8, 2010. Applicant timely filed a request for a continuance of her hearing for medical reasons. The administrative judge granted her request for a continuance. DOHA reassigned the case to me on April 20, 2010 for workload considerations. DOHA issued a notice of hearing on May 7, 2010, and I convened the hearing as scheduled on May 27, 2010. The Government offered three exhibits (GE), which were admitted into evidence as GE 1 through 3 without objection. Applicant testified and submitted 10 exhibits (AE), which were admitted into evidence as AE A through J without objection. DOHA received the transcript of the hearing (Tr.) on June 11, 2010. I held the record open until June 28, 2010, for Applicant to submit additional matters. Applicant timely submitted Exhibits AE K through AE EE, without objection. The record closed on June 28, 2010.

Procedural and Evidentiary Rulings

Notice

Applicant received the hearing notice on May 18, 2010, less than 15 days before the hearing. I advised Applicant of her right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. (Tr. 8) Applicant affirmatively waived her right to 15 days notice. (*Id.*)

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in the SOR. Her admissions are incorporated herein as findings of fact. She also provided additional information to support her request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 42 years old, works as an acquisitions program analyst in administrative support for a Department of Defense contractor. She began her current job in June 2009.¹

Applicant was born in the former Union of Soviet Socialist Republics (Russia). She moved to the United States when she was 12 years old and became a naturalized United States citizen in 1987. She received a bachelor's degree in French and economics. She married in 2000. She has three children, ages 7, 5, and 5 months (born in April 2010), and a 23-year-old step-daughter.²

¹GE 1; Tr. 18, 20, 42.

²GE 1; Tr. 18.

Applicant's husband owns and operates a small construction business. His business involves construction, remodeling, and home inspections. Applicant and her husband also own residential rental properties. When they started dating in the late 1990s, her husband owned both units of a duplex and she owned a property. After they married, Applicant and her husband would purchase a property, live in it while they renovated it, then rent the property, and purchase and move to their next house. They continued this process until 2005. By 2005, they owned a total of seven properties, including both units of a duplex. They lived in one property and rented the other properties. They purchased these properties as an investment for their retirement and their children's education.³

Applicant worked full-time until 2004, when she decided to stay home after the birth of her second child. She began working part-time in her husband's business and managing the rental properties. His business provided the only source of their household income. The rental income generally covered the costs associated with their rental properties.⁴

In 2006, Applicant's husband's business earned less income than in prior years because, as part of their long-term investment plan, they renovated a house and built an addition to it. Her husband's business income improved in 2007. However, by the end of 2007 or early 2008, his business began to decline as a result of the economic downturn. The construction and housing business work, including home inspections, stopped. Their rental business also began to suffer, as several tenants stopped paying rent after they lost their jobs. Applicant evicted two tenants in the summer of 2008. She rented one of these properties again and her family moved into the other property. She evicted five tenants, including the new tenant, in 2009 for the nonpayment of rent. In addition to lost rental income, Applicant incurred at least \$2,500 in legal costs for these evictions. Applicant and her husband incurred repair expenses to these properties after their tenants had been evicted. Some tenants damaged the property in retaliation for their eviction.⁵

By late summer of 2008, Applicant and her husband realized the recession was not ending. Both began to apply for jobs. She obtained her current job after 10 months of job searching. During this time, they used savings, rental income, and credit cards to pay their bills and repairs expenses on their rental property. They accumulated significant debt on five credit cards. By late 2008, they defaulted on their mortgage payments on their rental properties. They paid the mortgage on their personal residence. They also fell behind on their large credit card payments, but paid the smaller credit accounts.⁶

³AE N; Tr. 21.

⁴GE 1; 21, 24-25.

⁵AE 0; AE Q; AE R; AE T; AE DD; Tr. 22, 26, 83.

⁶GE 3; Tr. 26, 28, 54-56.

In October 2009, Applicant and her husband met with a financial advisor to discuss their financial situation. He reviewed their business and rental investments. He attributed their financial problems to the economic downturn and a decrease in construction work for her husband. He indicated that they had “good financial stewardship” until the economic downturn. They lived modestly, spent frugally, and displayed financial discipline.⁷ Their accountant verified that they had financial stability until the economic downturn in late 2007.⁸

Applicant and her husband also met with an attorney in 2009 to discuss their legal options. He discussed filing for bankruptcy, but also suggested that they contact their mortgage lenders and creditors to try and develop a mutually beneficial resolution to their financial problems. One credit card company offered to settle her account for one-third of its balance if Applicant paid the offer in cash in full. She did not have the money to make this payment and the creditor refused to accept a monthly payment plan on the offer. Her attorney confirmed that the mortgage lenders and creditors would not work with her. On the advice of her attorney, Applicant stopped making payments on all her credit cards.⁹

Applicant and her husband filed for bankruptcy on March 4, 2010. They included all their properties and credit card debts in the bankruptcy petition, which includes all the debts listed in the SOR. Applicant attended and completed the personal financial management course required by the bankruptcy court. The mortgage holders on several of their properties changed in 2009, which accounts for a change in the debt ownership of some SOR mortgage debt. None of the creditors appeared for the bankruptcy creditors’ meeting. Applicant and her husband reaffirmed the mortgage debt on their personal residence, which has been timely paid throughout the last two years. They also reaffirmed two personal loans against their 2000 truck and 2002 minivan. The bankruptcy court discharged their remaining debts under Chapter 7 on June 17, 2010.¹⁰

Applicant earns approximately \$4,190 a month in gross income and \$3,645 in net income.¹¹ Applicant’s husband obtained part-time work with a builder in 2009. His worked began to decline in April 2010. He earned a total gross income of \$8,356 through May 31, 2010 from his part-time job. His remodeling business work has started to increase and Applicant anticipates he will again receive income from his business.

⁷AE E.

⁸AE D; Response to SOR.

⁹Response to the SOR; Tr. 41-45.

¹⁰AE J; AE K; AE L; Tr. 30, 32-34, 78-79.

¹¹Applicant did not work in March, April, and the first week of May 2010 as she was on maternity leave. She received short-term disability during this time. She provided documentation showing her disability income in April and early May. Her May earnings statement indicated a lower income because she did not work the first week of May. AE W.

Their monthly expenses total approximately \$3,870. With her husband's income, Applicant has sufficient income to pay her monthly expenses. Some expenses are more flexible than others.¹²

Applicant attempted to obtain copies of her monthly statements from four credit card companies. She received some information on two accounts. By the time she closed one account in 2007, she had paid more than \$4,200 in charges. In one month, she made a \$3,800 payment. On the second account, she showed that she paid twice the minimum payment in May 2007.¹³

Applicant borrowed \$10,000 from a long-time friend in 2005 and repaid her friend with interest within a year. The credit reports of record reflect that Applicant paid her mortgage payments, paid mortgage debts in full, paid her credit cards as agreed, and paid credit cards in full. The credit reports also indicate that Applicant started falling behind on her mortgages in late 2008 and on her credit card payments around the same time.¹⁴

The Vice President of Applicant's employer and the Chief of Contracts with the Government highly recommend Applicant for a security clearance. Both describe her as trustworthy, dependable, and loyal. She has good judgment and is a person of integrity. Because of these qualities, they selected her to work on a very sensitive General Accounting Office audit. They praise her handling of this job assignment. Applicant volunteers with the local sheriff's office, teaching self-defense classes and working as an interpreter in French and Russian.¹⁵

Friends and former co-workers also describe her as trustworthy, honest, and hard-working. Two friends indicated that she paid her bills and helped them to learn to manage their finances. She has not taken a vacation in 10 years.¹⁶

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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.

¹²AE W; AE X; AE Y.

¹³AE Z; AE AA,; AE BB; AE CC.

¹⁴GE 1; GE 2; AE F.

¹⁵AE A; AE B; AE C; Response to SOR.

¹⁶AE F; AE G; AE H; AE I.

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. 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, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for 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 an 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 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and especially the following:

19(a) inability or unwillingness to satisfy debts.

19(c) a history of not meeting financial obligations.

Appellant developed significant financial problems when the economy moved into a recession. She defaulted on all but one of her mortgages in late 2008 and fell behind in her credit card payments a short time later. She could not pay her debts for some time. These two disqualifying conditions apply.

The Financial Considerations guideline also includes conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through 20(f), and especially the following:

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.

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.

Applicant paid her bills, including the mortgages on her residence and seven rental properties regularly and on time until late 2008. By this time, the country had been in a recession for more than a year. The recession impacted the construction industry very hard. Her husband's construction-related business stopped. Applicant used her savings to pay bills and then her credit cards. When she and her husband realized the recession would continue indefinitely, they sought stable employment. After 10 months of job searching, she obtained her current position. Her husband found part-time work. In the fall of 2009, they sought financial assistance from a financial advisor and an attorney. The attorney suggested that they attempt to renegotiate their mortgages and seek lower payments on their credit cards. Their efforts failed, as the creditors declined to work with her. They filed bankruptcy in March 2010 and the court discharged their debts on June 17, 2010, thus, her debts are resolved. She completed a financial counseling course as required by the bankruptcy court. The above mitigating conditions 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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant paid her bills for many years, including repaying a \$10,000 loan from a friend, and lived within her financial means until the 2008. Her financial advisor and her accountant confirm that she and her husband had solid finances. With the loss of business and rental income from her rental properties, Applicant stopped paying her mortgages, except her residence, and her monthly payments on her large credit card debts.

Applicant started a job search in 2008 to help provide income into her household, as her husband's business could no longer support the family. Her husband obtained part-time in 2009, and she eventually obtained a job. Her tenants lost their jobs and stopped paying the rent. Until the recession, Applicant and her husband paid their bills. Because the recession did not quickly resolve, they sought guidance to resolve their financial crisis. When the creditors refused to work with them, they followed their attorney's advice and filed for Chapter 7 bankruptcy. The court discharged her debts in June 2010. She reaffirmed three debts listed in their bankruptcy. She lives within her financial means and pays her current bills. She and her husband own an 8-year-old car

and a 10-year-old car. They have not taken a vacation in 10 years. They do not live extravagantly.

Applicant and her husband decided to buy, repair, and rent houses as an investment for their future. They intended for these properties to finance their retirement and their children's education. By 2005, they owned seven rental units. The rental income and her husband's business income provided sufficient income to meet all their mortgages and living expenses as the economy was working. They made decisions about purchasing property and repairing it, using the information they knew. After the repair of each property, they successfully rented it. For many years, they paid all their bills. When the economy spiraled downward, her husband's construction jobs ceased. Their tenants lost jobs and stopped paying the rent, causing a further income loss for Applicant. They evicted tenants, some of whom damaged the property in retaliation. The evictions increased her expenses and reduced her income. Until 2008, they had financial stability based on the decisions they made and their hard work.

Applicant's employer, co-workers, and friends describe her as an honest, dependable, reliable, and hard-working individual. She is well-respected at work and viewed as trustworthy. She taught friends about financial management and they are grateful. 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. But for the recession, Applicant always paid her bills and managed her finances. There is little likelihood that she and her husband will return to the property rental business. Her recent financial problems are not a source of concern.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her finances under Guideline F.

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 -1.o:	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.

MARY E. HENRY
Administrative Judge