



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-06965
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esquire, Department Counsel  
For Applicant: Pro se

June 22, 2011

**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant fell behind in her payments on a mortgage loan due to a decrease in the household income and medical and veterinary expenses. Financial concerns are mitigated because she is making payments toward her arrearage and she has no other delinquent debts. Personal conduct concerns alleged because of her failure to disclose a home equity loan debt on her security clearance application were not established in the absence of evidence that she knowingly falsified the form. Clearance granted.

**Statement of the Case**

On August 12, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, which provided the basis for its preliminary decision to revoke her security clearance. DOHA acted 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on November 2, 2010, and requested a hearing. On January 4, 2011, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On January 6, 2011, I scheduled a hearing for January 24, 2011.

I convened the hearing as scheduled. Five Government exhibits (Ex. 1-5) and five Applicant exhibits were admitted (Ex. A-E) without objection. Applicant also testified, as reflected in a transcript (Tr.) received on February 2, 2011. I held the record open after the hearing until February 14, 2011, for Applicant to submit proof that she was not delinquent on the loan identified in SOR 2.a when she completed her February 2009 Electronic Questionnaire for Investigations Processing (e-QIP). On February 11, 2011, Applicant submitted additional documents, which were marked collectively and admitted as Exhibit F without objection.

### **Summary of SOR Allegations**

The SOR alleges under Guideline F, Financial Considerations, that as of August 12, 2010, Applicant was \$40,796 past due on a mortgage loan (SOR 1.a). Under Guideline E, Personal Conduct, Applicant allegedly falsified her February 2009 e-QIP by failing to disclose a different delinquent mortgage debt (SOR 2.a).

### **Findings of Fact**

Applicant denied the SOR allegations. She indicated that since February 2010, she has been paying \$2,529.08 per month on the mortgage loan identified in SOR 1.a pending the lender's decision on her application for a loan modification. She explained that the loan identified in SOR 2.a had been paid in full in 2008 and she forgot to list it on her e-QIP. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 35-year-old computer network administrator. She has worked for her current defense contractor employer since September 2006. (Tr. 48.) She holds a secret-level security clearance, which was initially granted around December 1998. (Ex. 1.)

Applicant married her spouse in June 2004 in state X, where they maintain their current residence. Applicant was living and working in her native state Y. She owned her home, which she had bought in August 2001. (Tr. 50.) Applicant originally took out a \$193,000 primary mortgage, to be repaid at \$1,593 per month. She refinanced the mortgage to take advantage of lower interest rates. As of April 2006, she had a joint mortgage of \$241,000 and the monthly payments were \$1,294. In April 2005, Applicant took out an individual home equity loan of \$115,000 on the property (SOR 2.a). Monthly payments on that loan averaged around \$300. (Ex. 3, 4; Tr. 55.) Applicant's annual salary was around \$90,000. (Tr. 49.)

In late May 2006, Applicant and her spouse bought their almost 4,000 square-foot home in state X. (Tr. 50, 72.) They took out a joint conventional mortgage of \$415,000, to be repaid at \$3,708 per month (SOR 1.a). Applicant was contractually bound to work for her employer in state Y until August 2006. (Tr. 50.) In September 2006, she began working at the same salary (around \$90,000) in state X for her current employer, a defense contractor based in state Y. (Tr. 49.) She had no success in selling her home in state Y, and it sat vacant for six months. She exhausted her savings paying the two mortgages and home equity loan. In January 2007, she began renting out her home in state Y and the rental income covered her primary mortgage, so she managed to stay current on that loan. (Tr. 52-53.) However, she began falling behind in her home equity loan payments. (Ex. 5.)

In early 2007, Applicant's spouse was laid off. (Ex. 2.) In March 2007, her spouse had a son, who Applicant subsequently adopted. (Tr. 48.) Because Applicant's employer does not recognize the legality of their marriage, Applicant and her spouse have had to cover the \$5,000 in expenses of their son's birth and subsequent care. (Tr. 78-79.) Without her spouse's income of almost \$50,000 annually (Tr. 54.), Applicant started falling behind, albeit only around 30 days, on the mortgage on her primary residence in state X in the summer of 2007. She ran between 30 to 60 days late in her home equity loan payments on her other house. (Ex. 5.)

In 2008, her dog was diagnosed with bone cancer. (Tr. 42-43.) Applicant incurred about \$8,000 in veterinary costs when she had no savings (Tr. 60.), and she struggled to pay the mortgage on her home and on the home equity loan on her previous residence. Applicant paid something on the mortgage loan but often less than the full payment. (Tr. 44-45, 60.) As of early January 2009, Applicant owed \$2,233 in past-due debt on the home equity loan (SOR 2.a), which was reportedly 150 days past due. (Ex. 5.) She was notified by her lender that she would have to bring her loan current as her account was being sold to another lender. (Tr. 34.) On January 8, 2009, Applicant made a payment of \$6,043.41 to bring her home equity loan current (Ex. F) and her loan was transferred.

On February 12, 2009, Applicant executed an e-QIP to update her security clearance.<sup>1</sup> She responded negatively to the financial delinquency inquiries into whether he had been over 180 days delinquent on any debts in the last seven years, and whether she was currently over 90 days delinquent on any debts. (Ex. 1.) On February 19, 2009, the credit bureaus reported the equity loan as delinquent over 120 days. Apparently, they had not updated their records to reflect Applicant's recent payment on that loan to bring it current. Applicant was behind \$761 on a credit card account with a \$4,678 balance. She settled the debt in April 2009 for less than its full balance. (Ex. 3, 5.)

As of February 2009, Applicant and her spouse owed delinquent debt of \$7,573 on the mortgage in state X, which had a principal balance of \$404,715. Their account was

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<sup>1</sup>The e-QIP indicates it was certified in the e-QIP system on December 28, 2008, but it was not signed by Applicant until February 12, 2009. (Ex. 1.) It would appear that Applicant completed the form in December 2008, but that there was a delay in obtaining her signature. Applicant was not questioned about the discrepancy at the hearing.

rated as 60 days past due. (Ex. 5.) From around March or April 2009 to October 2009, Applicant paid \$4,000 per month in \$2,000 increments, but it was not enough to get caught up.<sup>2</sup> She stopped making those payments when the rest of her financial obligations, such as credit cards, began to suffer. (Tr. 61.) By September 2009, the amount past due had risen to \$18,542. (Ex. 4.)

On June 19, 2009, Applicant was interviewed about her finances by an authorized investigator for the Office of Personnel Management (OPM). She indicated that the mortgage on her home in state X was 45 to 60 days behind, but she was paying \$4,000 per month in an effort to catch up. She averred that she was a couple of months behind in her credit card payments on one account and that she was arranging to pay off the balance. Applicant also indicated that she had been three months behind in 2008 on her home equity loan on the home in state Y, but the account was current after she had paid off the arrearage with her income tax refunds. Applicant provided income and expense figures showing a net monthly remainder of \$779.64. On April 15, 2010, Applicant paid in full the outstanding balance of the credit card account that had been delinquent in June 2009. (Ex. 2.)

In December 2009, Applicant was notified of a loan modification program by the lender holding her delinquent mortgage in state X (SOR 1.a). (Ex. 2; Tr. 63-64.) In February 2010, as agreed by the lender pending approval of her application for a loan modification, Applicant began paying \$2,529.08 monthly on her loan account. As of early January 2011, Applicant had made 12 payments in lieu of her regular mortgage payment. (Ex. D; Tr. 62-64.) As of April 2010, Equifax reported the loan as past-due \$40,796. (Ex. 3.) On January 11, 2011, Applicant and her spouse received approval to enter into a trial home loan modification program under which they are to pay \$2,567.83 per month for three months in lieu of their regular mortgage, with the first payment due by February 1, 2011. (Ex. B; Tr. 65.) It is within Applicant's budget to make those payments. (Tr. 65.) After speaking with the bank, Applicant understands that should she make those payments and a loan modification plan be approved, her monthly obligation is likely to be similar if not the same as the amount paid under the trial agreement for the 30-year term of the loan. (Tr. 65, 82.)

As of late January 2011, Applicant and her spouse had closed all of their credit card accounts. (Tr. 69.) She paid off a \$2,216.26 balance on a credit card account in April 2010 using her income tax refund. (Ex. 2.) Their cars are paid off,<sup>3</sup> and they have no delinquent credit obligations other than the mortgage on their home in state X, which Applicant is seeking to resolve through the loan modification. She had \$700 on deposit in a checking

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<sup>2</sup> Applicant's credit report of October 2009 (Ex. 4) shows a last activity on the account of October 2008, and a past due balance of \$18,542 as of October 2009. As of June 2010, Equifax was reporting the loan as \$40,796 past due, with no activity since October 2008. (Ex. 3.) The last activity date may be the date on which Applicant's account was last rated as current.

<sup>3</sup> Applicant and her spouse have three vehicles, which are paid for. She has a Mustang with low mileage in pristine condition, a Jeep Grand Cherokee worth about \$8,000, and a Ford Explorer worth about \$1,000. (Tr. 75.) She testified that she bought the Mustang in 2005. She put down \$20,000 cash and paid off her loan in eight or nine months. (Tr. 81.) Applicant's credit report shows an automobile loan of \$27,654 opened in August 2005 with monthly payments of \$562. The loan was paid off in May 2006.

account. (Tr. 81.) Applicant has her home in state Y rented out for the next two years. She intends to sell the home at that point. (Tr. 83.)

## Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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. 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 to obtain 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 that the applicant may deliberately or inadvertently fail to 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, as follows:

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.

Applicant took on a joint mortgage loan debt with her spouse of \$415,000 in May 2006 for their new home when she was paying around \$1,596 per month on her home in state Y. She exhausted her savings to keep up with the monthly mortgage payments, which totaled about \$5,304, after she moved to state X and her home in state Y sat vacant. When medical and veterinary expenses put pressure on her finances in 2008, she began making partial payments of her mortgage on the home in state X. She fell behind \$6,043 on the home equity loan for the property in state Y, and by September 2009, \$18,542 on the mortgage in state X. Disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and ¶ 19(c), "a history of not meeting financial obligations," apply.

Four Financial Considerations mitigating conditions under AG ¶ 20 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems are too recent to favorably consider AG ¶ 20(a). As of her hearing in January 2011, Applicant had yet to satisfy the delinquency on her mortgage in state X. AG ¶ 20(b) applies in that her inability to sell her home in state Y can be

attributed to outside factors, such as the declines in the local real estate market and the economy in general. The loss of her spouse's income was unanticipated when they bought their home in state X, and subsequent financial pressures caused by high medical and veterinary expenses fall within AG ¶ 20(b). At the same time, AG ¶ 20(b) does not fully mitigate or explain her purchase of an almost 4,000 square-foot home in May 2006 when she already had mortgage and home equity loans on her home in state Y. She also failed to manage her consumer credit cards responsibly at times. Around April 2009, she settled one delinquent account for less than its full balance. More recently, in April 2010 she paid in full a credit card debt that had been past due in June 2009.

AG ¶ 20(d) applies because Applicant satisfied, in one case for less than the full amount, two delinquent credit card accounts before the SOR. She also brought her home equity loan (SOR 2.a) current in 2008, before she completed her e-QIP to update her security clearance. While the mortgage arrearage on her home in state X has yet to be satisfied, Applicant has been making payments on that debt on terms agreed on by the lender since February 2010. As of January 2011, Applicant and her spouse had been approved for a three-month trial loan modification. Their lender has assured them that if they make their \$2,567.83 payments on time, their loan will be modified to this new lower monthly payment (or a similar amount) for the life of the loan. Although the loan modification had yet to be finalized as of the close of the record, I am confident that Applicant will make the payments required. Applicant paid \$2,529.08 per month on the loan for the past year. She has demonstrated a willingness and ability to cover the payments that will likely be required of her under the final loan modification. So even though the arrearage has yet to be satisfied in full, she has a credible plan in place to resolve it. AG ¶ 20(c) and ¶ 20(d) apply.

### **Guideline E, Personal Conduct**

The security concern about personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant did not disclose any financial delinquencies on the e-QIP, which she apparently filled out in December 2008 but did not sign until February 2009. The Government alleged that Applicant should have listed her delinquent home equity loan, apparently based in part on the credit bureaus reporting the debt as 150 days past due as of January 2009. (Ex. 5.) Applicant denies any intentional falsification, so the burden is on the Government establishing the applicability of AG ¶ 16(a):

Deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form

used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

A finding of intentional falsification can be inferred from omission of information that on its face should have been reported. After her hearing, Applicant presented a cashier's check showing that she paid the home equity loan arrearage on January 8, 2009 (Ex. F), and not in 2008 as she had recalled. As of December 28, 2008, when Applicant reportedly certified her e-QIP in the system, the debt was more than 90 days past due. Applicant would have been required at that time to list the debt in response to question 28.b ("Are you currently over 90 days delinquent on any debt(s)?"). However, as of February 12, 2009, when she certified by her signature the accuracy of her statements on the e-QIP, she was not then past due 90 days on any debt. Applicant indicated in her Answer that she had forgotten about the debt when she "filled out the e-QIP in February of 2009." It is difficult to believe that she would have failed to remember paying the debt in early January 2009, especially given its sizeable amount and the fact that she paid it after she had apparently filled out the e-QIP online. However, I cannot conclude that she deliberately falsified her e-QIP in light of her signature date of February 12, 2009, and no details about the manner in which the e-QIP was filled out and then signed.

### **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 conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).<sup>4</sup> Applicant took on a large amount of debt at a relatively young age without ensuring sufficient financial savings should her circumstances change. While she indicates that the mortgages were affordable as long as both she and her spouse were working, she exhausted all her savings during the latter half of 2006 to keep up with the payments on her loans when they were both employed. In Applicant's favor, she has not walked away from her financial obligations. She obtained renters for her home in state Y, and paid off or settled her past-due credit card balances and the arrearage on her home equity loan. For over a year, she has been working with the lender of her home loan in state X to resolve that debt. Applicant and her spouse appear to be living within their means, in that they are not incurring any new consumer credit debt. The DOHA Appeal Board addressed a key element in the whole-person analysis in financial cases stating:

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<sup>4</sup>The adjudicative process requires assessment of the following factors:

- (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.



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 [she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that [she] has ‘. . . established a plan to resolve [her] financial problems and taken significant actions to implement that plan.’ The Judge can reasonably consider the entirety of an applicant’s financial situation and [her] actions in evaluating the extent to which that applicant’s plan for the reduction of [her] 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). I am confident that she will continue to resolve her delinquent mortgage debt in SOR 1.a.

### **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

Subparagraph 1.a: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

### **Conclusion**

In light of 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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Elizabeth M. Matchinski  
Administrative Judge