



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-07576
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

April 13, 2011

**Decision**

---

LYNCH, Noreen A., Administrative Judge:

On May 29, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) alleging security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented in September 2006.

Applicant timely answered the SOR, admitted the two allegations, and requested a hearing. DOHA assigned the case to me on December 15, 2010. DOHA issued a notice of hearing on February 8, 2011, and I convened the hearing as scheduled on February 24, 2011. Department Counsel submitted six exhibits (GE 1-6) which were admitted into the record without objection. Applicant testified, presented two witnesses and submitted 10 exhibits (AE A-J). DOHA received the transcript on March 3, 2011. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

## Findings of Fact

Applicant is a 42-year-old employee of a defense contractor. She graduated from college in 1990 and has taken graduate courses. She is divorced with no children. She has worked for her current employer since March 2008. She has held several levels of security clearance since 1997. (GE 1)

From August until December 2004, Applicant was enrolled in a graduate program while working full time. She borrowed approximately \$30,000 in student loans from a bank. Her loan payments were scheduled to begin in 2007. The monthly loan payment was \$330. Applicant paid on her student loan from early 2007 until the fall of 2007. (GE 3)

In the interim, Applicant married her third husband in 2006. They built a home in 2006, for \$1,400,000. Applicant made a down payment of \$175,000 (cash) and her husband contributed about \$100,000. She and her husband obtained two home mortgages. The primary mortgage was approximately \$999,999. The secondary loan (home equity line of credit) was approximately \$247,000. They each contributed to the monthly mortgage payments and had no difficulty with expenses based on a combined income of \$400,000. (GE 3)

Before September 2006, Applicant had no financial difficulties. She earned a significant salary and was responsible for managing budgets for federal government clients. She had no difficulty paying her expenses and had sizeable assets, as evidenced by her favorable credit report. (GE 2) However, later in 2006, her husband abandoned her. He left their home and filed for bankruptcy. Applicant was left with all the marital debt, which included a mortgage of 1.25 million dollars. (Tr. 23) Applicant did not know that her husband stopped making payments on his half of the mortgage until January 2007. Due to her recovery from surgery, Applicant could not work from December 18, 2006 until February 2007. During her unemployment, she lived on her savings, which complicated her financial situation.

Applicant downsized when she learned about that her husband defaulted on his half of the home mortgage. She attempted to sell her car. She reduced her expenses. However, she finally exhausted her resources.

Applicant refuses to file for bankruptcy. She intends to pay her debts. Applicant addressed the issue of the mortgage immediately after her husband left. She paid the monthly mortgage of approximately \$9,000 until she could not longer afford the payments. She then used her retirement funds, savings, and stocks in the amount of approximately \$60,000 to pay late fees and back payments on the mortgage. She lived in the house approximately one year. (GE 3) She contacted the bank for a restructure of the home loan that would have allowed her to keep the home, but the bank denied her request. She unsuccessfully attempted to sell the home. She attempted a short sale, but that was not successful. The home was foreclosed upon in April 2007. The bank sold the home, which covered the primary home loan (\$960,00). She does not have a balance. (GE 4) For the second home loan of \$247,000, which was also

forgiven, she was issued a Form 1099, reporting the forgiven debt as income for tax year 2007. Applicant worked with the IRS to reissue the 1099 for half of the \$247,000 due to her husband's liability, but that was not successful. (GE 4)

The SOR alleges a May 2009 tax lien from the Internal Revenue Service (IRS) in the amount of \$52,508 and a student loan in collection in the amount of \$37,896. These debts are indirectly a result of the abandonment in 2006, her home foreclosure in 2007, and tax liability for years 2005 and 2007. Moreover, Applicant has been trying to resolve both issues for approximately two or more years.

Applicant filed her 2005 taxes in April 2006. She received a refund. When she filed in 2007 for the tax year 2006, she forgot to list a sale of stock. In 2007, the IRS contacted Applicant about the error. She admitted that she owed the extra money. Approximately eight months later the IRS determined that she owed an additional amount of money based on a capital gain. (Tr. 103) Applicant learned that she had about \$15,000 in tax owed. She then learned that there was more tax liability due to the \$247,000 from the second home loan.

The IRS issued a notice of federal tax lien to Applicant on May 5, 2009. Applicant hired a tax attorney in 2009, when she received a notice of the tax lien. After consultation, an appeal was to be filed to determine the accuracy of the tax liability. Applicant's attorney reviewed her tax liabilities and prepared to initiate the best manner to resolve the tax issue with the IRS, either through an installment agreement or other payments, and to see if any liability belonged to Applicant's husband due to the home that was also owned by him. (AE K) However, before the actual appeal period ended, the IRS garnished Applicant's wages. (Tr. 37)

Applicant's attorney testified at the hearing that he filed a request to release the levy and garnishment. An IRS representative advised the attorney that the levy/garnishment was erroneous and would be lifted. An appeal was filed in June 2009. (AE J)

Applicant's attorney provided the IRS with financial information between June 10, 2009 and June 25, 2009, notwithstanding the pending appeal. An installment agreement was reached for \$3,500 per month. A direct draft from Applicant's bank account (\$1,750) semi-monthly was scheduled to begin. (AE K)

A series of convoluted events followed. In July 2009, Applicant and her attorney learned that the installment agreement with the IRS was put on hold and that the appeal had been "transferred" to another unit. A hearing was held on December 21, 2009, to review and discuss the appeal and the status of the collection process. Additional documentation was presented in January 2010. The appeal officer noted that two years in question were coded as having been in bankruptcy, which was incorrect. The appeal officer needed more information from the IRS. In March 2010, Applicant's attorney requested status of the appeal and was told that an installment agreement could be reached for \$3,600 a month. (AE K) However, the appeal was denied and the lien was to remain in place. The appeal file was closed on April 9, 2010. In May 2010,

an IRS representative contacted Applicant's attorney concerning the resolution of the tax liabilities. He had no information concerning the installment agreement. The file was not accessible from the appeal officer. In June 2010, Applicant's attorney again provided the same information, documentation, and installment terms and agreement. At the same time, the agreed upon payments were drafted directly from Applicant's account. Applicant submitted documentation of the payments made to IRS since August 2010. (AE A-F)

The 2005 tax liability was the result of the liquidation of a stock and thus investment income that Applicant forgot to list. She believes that she owed about \$14,000 in tax and she made arrangements with the IRS to pay \$500 a month. She was able to make three months payments in 2007, but was forced to stop because she did not have the income. (GE 3)

The 2007 and 2008 tax liability was in part due to the reduced income and dwindling resources that Applicant had and the liability that she incurred when using retirement funds, IRAs or prematurely withdrawing funds from various accounts to maintain her debts and obligations. Thus, she had underfiled.

Applicant's student loan, which has been in default since late 2007, is now in repayment status. (AE G) She had to develop the IRS plan before she was permitted to address the student loan. In addition, the student loan was sold from one company to another company. Because the payment had been automatically deducted from her account when she noticed that it was not being automatically deducted, she called the company but learned the loan had been sold. She was advised that she would be contacted about the loan. (Tr. 113) By this time, she was starting to negotiate with the IRS. She was advised to have the installment agreement in place before she addressed the student loan. (Tr. 114) As soon as she established the IRS agreement, she contacted the student loan company. Applicant made her first payment in May 2010. (AE G) She is current with her monthly payments.

Applicant's 2011 monthly net income is approximately \$8,600. After monthly expenses and debt repayments, there is a net remainder of \$550 in disposable income. She follows a budget. She is current on her daily expenses.

Applicant's professional career spans more than 15 years. She has four major awards for ethics and customer service. She submitted several letters of recommendation. Each attests to her responsibility as a professional. (AE A) Applicant's current landlord submitted documentation that Applicant is timely with her rent.

Applicant's facility security officer (FSO) testified that Applicant is the information systems security manager. He met her when she was hired for the position. He noted that she is certified in information security systems. The FSO knew about the financial issues involved in Applicant's case. He discussed the tax lien with Applicant and stated that she had been very candid and forthright. He described her as responsible and accountable. (Tr. 84) He recommends her for her security clearance.

## Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The United States Government (Government) must present evidence to establish controverted facts alleged in the SOR. 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. . . ." <sup>1</sup> The burden of proof is something less than a preponderance of evidence. <sup>2</sup> The ultimate burden of persuasion is on the applicant. <sup>3</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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

---

<sup>1</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>2</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>3</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

applicant concerned.”<sup>4</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>5</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>6</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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 acknowledged that she had a tax lien and a student loan debt. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

Applicant had no financial difficulties prior to 2006. The two debts alleged in the SOR are the direct or indirect result of her husband leaving the marriage in 2006, and leaving Applicant with a new home mortgage and other marital debts. The 2007 home foreclosure would not have occurred if her husband had remained in the marriage or continued to meet his financial obligations. Applicant also had a few months of unemployment. She paid on her student loan until she had exhausted her financial resources in 2007. She has provided documentation concerning the fact that she has no other debts. Applicant’s conduct in resolving her debts warrants full application of the first mitigating condition. Consequently, Financial Considerations Mitigating Condition (FCMC) AG ¶ 20(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) applies.

---

<sup>4</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>5</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>6</sup> *Id.*

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) applies. Applicant's husband abandoned her in 2006. They had recently purchased a home. Applicant's husband stopped paying his half of the \$9,000 monthly mortgage and filed for bankruptcy. This event had a profoundly negative affect on her financial circumstances and caused the delinquencies noted. She made adjustments to her lifestyle and reduced expenses. And for the past nine months has paid the \$3,600 monthly installment payment to the IRS. She is currently paying off her student loan balance in monthly automatic payments of \$200. Her financial problems were generated by circumstances largely beyond her control. She acted responsibly.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. When Applicant learned that her husband was not paying his half of the mortgage, she continued to pay the mortgage until she used all of her savings. She tried to sell the home, but unfortunately the home was foreclosed upon. She also inherited the marital debts. Applicant received a 1099 for the \$247,00 equity loan, so that was more income and more tax liability. She learned in 2006 that due to selling a stock, she incurred more tax liability. She worked with the IRS and took action immediately. She hired a tax attorney. Applicant provided evidence of payments for both the tax lien and the student loan. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) applies.

A recent Appeal Board decision illustrates the analysis for applying AG 20(a) and 20(b). In ISCR Case No. 09-08533, the Applicant had \$41,000 in delinquent credit card debt and defaulted on a home loan generating a \$162,000 delinquent debt. She filed for bankruptcy the same month the Administrative Judge issued her decision. The Applicant was recently divorced, had been unemployed for 10 months and had childcare responsibilities. Her former husband was inconsistent in his payment of child support. The Appeal Board determined that AG 20(a) was "clearly applicable (debt occurred under such circumstances that it is unlikely to recur and [the debt] does not cast doubt on the individual's current reliability, trustworthiness, or good judgment" even though that Applicant's debts were unresolved at the time the Administrative Judge's decision was issued. The Appeal Board also decided that the record evidence raised the applicability of AG 20(b) because of the absence of evidence of irresponsible behavior, poor judgment, unreliability, or lack of trustworthiness.

### **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 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.

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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the "whole-person" factors. Applicant is 42 years old. She is a highly educated and accomplished individual. Applicant has held a security clearance for many years without any incidents. She has an excellent record of employment. She has favorable letters of recommendation. Her FSO recommends her for a clearance. She was candid and forthright at the hearing.

In 2006, Applicant was abandoned by her husband, and was left with responsibility for all the marital debts, including the entirety of the recent mortgage and her student loans. Since that time, she has worked diligently and in good faith with her tax attorney to pay off her debts, a process that was complicated by the fact that she could not in good faith commit to a payment schedule with other creditors until the IRS determined the extent of her obligation and her schedule for payment. She remains a key employee. She is recommended for retention of a security clearance by her FSO. She has been paying on the two debts alleged in the SOR for at least nine months. She has the ability to carry out her plan. She is not required to have the entire debt resolved. I have no doubts about Applicant's eligibility for access to classified information. She has met her burden. Clearance is granted.

### **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.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 a security clearance. Clearance is granted.

---

NOREEN A. LYNCH  
Administrative Judge