



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-08496
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

March 18, 2011

**Decision**

HEINY, Claude R., Administrative Judge:

A mortgage lender obtained a \$93,812 judgment against Applicant, which was discharged in her 2009 bankruptcy. Applicant has rebutted or mitigated the financial considerations security concerns. Clearance is granted.

**Statement of the Case**

Applicant contests the Defense Department's (DoD) intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on April 13, 2010, detailing security concerns under Guideline F, financial considerations.

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<sup>1</sup> 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) effective within the DoD on September 1, 2006.

On May 6, 2010, Applicant answered the SOR and requested a hearing. On August 12, 2010, I was assigned the case. On August 25, 2010, DOHA issued a Notice of Hearing for the hearing held on September 15, 2010.

At the hearing, the Government offered Exhibits (Ex.) 1 through 7, which were admitted into evidence without objection. Applicant testified on her own behalf and submitted Exhibits A through Y, which were admitted into evidence without objection. On September 24, 2010, DOHA received the hearing transcript (Tr.)

#### Procedural Matter

On December 28, 2010, following the hearing, notice was received that Applicant's employment had been terminated. At the hearing, Applicant stated she would not have a job if she did not have a clearance. (Tr. 69) When DOHA has jurisdiction over the matter at the time of hearing commences, the matter will proceed to a determination. In this case, DOHA had jurisdiction to render a decision when the matter came to hearing and a decision is made even though Applicant's employment has been terminated.

#### Findings of Fact

In Applicant's Answer to the SOR, she admitted the judgment listed in SOR ¶ 1.a. and filing bankruptcy as alleged in SOR ¶ 1.b. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 36-year-old machinist who has worked for a defense contractor since July 2009, and is seeking to obtain a security clearance.

In June 2001, Applicant and her husband purchased a home for \$88,609 with \$842 monthly payments. (Ex. 2, Tr. 49) At the time, both were employed. She was making \$15 per hour working for an automotive industries company and he was making \$23 per hour as a program and code writer for machines in an industrial shop. (Tr. 53, 55, 56, 73) Shortly thereafter, the marriage deteriorated. In January 2006, Applicant filed for divorce and moved into a mobile home with her three children ages 7, 14 and 16. One child is from a prior marriage and two are from her current marriage. (Tr. 61, 87) Her husband was left in possession of the family home. Child support ended when her husband lost his job in May 2006. (Ex.4, Tr. 50) Her husband abandoned the home after the electricity and other utilities were turned off for non-payment. (Tr. 51) Her husband moved into the mobile home she had purchased. (Tr. 51) She experienced financial problems and her Toyota Sequoia was repossessed. (Tr. 52)

In September 2006, in an attempt to make the marriage work, they moved to another state where her husband had better employment prospects. Applicant obtained a job making \$10 per hour. (Tr. 54) A job did not materialize and in March 2007, she and her husband moved to their current state, but lived in different cities. In October

2007, her husband obtained his current job. (Tr. 68) Applicant and her husband are currently separated but have talked about reconciling. (Tr. 57, 64)

In the fall of 2007, Applicant returned to school and continued in school full-time until May 2009, when she started attending school part-time. (Tr. 16) After obtaining her associates degree in machining, she obtained her current job as a machinist making \$15 per hour. (Tr. 55) She moved to another city. In February 2010, she paid the expenses of having her household goods shipped to her new location.

There were two judgments rendered against Applicant and her husband related to the same mortgage on the home they purchased in 2001. (Tr. 58) Applicant and her husband were unable to make the monthly \$842 payments, their \$600 truck payments, and meet their other financial obligations. (Tr. 49) They failed to pay their mortgage. In May 2004, a default judgment (\$93,812) was rendered against them and their mortgage company by another mortgage company. (Ex. 4 and Ex. I) Following the judgment, Applicant and her husband continued to live in the home and continued to make their monthly payments. (Tr. 43) Applicant continued to live in the home until January 2006. (Tr. 43)

In January 2007, a default judgment (\$90,304) was entered against Applicant, her husband, two additional mortgage companies, and the mortgage company who had obtained the 2004 judgment. (Ex. J) The company who obtained the 2004 judgment was a loan servicing company for the creditor who obtained the 2007 judgment. (Tr. 47)

When Applicant started her current job in July 2009 she did not see her financial situation to be as serious as it was. (Tr. 67) A month later, in August 2009, Applicant realized she had to address her financial problems and filed for Chapter 7 bankruptcy protection. (Ex. 3, Tr. 68) There was no distribution of assets due to the bankruptcy. (Ex. 7, Tr. 60) The mortgage judgment was included in schedule F, creditors holding unsecured nonpriority claims. The bankruptcy listed assets of \$28,000 and liabilities of approximately \$138,000, which included the \$93,812 owed the mortgage lender. (Ex. 3 and Ex. 4) In December 2009, the bankruptcy debts were discharged. (Ex. 3) Her September 2010 credit bureau report (CBR) lists the judgment as included in the bankruptcy. (Ex. 6)

In May 2010, the bankruptcy was reopened to allow Applicant to include creditors not previously listed so to allow the discharge of those debts. (Ex. 7) The amended Schedule F, Creditors Holding Unsecured Nonpriority Claims, lists a \$90,304 claim with the original mortgage company and the \$93,812 judgment with another creditor. (Ex. 7, Tr. 40)

In July 2009, Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP) in which she listed a number of judgments, a repossession, and numerous delinquent accounts. (Ex. 1) As of January 2010, the household's net monthly income was \$4,638, expenses were \$3,541, and payment on debts was \$722, which left a net monthly remainder of \$374. (Ex. 4) At the hearing, the household's net

monthly income was \$5,063, their expenses were \$3,500, their debt payment was \$600, which left a net monthly remainder of \$972. (Ex. B)

As of August 2010, her student loans were in a repayment status. (Ex. P) She is current on her \$7,000 student loans. (Tr. 64) In 2010, she had made four monthly payments of \$100 each before the monthly payments being reduced to \$78. (Ex. P) She is current on her truck note, which requires monthly payments of \$425. (Ex. R, Tr. 53) She is current on her rent, utility bills and other debts. (Exs. A, K, L, M, S, and V) She pays \$885 monthly rent and her husband pays \$360 monthly rent where he lives. (Tr. 70) She is not receiving calls or letters from creditors demanding payment. (Tr. 64) The state attorney general brought a \$398 child support garnishment against her oldest son's father in Applicant's favor. (Ex. Y, Tr. 33)

Applicant has received financial counseling through a debtor's education course, which was part of the bankruptcy proceeding. (Tr. 71) She does not believe she will have financial problems in the future and hopes to one day buy a house. (Tr. 63) Her financial problems predate her August 2009 bankruptcy filing. (Tr. 84)

### **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 must 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 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.

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 the applicant may deliberately or inadvertently fail to safeguard 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 of 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**

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

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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

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

In 2004, a mortgage loan servicing company received a \$93,813 judgment against Applicant. In 2007, a \$90,304 default judgment was rendered against Applicant and the loan servicing company. Both judgments were included in her Chapter 7

bankruptcy. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The mitigating conditions listed in AG ¶ 20(a) apply. In 2004, Applicant and her husband became financially overextended. They were unable to make their monthly mortgage payments and the loan servicing company obtained a default judgment against them. Following the judgment, they continued to live in the house and continued to make their monthly payments to the mortgage company. In January 2006, marital problems caused the Applicant to leave the home and move into a mobile home. In May 2006, her husband lost his job. Shortly thereafter, the home went to foreclosure and the mortgage company obtained a judgment against Applicant and her husband.

The 2004 judgment is not recent. It was obtained more than six years ago. This is the only SOR debt alleged and is therefore considered isolated. Following the judgment, Applicant continued to live in the home for an additional two years before circumstances prevented further payments, which resulted in the foreclosure of their home. The factors leading up to the judgment are unlikely to recur. AG ¶ 20(a) applies.

Under AG ¶ 20(b), Applicant experienced both separation and periods of unemployment along with the financial burden associated with each. In 2001, when Applicant and her husband bought their home she was making \$15 per hour and he

was making \$23. Following a move to another state, her income decreased to \$10 per hour. For economic reasons, they again moved to another state where she was unemployed for two years while obtaining her associates degree. She realized her earning potential was limited without further education. She is now making \$15 per hour. Her financial problems were caused by her marital problems, her moves in search of employment, and her lack of employment. Since her 2009 bankruptcy, she is current on all of her financial obligations. AG ¶ 20(b) applies.

As required during her bankruptcy, Applicant received financial counseling. There are definite signs that her counseling has netted positive results. She is living within her means and regained financial responsibility. She is current on all her debts including her rent, truck payment, student loans, and utility bills. No creditors are contacting her demanding payment. The mitigating conditions in AG ¶ 20(c) apply.

Applicant's initial bankruptcy filing listed the 2007 judgment, but not the earlier 2004 judgment on the home mortgage. That 2007 judgment was a default judgment not only against Applicant and her husband, but also against the holder of the 2004 judgment. The newer judgment, which superseded the prior judgment on the same mortgage was discharged in December 2009. When Applicant learned the initial filing failed to include all debtors she was allowed to amend her initial bankruptcy. Since the bankruptcy was a no distribution chapter 7 bankruptcy, the creditors received nothing. Therefore, it did not matter if there was one creditor or multiple creditors, the creditors received no distribution. The 2009 bankruptcy order discharged her obligation on her mortgage. Even without the May 2010 discharge order, which followed the amendment of creditors, her mortgage obligation had been discharged.

### **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. In 2004, Applicant and her husband missed some mortgage payments and the creditor obtained a judgment. However, she and her husband continued making their monthly payments and living in the home until May 2006, when her husband lost his job. Because of marital problems, underemployment, and unemployment, Applicant was forced to seek bankruptcy protection. The bankruptcy included the two judgments by successors in interest on their home mortgage. The judgments have been discharged.

Since the bankruptcy occurred, Applicant has been current on her financial obligations. Of course, the issue is not simply whether all her debts are paid—it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(a)(1).)

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 financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations:	FOR APPLICANT
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 the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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CLAUDE R. HEINY II  
Administrative Judge