



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-00062
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

July 22, 2010

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated Financial Considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On March 31, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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).

Applicant answered the SOR in a response that was misdated as March 14, 2010, and requested a hearing before an administrative judge. The case was assigned to me on May 11, 2010. DOHA issued a notice of hearing on May 19, 2010, and the hearing was convened as scheduled on June 10, 2010. The Government offered

Exhibits (GE) 1 through 4, which were received without objection. Applicant testified and submitted Exhibits (AE) A and B, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant submitted documents that were marked AE C through E and admitted without objection. Department Counsel's memorandums are marked Hearing Exhibits (HE) I and II. DOHA received the transcript of the hearing (Tr.) on June 17, 2010.

### **Findings of Fact**

Applicant is a 44-year-old employee of a defense contractor. She is applying for a security clearance. She attended community college for two semesters but did not obtain a degree. She is married with four children, ages 23, 20, 16, and 8.<sup>1</sup>

Applicant's husband has worked for the same construction company for 19 years. Their geographic area benefitted greatly from the housing boom of the 1990s and early 2000s. His work hours were severely cut by his employer in 2007 after the housing market slowed and then collapsed. Her husband picked up small jobs, but it was not enough to offset their loss of income. Applicant and her husband struggled to pay their bills, but were unable to maintain the payments. They lost their house to foreclosure in 2007, and their two cars were repossessed. In February 2009, Applicant was laid off from the company where she worked for 22 years. She was hired by her current employer in May 2009.<sup>2</sup>

Applicant co-signed her brother's mortgage. He was responsible for paying the mortgage. He also lost his longtime job at the same company where Applicant worked, and he fell behind on the mortgage payments. An Equifax credit report from March 17, 2010, lists the mortgage as charged off, \$12,000 past-due, and a balance of \$83,000. Applicant testified that her brother found another job. He worked with the mortgagor, and the mortgage is now current to the lender's satisfaction. She submitted a TransUnion credit report obtained on March 4, 2010, with her response to DOHA interrogatories. That credit report shows the mortgage as "Paid or paying as Agreed," with zero past-due. A balance was not provided. Applicant submitted a mortgage payment record showing a monthly amount due on her brother's mortgage of \$664. The payment record showed no monthly payments made for the seven-month period from July 2009 to January 2010. The record showed five payments of at least \$664 made in the five months between February 2010 and June 2010. The document reports that \$8,633 was due on the mortgage for the 12-month period of the report; \$3,357 was paid to the mortgage; leaving a shortage of \$5,276. The legal assistant for Applicant's bankruptcy attorney indicated that the mortgage payment record "shows current payments since February which is when her Loan Modification was approved." A copy of the loan modification agreement was not submitted.<sup>3</sup>

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<sup>1</sup> Tr. at 24-25, 31, 41, GE 1.

<sup>2</sup> Tr. at 18-24, 31-33; GE 1, 3.

<sup>3</sup> Tr. at 19-21, 35-39; Applicant's response to SOR; GE 1. 3; AE D, E.

The SOR alleges three delinquent medical debts totaling \$1,067, the unpaid car loans for the two repossessed cars, the unpaid mortgage for her foreclosed house, and the mortgage for her brother's house. Applicant admitted all the allegations.

Applicant had several surgeries for various medical conditions, and her husband also had some medical problems. They maintained medical insurance during their employment problems, but it was costly. Their medical bills were related to co-payments and deductibles.<sup>4</sup>

Applicant sought financial counseling from a debt management company in March 2010. She was advised to file bankruptcy. She contacted an attorney in April 2010. He also advised her to file bankruptcy. Applicant completed the counseling required for her bankruptcy. She and her husband filed Chapter 7 bankruptcy on June 16, 2010.<sup>5</sup>

The bankruptcy petition listed under Schedule D – Creditors Holding Secured Claims, the mortgage for Applicant's brother's house. The petition indicated that “[d]ebtor(s) will retain collateral and continue to make payments.” Under Schedule E – Creditors Holding Unsecured Priority Claims, the petition listed \$3,000 owed to the Internal Revenue Service (IRS) for tax year 2009 and \$1,200 owed for state income taxes for tax year 2009. Under Schedule F – Creditors Holding Unsecured Nonpriority Claims, the petition listed 37 debts totaling \$46,907. The two largest debts were for \$20,870 and \$14,235 for the deficiencies owed on the car loans for Applicant's two repossessed vehicles. There were 21 medical debts totaling \$10,319. There was a \$1,292 debt for an unsecured line of credit, and there was a \$190 utility bill. The rest of the debts were notices only, with no amount listed. The mortgage for Applicant's foreclosed home is not included in the bankruptcy.<sup>6</sup>

Applicant's attorney told her that the bankruptcy should be completed “a couple [of] months” after the filing. She testified that her finances will be in order once the bankruptcy discharges her debts. She and her husband have older model cars, with high mileage. Her car is 23 years old and has more than 200,000 miles. They are renting a home. She is not accruing credit card debt. Her employer contracts her to a large defense contracting company. If she obtains a clearance, she will become eligible to be hired as a permanent employee of the large defense contractor. That would mean greater stability, salary potential, and benefits including health insurance.<sup>7</sup>

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<sup>4</sup> Tr. at 28-30; GE 3.

<sup>5</sup> Tr. at 25-26; GE 3; AE A-C.

<sup>6</sup> AE C. The foreclosed mortgage is likely not included in the bankruptcy because Applicant's state has an anti-deficiency statute which in most instances precludes the mortgagor from enforcing the deficiency owed on the mortgage after the home is foreclosed.

<sup>7</sup> Tr. at 26-31; GE 3; AE C.

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 the 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 EO 10865 provides that adverse 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay her obligations for a period. The evidence is sufficient to raise the above disqualifying conditions.

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 still owes the debts alleged in the SOR. Her financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

Applicant and her husband both had stable employment before the recent economic decline. Her husband has worked for the same construction company for 19 years in a city that benefitted greatly from the housing boom. He did not lose his job when the housing market slowed and then collapsed, but his work hours were severely cut. In February 2009, Applicant was laid off from the company where she worked for 22 years. She was out of work for about three months before she was hired by her current employer. She and her family also had medical problems and were unable to pay the co-payments and deductibles. These qualify as conditions that were outside her control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant wanted to resolve her debts. She sought financial counseling from a debt management company and an attorney, and both advised her to file bankruptcy. Applicant struck me as a hardworking, honest woman who strived to live the American dream. Things were going well. Her family had two cars and a home. After the housing crisis affected her husband's employment, they essentially lost everything. They have adjusted their priorities. They drive two old cars and live in a rented home. It is telling that there is no credit card debt in the bankruptcy petition. Except for a \$1,292 debt for an unsecured line of credit and a \$190 utility bill, the Unsecured Nonpriority Claims are all medical debts and the deficiencies owed on the car loans for Applicant's two repossessed vehicles. I find under the circumstances of this case, that seeking the legal remedy of bankruptcy is responsible action. AG ¶ 20(b) is applicable.

Applicant received financial counseling as part of her bankruptcy. There are several issues that are unaffected by the bankruptcy. The mortgage on Applicant's foreclosed home is not listed in the bankruptcy. That is likely because of the state's anti-deficiency statute. She has to rely on her brother to continue to make the mortgage payments on his house that she co-signed. The state's anti-deficiency statute makes this somewhat less problematic, because she will not be held personally liable if he cannot keep the property out of foreclosure. Finally, the unpaid state and federal taxes for 2009 are a concern. The unpaid taxes were not alleged in the SOR, and Applicant was not questioned about them. After considering Applicant's demeanor and sincerity, I am convinced that, if she has not already done so, she will pay her state and federal taxes. Applicant's financial problems have not yet been resolved. However, the bankruptcy provides a clear indication that the problem is in the process of being resolved and is under control. AG ¶ 20(c) is applicable.

Applicant's actions do not qualify as a good-faith effort to repay overdue creditors or otherwise resolve debts.<sup>8</sup> AG ¶ 20(d) is not applicable.

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<sup>8</sup> The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6, an applicant must present evidence showing either a good-faith effort to repay overdue

## 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant is taking the legal remedy of bankruptcy to resolve debts brought on by the housing crisis and subsequent economic downturn. She is not attempting to absolve herself of excessive credit card debt caused by frivolous or irresponsible spending. She is attempting to rectify a situation that was beyond her ability to control. She has convinced me that she is on the right track financially.

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 has mitigated Financial Considerations security concerns.

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creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or an anti-deficiency statute]) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

### **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.g:                      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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Edward W. Loughran  
Administrative Judge