



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-00133

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel

For Applicant: *Pro se*

September 20, 2011

Remand Decision

DUFFY, James F., Administrative Judge:

Applicant has not mitigated financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 2, 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on December 22, 2010, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel prepared a file of relevant material (FORM) on March 8, 2011. On March 14, 2001, Applicant was mailed a complete copy of the FORM and advised that she could file objections or

submit other material for consideration within 30 days of its receipt. Applicant received the FORM on March 23, 2011. The case was initially assigned to me on May 12, 2011, and contained no indication that Applicant submitted a response to the FORM. On June 30, 2011, I issued a Decision denying Applicant's request for a security clearance.

Applicant appealed my Decision and provided credible evidence that four character reference letters were submitted to DOHA within the prescribed period of time for her to respond to the FORM. In a reply brief, Department Counsel stated that expedited remand was the most equitable means of addressing this issue. On August 18, 2011, the Appeal Board remanded that Decision for further processing. As noted in my original Decision, the Government's exhibits included in the FORM (Items 1 through 8) were admitted into the record. Applicant's four character reference letters have been marked as Applicant's exhibits (AE) A through D and admitted into the record. Department Counsel and Applicant have not submitted any objections to the opposing party's exhibits.

Findings of Fact

Applicant is a 37-year-old employee of a defense contractor. She has worked for her current employer since May 1998. She obtained a bachelor's degree from a major university in 1997. She married in September 2007 and divorced in March 2009. Her Questionnaire for National Security Positions (SF 86), submitted on September 1, 2009, does not list any children. She is applying for a security clearance for the first time.¹

The SOR alleges five delinquent mortgages that were either charged off or past due in the approximate total amount of \$285,478 and had balances totaling about \$919,499. In her Answer to the SOR, Applicant admitted each of the alleged delinquent debts, but denied the paragraph setting forth the Guideline F security concern. Her admissions are hereby incorporated as findings of fact.²

In 2005, Applicant was dating her future husband/ex-husband. At that time, they discussed her moving to Town Y, where he was living, and later marrying. They were also planning for her to take time off work so that they could begin a family. Based on the advice of her future brother-in-law who was a real estate broker, she purchased four townhomes (Properties A through D) in 2005 with the intent of renting them. The townhomes were located in Town X (approximately 120 miles from her residence and approximately 330 miles from Town Y).³ After the purchase of these townhomes, she and her boyfriend changed their minds about moving. This was the first time that she purchased property and was unaware of the expenses (e.g., property taxes and homeowners' association (HOA) fees) that were involved. Her future brother-in-law

¹ Item 4.

² Items 1, 3.

³ MapQuest was used to determine the mileage from Town X to her residence and from Town X to Town Y.

handled the leasing arrangements for the townhomes and picked the property manager. The property manager was also one of the tenants in the townhomes. Applicant claimed the property manager turned out to be a criminal who stole the “tenants’ money” (apparently the rent payments from tenants were stolen, but the amount stolen is unknown). She also provided documentation showing that other people claimed they were defrauded by the property manager. It is unknown what actions she took to monitor the properties to ensure the mortgages and other expenses were being paid on time.⁴

In about 2006, Applicant started falling behind on her mortgage payments “when the money was coming up short from my tenants and little did [she] know the HOA fees were not being paid as [she] thought they were.” She was sued by the HOA and hired an attorney to represent her. From approximately October 2006 to March 2007, she contracted with a real estate company in an attempt to sell the townhomes. No offers were submitted for these properties. She also contacted the mortgage companies seeking to dispose of the townhomes through Deeds in Lieu of Foreclosure and short sales. Due to the slow housing market, she was unable to sell or otherwise dispose of the townhomes.⁵

Due to HOA fee deficiencies, the HOA instituted legal action to auction the townhomes and transfer title pursuant to Assessment Lien Deeds. On February 6, 2007, the four townhomes were auctioned at the county courthouse and sold to the highest bidder. Property A was sold for \$7,500, Property B for \$7,000, Property C for \$100, and Property D for \$100. After the auctions, Applicant was given the right to redeem the properties from the purchasers. No evidence was presented that Applicant redeemed the properties.⁶

During an interview with an Office of Personnel Management (OPM) investigator on November 24, 2009, Applicant indicated that she does not owe any money to the mortgage companies and that she has received Form 1099-A’s for the mortgages. She also indicated that she was informed that the mortgages will continue to appear on her credit report until the allotted time has passed for them to be removed. Furthermore, she indicated that purchasing the townhomes was a terrible financial decision that she will never make again.⁷

In responding to interrogatories in June 2010, Applicant provided four Form 1099-A’s (Acquisition or Abandonment of Secured Property) and one Form 1099-C (Cancellation of Debt). Each of these forms was for tax year 2007. These forms contain the following information:

⁴ Item 7.

⁵ Item 7.

⁶ *Id.*

⁷ *Id.* Form 1099-A does not establish cancelation of a debt. See ISCR Case No. 09-05252 at 4 (App. Bd. Dec 3, 2010).

- a. Form 1099-A for Property A
 - Box 1. Date of lender's acquisition or knowledge of abandonment: 03/06/07;
 - Box 2. Balance of principal outstanding: \$332,000;
 - Box 4. Fair market value of property: \$413,000; and
 - Box 5. Was borrower personally liable for repayment of debt? Yes.
- b. Form 1099-A for Property B
 - Box 1. Date of lender's acquisition or knowledge of abandonment: 08/27/07;
 - Box 2. Balance of principal outstanding: \$324,000;
 - Box 4. Fair market value of property: \$440,000; and
 - Box 5. Was borrower personally liable for repayment of debt? Yes.
- c. Form 1099-C for Property B
 - Box 1. Date canceled: 04/17/07;
 - Box 2. Amount of debt canceled: \$80,557;
 - Box 3. Interest if included in box 2: [Blank];
 - Box 7. Fair market value of property: \$00.
- d. Form 1099-A for Property C
 - Box 1. Date of lender's acquisition or knowledge of abandonment: 03/07/07;
 - Box 2. Balance of principal outstanding: \$331,539;
 - Box 4. Fair market value of property: \$354,755; and
 - Box 5. Was borrower personally liable for repayment of debt? No.
- e. Form 1099-A for Property D
 - Box 1. Date of lender's acquisition or knowledge of abandonment: 03/06/07;
 - Box 2. Balance of principal outstanding: \$349,605;
 - Box 4. Fair market value of property: \$375,000; and
 - Box 5. Was borrower personally liable for repayment of debt? Yes.⁸

Based on a review of the SOR, Form 1099-A's, and credit reports, I find that the Form 1099-A for Property B is for the mortgage alleged in SOR ¶ 1.c; the Form 1099-C for Property B is for the mortgage alleged in SOR ¶ 1.b; and the Form 1099-A for Property D is for the mortgage alleged in SOR ¶ 1.d. There were first and second mortgages on some of these properties. From the information provided, the remaining Form 1099-A's noted above cannot be equated to specific allegations in the SOR.⁹

In the interrogatories, Applicant stated, "I feel overwhelmed and embarrassed and that I feel I can't afford to make repayment." In May 2010, a debt collection agency

⁸ *Id.*

⁹ Items 4, 5, 7, and 8. The balance of the principal outstanding on the Form 1099-A for Property B matches the balance reflected in SOR ¶ 1.c. The account number on the Form 1099-C for Property B matches the account number the account number listed in SOR ¶ 1.b. The account number on the Form 1099-A for Property D matches the account number listed in SOR ¶ 1.d.

for Property D contacted her, and she paid that agency \$150 in June 2010. Evidence of further payments to that debt collection agency has not been provided. She also provided a canceled check showing a payment of \$165, but it is unknown for which debt that payment was made. She provided a personal financial statement (PFS) dated June 11, 2010, that reflects a monthly income of \$4,885, monthly expenses of \$2,717, monthly debt payments of \$395, and a net remainder of \$1,773. On the PFS statement, she listed a monthly payment of \$150 to the debt collection agency, but no payments to the creditors holding the defaulted mortgages.¹⁰

In the interrogatories, Applicant also provided her federal income tax return for 2007. This return reported the sales (*i.e.*, foreclosures) of the four townhomes for losses. It also noted that she and her then-husband were due a refund for that tax year. Furthermore, she provided an Internal Revenue Service Final Determination dated April 2010 that states:

We considered your Form 8857, Request for Innocent Spouse Relief, and have made our final determination. . . .

For TAX YEAR(S) 2007

You are granted relief. You will not be held liable for the balance owed.

No explanation was provided as to why she submitted these tax documents or for what balance the IRS was not holding her liable.¹¹

Applicant's mother, former sister-in-law, former coworker, and longtime acquaintance have submitted character reference letters for her. Her mother indicated that she is a strong-willed, financially responsible individual. Her former sister-in-law has known Applicant for six years and describes her as highly intelligent, disciplined, dedicated, and dependable. Her former coworker has known Applicant for about 11 years and indicated she is extremely well organized, efficient, and financially responsible. Applicant and the former coworker have worked together on many community service projects and served together in civil and fraternal organizations. The longtime acquaintance stated that Applicant demonstrates great fiduciary responsibility in both personal and business matters and indicated she is dependable and trustworthy. Applicant has served as the President of the Women's Leadership Development Initiative. Each author of the character reference letters recommends her for a security clearance. Since she elected to have her case decided without a hearing, I was unable to evaluate in person her credibility, demeanor, or character.

¹⁰ Item 7

¹¹ *Id.*

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 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:

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.

In 2006, Applicant defaulted on five mortgages. The properties were foreclosed in 2007. One of the alleged mortgage debts (SOR ¶ 1.b) has been cancelled. Contrary to her earlier assertion, a FORM 1099-A is not evidence of cancellation of a debt.¹² Based on the evidence presented, she is still financially responsible for the four alleged mortgages totaling about \$838,841. The evidence is sufficient to raise the above disqualifying conditions.

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;

¹² See ISCR Case No 09-05252 at 4 (App. Bd. Dec 3, 2010) (IRS Form 1099-A Applicant received is not evidence of the cancellation of mortgage debt).

(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.

Applicant has been continually employed since 1998. As an inexperienced homebuyer, she purchased four townhomes in 2005. The total amount of these properties was over \$900,000. The properties were located about 120 miles from where she lived. She relied on others to manage the properties. This was a risky venture that failed.

Applicant's property manager apparently stole rent payments and did not pay the HOA fees as required. The number of months that those payments were stolen and the exact amount stolen is unknown. The HOA fee deficiencies led to the property foreclosures. The theft of the rent payments was a condition beyond her control. Both her marriage and divorce occurred after the properties were foreclosed. To obtain full credit under AG ¶ 20(b), both prongs of that mitigating condition, *i.e.*, conditions beyond the person's control and responsible conduct, must be established. When she started to have problems in meeting the mortgage and HOA fee payments, she attempted to sell the properties. Due to a slow housing market, she was unable to sell or otherwise dispose of them. In 2007, the four townhomes were sold at foreclosure auctions. One mortgage (SOR ¶ 1.b, apparently a second mortgage) has been canceled. She remains financially responsible for four defaulted mortgages. Since the foreclosures, she has done little to resolve the remaining delinquent mortgages. In June 2010, she made one payment of \$150 to a debt collection agency seeking payments on one of the mortgages. Even though she currently has about \$1,773 in disposable income each month, she had not provided proof of further payments to that debt collection agency or to any of the other mortgage companies. Besides that one payment, no evidence has been provided that she has remained in contact with the mortgage companies in an attempt to resolve these debts. Her failure to establish that she has taken meaningful steps to resolve the outstanding delinquent mortgages since the foreclosures weighs against a determination that she has acted responsibly under the circumstances. AG ¶¶ 20(b) and 20(d) partially apply.

No evidence was presented that Applicant received financial counseling. Her financial problems are recent and ongoing and insufficient evidence has been presented to conclude those problems are being resolved or are under control. Based on the information provided, I am unable to determine that her financial problems are unlikely to recur or that they do not cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(c) do not apply. AG ¶ 20(e) applies to SOR ¶ 1.b, the canceled mortgage.

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 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.

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. Applicant's mother and other acquaintances recommend her for a security clearance. They indicated that she is dependable, financially responsible, and trustworthy. Nevertheless, she has defaulted on a number of significant mortgages that remain unresolved. She has not established either a realistic plan or meaningful track record for addressing these financial problems. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated financial considerations security concerns.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.e:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

James F. Duffy
Administrative Judge