



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 10-01822

**Appearances**

For Government: Ray T. Blank, Jr., Esquire, Department Counsel

For Applicant: *Pro se*

May 26, 2011

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is granted.

**Statement of the Case**

On September 18, 2009, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).<sup>1</sup> On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued her a set of interrogatories. She responded to the interrogatories on June 18, 2010.<sup>2</sup> On another unspecified date, DOHA issued her another set of interrogatories. She responded to the interrogatories on June 18, 2010.<sup>3</sup> On August 6, 2010, DOHA issued a Statement of Reasons (SOR) to her, pursuant to

<sup>1</sup> Government Exhibit 1 (SF 86), dated December 18, 2009.

<sup>2</sup> Government Exhibit 2 (Applicant's Answers to Interrogatories, dated June 18, 2010).

<sup>3</sup> Government Exhibit 3 (Applicant's Answers to Interrogatories, dated June 18, 2010).

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 and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guideline F (Financial Considerations) and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on August 26, 2010. In a written statement, notarized on October 8, 2010, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on November 10, 2010, and the case was assigned to me on February 2, 2011. A Notice of Hearing was issued on March 2, 2011, and I convened the hearing, as scheduled, on March 24, 2011.<sup>4</sup>

During the hearing, 8 Government exhibits (GE 1-8) and 26 Applicant exhibits (AE A-AB, there was no exhibit M) were admitted into evidence, some without objection, and other's over objection. Applicant testified. The hearing transcript (Tr.) was received on April 1, 2011. The record was kept open, initially until April 5, 2011, and subsequently until May 20, 2011, to enable Applicant to supplement the record. Applicant took advantage of those opportunities and she submitted four additional exhibits which were admitted into evidence (AE AC-AF) without objection.

### **Rulings on Procedure**

During the hearing, Applicant requested that I take administrative notice of certain enumerated facts pertaining to the economy and the local housing market, appearing in three Internet articles or blogs. Department Counsel objected. In response to my post-hearing Order that the objection had been sustained, Applicant submitted two publications of the U.S. Government, erroneously referred to by her as exhibits, but in actuality, materials meant to furnish certain enumerated facts pertaining to the economy and regulatory actions related to foreclosure activities. One was a publication of the Federal Deposit Insurance Corporation (FDIC) ("*Supervisory Insights – Regulatory Actions Related to Foreclosure Activities by Large Servicers and Practical Implications for Community Banks*," dated May 2011) and the other from the Bureau of Labor Statistics, Monthly Labor Review ("*The U.S. Housing Bubble and Bust: Impacts on Employment*," dated December 2010). Department Counsel did not object. Facts are proper for administrative notice when they are easily verifiable by an authorized source and relevant and material to the case. After weighing the reliability of the source

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<sup>4</sup> It apparently took one week for the Notice of Hearing to reach Applicant. As she was made telephonically aware of the hearing date before the issuance of the official notice, Applicant expressly waived the 15-day notice requirement. See Tr. at 17.

documentation and assessing the relevancy and materiality of the facts initially proposed by Applicant, pursuant to Rule 201, *Federal Rules of Evidence*, I declined to take administrative notice of certain facts as they appear in the three articles or blogs, but I have agreed to do so as to the two U.S. Government publications.<sup>5</sup> Moreover, while I did reject the specific facts set forth in the blogs, I shall take administrative notice of facts regarding the economy in general and the housing market in general, as well as material and relevant facts pertaining to the regulatory actions related to foreclosures and the U.S. housing bubble and bust.

### Findings of Fact

In her Answer to the SOR, Applicant admitted the sole factual allegation (§ 1.a.) of the SOR. Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 50-year-old employee of a defense contractor, currently serving as an administrative assistant.<sup>6</sup> She is seeking to retain a secret security clearance with access to sensitive compartmented information (SCI).<sup>7</sup> A 1978 high school graduate,<sup>8</sup> Applicant completed one year of college before dropping out to get married in May 1980,<sup>9</sup> and attended a community college for three months in 1987.<sup>10</sup> Applicant joined her current employer in January 1986.<sup>11</sup> She has never served in the U.S. military.<sup>12</sup>

Applicant and her first husband had three children, a son (born in May 1982) and twin daughters (born in May 1983).<sup>13</sup> Applicant and her first husband divorced in July

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<sup>5</sup> Administrative or official notice is the appropriate type of notice used for administrative proceedings. See *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Requests for administrative notice may utilize authoritative information or sources from the internet. See, e.g. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (citing internet sources for numerous documents). Tr. at 51-59.

<sup>6</sup> Government Exhibit 1, *supra* note 1, at 17.

<sup>7</sup> Tr. at 7-8. It is unclear if Applicant actually had access to SCI, as she claimed during the hearing, or access to special programs, as she indicated in her SF 86. In this regard, see *Id.*, at 40.

<sup>8</sup> Tr. at 102.

<sup>9</sup> *Id.*

<sup>10</sup> Government Exhibit 1, *supra* note 1, at 14.

<sup>11</sup> *Id.* at 15.

<sup>12</sup> *Id.* at 18.

<sup>13</sup> *Id.* at 26-27.

1985.<sup>14</sup> She married her second husband in November 1990, and they were divorced in July 2004.<sup>15</sup>

## Financial Considerations

There was nothing unusual about Applicant's finances until the local economy and the local housing market deteriorated some time during 2005-06. Applicant is the owner of three properties. After her divorce from her second husband, their residence was sold, and with some of the proceeds from that sale, she purchased the first property (property A) in December 2004, for \$120,000.<sup>16</sup> She financed \$100,000.<sup>17</sup> Over the course of two to three years, Applicant resided in property A, off and on, going between property A and her parents' residence.<sup>18</sup> Applicant's son rented the property and he resided there with his wife and son for about one year until they separated.<sup>19</sup> At some point in 2009, property A became empty, and with Applicant unable to make her mortgage payments, property A went into a foreclosure status.<sup>20</sup> Applicant received an escrow refund of \$2,613.26 in December 2009, and she applied those funds, as well as some of her 401(k) funds to the unpaid mortgage balance.<sup>21</sup> The mortgage is currently up-to-date, and the property was removed from foreclosure status.<sup>22</sup> Property A is rented by a low-income family with five children<sup>23</sup> with subsidies under the U.S. Department of Housing and Urban Development (HUD) Housing Choice Voucher Program called Section 8.<sup>24</sup> The property is not for sale.<sup>25</sup>

With some of the proceeds from the sale of her former marital residence, as well as from the sale of a townhouse she retained as part of her divorce, and with an inheritance from her father's estate, Applicant purchased the second property (property

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<sup>14</sup> *Id.* at 22-23.

<sup>15</sup> *Id.* at 21-22.

<sup>16</sup> Tr. at 63, 66.

<sup>17</sup> Government Exhibit 2 (Personal Subject Interview, dated December 29, 2009), at 2, attached to Applicant's Answers to Interrogatories; *Id.* at 64.

<sup>18</sup> Tr. at 63.

<sup>19</sup> *Id.* at 63, 70.

<sup>20</sup> *Id.* at 62; Government Exhibit 8 (Combined Experian, TransUnion, and Equifax Credit Report, dated October 24, 2009, at 5.

<sup>21</sup> Government Exhibit 2 (Personal Subject Interview), *supra* note 17, at 1-2.

<sup>22</sup> Applicant Exhibit Z (Mortgage lender letter, dated January 6, 2011); *Id.*

<sup>23</sup> Tr. at 93.

<sup>24</sup> Government Exhibit 2 (Personal Subject Interview), *supra* note 17, at 2.

<sup>25</sup> Tr. at 93.

B) in July 2005, and financed it for \$238,540.<sup>26</sup> Applicant resided in property B for a little over two years.<sup>27</sup> The developer went into foreclosure, and his homeowner's association (HOA) dues were not being paid. As a result, the HOA dues for the property owners, including Applicant, were increased.<sup>28</sup> Applicant's monthly HOA dues are \$405.<sup>29</sup> When issues occurred involving another property (property C), to be discussed further below, Applicant decided to sell property B. No potential purchasers ever looked at property B.<sup>30</sup> While monthly mortgage payments may have been periodically delayed, property B did not enter a foreclosure status. Applicant applied some of her 401(k) funds to eliminate the delinquencies.<sup>31</sup> In February 2010, Applicant finally rented property B and took the house off the market.<sup>32</sup> The tenant paid a monthly rent of \$1,300, which was about \$118 or \$120 less than Applicant's mortgage payments.<sup>33</sup> A new tenant, effective April 1, 2011, will pay \$1,400 monthly rent.<sup>34</sup> The mortgage is currently up-to-date, and property B is no longer for sale.<sup>35</sup>

The SOR identified only one continuing delinquency, a mortgage for a townhouse identified as property C. Applicant purchased property C in December 2005, for \$250,000,<sup>36</sup> with a down payment of \$70,000 derived from the sale of another property.<sup>37</sup> The townhouse was intended as a residence in a safe area for her twin daughters to live alone while they attended school and worked.<sup>38</sup> Applicant's daughters paid rent sufficient to cover the mortgage payment,<sup>39</sup> and remained in property C until 2008. The incomes of Applicant's daughters were reduced so they were forced to scale back their expenses. At some point in 2007, they could no longer afford to pay the rent, and Applicant placed property C on the market.<sup>40</sup> Property C has been for sale and for

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<sup>26</sup> *Id.* at 66-67, 74.

<sup>27</sup> *Id.* at 67.

<sup>28</sup> *Id.* at 73.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 75.

<sup>31</sup> Government Exhibit 2 (Personal Subject Interview), *supra* note 17, at 1.

<sup>32</sup> Tr. at 70, 75, 94.

<sup>33</sup> *Id.* at 70, 73.

<sup>34</sup> *Id.* at 73; Applicant Exhibit V (Rental Application Review, dated March 10, 2011).

<sup>35</sup> Tr. at 94.

<sup>36</sup> *Id.* at 79.

<sup>37</sup> *Id.* at 80.

<sup>38</sup> Tr. at 69.

<sup>39</sup> *Id.* at 77.

<sup>40</sup> *Id.* at 68.

rent since 2007,<sup>41</sup> but except for a period when Applicant's son occupied the townhouse, or Applicant had someone else stay there to keep the townhouse clean and presentable for possible showings, it has remained empty.<sup>42</sup> Applicant kept reducing the sale price,<sup>43</sup> and sought approval from the mortgage lender for potential short sales, and while the property was shown to potential buyers, and there were offers, the mortgage lender took too long to act on offers, and the buyers withdrew their offers.<sup>44</sup> As with her other two properties, Applicant continued paying the townhouse mortgage by using funds from her 401(k), but eventually she could not keep doing so for the townhouse.<sup>45</sup> She exhausted all of her assets in trying to keep the mortgage current.<sup>46</sup> Applicant fired her realtor after determining he was not very aggressive with her property and engaged the services of another realtor to give the property more exposure.<sup>47</sup>

Applicant engaged the services of an attorney in November 2008 to discuss possible options pertaining to property C.<sup>48</sup> At that time it was decided that a short sale would be the best option since Applicant had indicated a desire to avoid foreclosure.<sup>49</sup> A number of short sale offers were given to the mortgage lender, a Troubled Asset Relief Program (TARP) recipient, but in the words of Applicant's attorney, the mortgage lender "has been a nightmare to communicate and work with."<sup>50</sup> The mortgage lender refused to accept more than one offer at a time, essentially ignoring back-up offers.<sup>51</sup> It also took a substantial period for the mortgage lender to either reject or accept offers, in one instance taking nine months to accept the only offer it eventually accepted up to that time.<sup>52</sup> The characterization of the mortgage lender by Applicant's attorney is supported by the conclusions of the regulatory review conducted by the various federal banking agencies and subsequent Consent Orders by and between those agencies and certain national banks, including the mortgage lender herein. The Consent Orders were designed to remedy the numerous matters requiring attention, including unsafe or

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<sup>41</sup> *Id.* at 68, 71, 76, 80.

<sup>42</sup> *Id.* at 76.

<sup>43</sup> The most recent asking price for property C is \$99,000, effective August 30, 2010. See Applicant Exhibit B (Exclusive Right of Sale Listing Agreement, dated August 30, 2010).

<sup>44</sup> Tr. at 78-82.

<sup>45</sup> *Id.* at 77.

<sup>46</sup> *Id.* at 78.

<sup>47</sup> *Id.* at 81.

<sup>48</sup> Applicant Exhibit D (Attorney Affidavit, dated October 8, 2010).

<sup>49</sup> *Id.* at 1.

<sup>50</sup> *Id.*

<sup>51</sup> Applicant's Answer to the SOR, dated October 8, 2010, at 1; Applicant Exhibit U (Letter from Applicant, dated March 3, 2011).

<sup>52</sup> Applicant's Answer to the SOR, at 1.

unsound practices that were identified. Among the concerns were deficient loss mitigation procedures and controls such as the failure “to commit resources sufficient to manage responsibly the rapidly growing volume of mortgage loans in default or at risk of default.”<sup>53</sup>

An offer in the amount of \$100,000 was made on March 15, 2009;<sup>54</sup> another offer in the amount of \$120,000 was made on July 9, 2009;<sup>55</sup> another offer in the amount of \$125,000 was made on September 18, 2009;<sup>56</sup> another offer in the amount of \$91,500 was made on September 10, 2010;<sup>57</sup> and another offer in the amount of \$104,000 was made in December 2010.<sup>58</sup> While awaiting a mortgage lender decision on one offer, the mortgage lender filed for foreclosure on property C, but the process server attempted to serve the complaint at an address unconnected to Applicant.<sup>59</sup> Applicant’s attorney contended the plaintiff in the foreclosure action cannot prove evidence of standing to bring the action.<sup>60</sup> The attorney also commented that Applicant “had no control of the real estate market crash and the fraudulent banking transactions.”<sup>61</sup> The September 2009 offer was finally accepted nine months later by the mortgage lender with a closing date scheduled for June 2010, but the buyer was unhappy with the inspection results and could not wait for the decision. He withdrew the offer. As of September 29, 2010, Applicant’s mortgage balance was \$185,851.43, with a past due amount of \$49,203.54.<sup>62</sup> The December offer was finally accepted on February 28, 2011, and was supposed to close on April 15, 2011.<sup>63</sup> The buyer apparently had some issues with his pre-approval letter and he was unable to close as scheduled.<sup>64</sup> Applicant also received

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<sup>53</sup> FDIC (“*Supervisory Insights – Regulatory Actions Related to Foreclosure Activities by Large Servicers and Practical Implications for Community Banks*,” dated May 2011), at 2.

<sup>54</sup> Applicant Exhibit G (“As Is” Contract For Sale And Purchase, dated March 15, 2009).

<sup>55</sup> Applicant Exhibit F (“As Is” Contract For Sale And Purchase, dated July 9, 2009).

<sup>56</sup> Applicant Exhibit H (“As Is” Contract For Sale And Purchase, dated September 18, 2009).

<sup>57</sup> Applicant Exhibit C (“As Is” Contract For Sale And Purchase, dated September 10, 2010).

<sup>58</sup> Tr. at 82-83.

<sup>59</sup> Applicant Exhibit E (Motion to Quash, dated April 29, 2009). Among the failures in the foreclosure process described by the FDIC were: “inadequate monitoring and controls to oversee foreclosure activities conducted on behalf of servicers by external law firms or other third-party vendors.” FDIC (“*Supervisory Insights – Regulatory Actions Related to Foreclosure Activities by Large Servicers and Practical Implications for Community Banks*,” *supra* note 53, at 3.

<sup>60</sup> Applicant Exhibit D, *supra* note 48, at 1. Another of the FDIC recommendations was that “foreclosures should be brought in the name of the holder of the note or the party entitled to enforce the note.” See FDIC (“*Supervisory Insights – Regulatory Actions Related to Foreclosure Activities by Large Servicers and Practical Implications for Community Banks*,” *supra* note 53, at 7.

<sup>61</sup> *Id.* at 2.

<sup>62</sup> Applicant’s Answer to the SOR, *supra* note 51, at 1; Applicant Exhibit A (Monthly Statement, dated September 29, 2010).

<sup>63</sup> Applicant Exhibit W (Short Sales Approval Letter, dated February 28, 2011), at 1.

<sup>64</sup> Tr. at 82, 90-92.

a cash offer in the amount of \$104,000 on April 11, 2011.<sup>65</sup> She received another cash offer in an unspecified amount on an unspecified date, and she is confident that one of the offers will be approved.<sup>66</sup>

In December 2010, Applicant submitted a personal financial statement reflecting a net monthly income, including rental income, of \$3,641.67; and monthly expenses, including mortgage payments, of \$3,195.<sup>67</sup> She estimated she has a monthly remainder of \$446.67 available for discretionary spending.<sup>68</sup> In May 2011, Applicant submitted an updated version of her personal financial statement reflecting a net monthly income, including rental income, of \$4,594.44; and monthly expenses, including mortgage payments and repayment of 401(k) loans, of over \$7,000.<sup>69</sup> It is unclear if Applicant's expenses are actual or projected.

Applicant has altered her lifestyle. She no longer shops at the mall, but rather at the thrift shop, and she has closed all of her accounts. She no longer has any credit cards in her name, but uses a debit card associated with her bank account.<sup>70</sup> Applicant has only one delinquent account, and that is the mortgage on property C.<sup>71</sup>

### **Civilian Character References and Work Performance**

Applicant's overall performance assessments over the past eight years reflect an individual who is normally a successful contributor and, on occasion, a high contributor.<sup>72</sup> She is described as being dedicated, loyal, trusted, trustworthy, respected, mission-oriented, and motivated.<sup>73</sup> Her supervisor noted in her 2010 assessment: "I have valued [Applicant's] support and "Do what it takes to succeed" attitude for over 20 years."<sup>74</sup>

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<sup>65</sup> Applicant Exhibit AC ("As Is" Contract For Sale And Purchase, dated, April 11, 2011).

<sup>66</sup> Applicant Exhibit AD (E-mail from Applicant, dated April 13, 2011).

<sup>67</sup> Government Exhibit 4 (Personal Financial Statement, dated December 29, 2009).

<sup>68</sup> *Id.*

<sup>69</sup> Applicant Exhibit AE (Personal Financial Statement, undated).

<sup>70</sup> Tr. at 101.

<sup>71</sup> *Id.*

<sup>72</sup> Applicant Exhibits L – T (Performance Assessment and Development Reviews, various dates). It should be noted that there is no Applicant Exhibit M. During the hearing I inadvertently skipped over the designation M. In this regard see Tr. at 40, 51.

<sup>73</sup> *Id.*

<sup>74</sup> Applicant Exhibit T, *supra* note 72, at 1.



## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”<sup>75</sup> As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”<sup>76</sup>

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”<sup>77</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.<sup>78</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

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<sup>75</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>76</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

<sup>77</sup> “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>78</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”<sup>79</sup>

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”<sup>80</sup> Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

## **Analysis**

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

The security concern relating to the guideline 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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. As noted above, there was nothing unusual about Applicant’s finances until the local economy and the local housing market deteriorated some time during 2005-06. She found it difficult to keep up with her monthly mortgage payments and, at some point, stopped making them. As of September 29, 2010, Applicant’s mortgage balance was \$185,851.43, with a past due amount of \$49,203.54. Property C

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<sup>79</sup> *Egan*, 484 U.S. at 531

<sup>80</sup> See Exec. Or. 10865 § 7.

is currently in a disputed foreclosure status awaiting mortgage lender approval of a short sale. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Also, under AG ¶ 20(b), financial security concerns may be mitigated where “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.” Evidence that “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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”<sup>81</sup>

AG ¶¶ 20(a) and 20(b) apply. Applicant’s initial financial problems commenced when the local economy and the local housing market burst some time during 2005-06. As the owner of three properties, she had previously been able to maintain renters in her properties. The rent received each month enabled her to make her mortgage payments and save for future investments. As the economy continued to deteriorate, the ability of her renters, including her daughters, to keep up with the monthly payments also evaporated. Applicant acted responsibly under the circumstances. She scrambled to find renters, or buyers, but the plummeting economy was such that there simply were none. She reduced the asking prices for both sale and rent. Applicant continued paying her mortgages by using funds from her 401(k), but eventually she could not keep doing so for property C. She exhausted all of her assets in trying to keep that mortgage current.

Property A is now rented by a low-income family with subsidies under the HUD Section 8 program. Property B is rented. The mortgages of both property A and property B are up-to-date. Property C, the sole focus of the SOR, is in a disputed foreclosure status, awaiting another approval of a short sale by the mortgage lender. The

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<sup>81</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 [the “good-faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue 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 statute of limitations]) in order to claim the benefit of [the “good-faith” mitigating condition].

(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. June 4, 2001)).

unprecedented decline in the housing market was not due to anything Applicant had done. She was merely one of the many innocent victims of the housing market correction. Applicant's financial difficulties were largely beyond her control, and occurred under such circumstances that they are unlikely to recur and do not cast doubt on her current reliability, trustworthiness, or good judgment.<sup>82</sup>

AG ¶ 20(c) partially applies. While Applicant has never received any "financial counseling" related to debt management, debt repayment, etc., she did seek guidance and real estate counseling from two licensed real estate agents and an attorney in handling her real estate difficulties. She followed their guidance and finally repaired two-thirds of her real estate difficulties, returning property A and property B to financial stability. Property C remains her only unresolved issue.

AG ¶ 20(d) applies. Well before the SOR was issued, Applicant was addressing her financial difficulties with all of her properties. She has continued her aggressive efforts to restore her real estate portfolio to financial stability. She scrambled to find renters, or buyers; she reduced the asking prices for both sale and rent; she continued paying her mortgages by using funds from her 401(k); and she exhausted all of her assets in trying to keep the mortgage on property C current. Her continuing experiences with the mortgage lender have been exhausting. Various short sale offers, from \$91,500 to \$125,000, were received by Applicant and promptly submitted to the mortgage lender, only to face lengthy delays in processing. In a business where timeliness is important, Applicant was faced with one delay that lasted for nine months before the decision was made. In that instance, the decision came too late. Circumstances may have been such that Applicant was unable to resolve all three of her mortgages by bringing them up-to-date, but she did do so with two of the properties. Her failure with respect to property C was not for lack of trying.<sup>83</sup>

### **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

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<sup>82</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

<sup>83</sup> "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

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.

There is evidence against mitigating Applicant's conduct. She has one mortgage which, as of September 29, 2010, had a balance of \$185,851.43, with a past due amount of \$49,203.54. The property is currently in a disputed foreclosure status.

The mitigating evidence under the whole-person concept is more substantial. Applicant's initial financial problems commenced when the local economy and the local housing market burst some time during 2005-06. She scrambled to find renters, or buyers; she reduced the asking prices for both sale and rent; she continued paying her mortgages by using funds from her 401(k); and she exhausted all of her assets in trying to keep the mortgage on property C current. Her continuing experiences with the mortgage lender have been exhausting. Various short sale offers, from \$91,500 to \$125,000, were received by Applicant and promptly submitted to the mortgage lender, only to face lengthy delays in processing. This problem was identified in the FDIC publication as an example of "inadequate organization and staffing of foreclosure units to address the increased volumes of foreclosures" and "weaknesses in quality control and internal auditing procedures." These practices by the mortgage lender were not Applicant's fault, for she was merely a victim of the process. Applicant has been unable to resolve all three of her mortgages by bringing them up-to-date, but she did do so with two of the properties. And her efforts pertaining to the remaining property have been unrelenting.

I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>84</sup> Applicant's continuing good-faith efforts have been extensive, and are sufficient to mitigate continuing security concerns. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:<sup>85</sup>

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 he [or she] has paid off each and every debt listed in the SOR. All that is required is that an

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<sup>84</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

<sup>85</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

applicant demonstrate that he [or she] has “ . . . established a plan to resolve his [or 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 his [or her] actions in evaluating the extent to which that applicant’s plan for the reduction of his 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.

Applicant’s current plan is to eventually resolve her only delinquent mortgage, and she has repeatedly made efforts to do so. She has resolved her two non-SOR mortgages, but has been, to date, unable to resolve the remaining property C mortgage. Overall, the evidence leaves me without questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has 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, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	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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ROBERT ROBINSON GALES  
Administrative Judge