



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-04433
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Philip J. Katauskas, Esquire, Department Counsel  
For Applicant: *Pro se*

December 7, 2011

**Decision**

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METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,<sup>1</sup> Applicant's clearance is granted.

On 2 June 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations.<sup>2</sup> Applicant timely answered the SOR, requesting a hearing. DOHA assigned the case to me 29 July 2011, and I convened a hearing 24 August 2011. DOHA received the transcript (Tr.) 1 September 2011.

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-4, and Applicant exhibit (AE) A.

<sup>2</sup>DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

## Findings of Fact

Applicant admitted the SOR allegations, except for SOR 1.c—a \$153 medical bill she paid in June 2011 (AE A). She is a 51-year-old controller/corporate secretary-treasurer employed by a defense contractor since June 2009. She is also the part-time controller for another corporation. She has not previously held a clearance.

The SOR alleges, Government exhibits confirm, and Applicant admits, delinquent first and second mortgages totaling nearly \$119,000. The property secured by the mortgages has since been foreclosed upon, and the status of the foreclosure is unknown.

Applicant and her ex-husband were married in August 2002, separated in April 2008, and divorced in October 2009. If her ex-husband was not contentious during the divorce, he was at least uncooperative. During their marriage, they lived in a house that was solely owned by the ex-husband. They jointly owned a house they bought as an investment property.

In September 2008, the ex-husband moved into the investment property, complicating efforts to sell the property, as he would not permit the realtor to show the property. He was supposed to continue to pay the mortgage. Unbeknownst to Applicant, he stopped paying the mortgage, and in May 2009, filed for chapter 7 bankruptcy protection to escape his liability for the investment property and house he held sole title to. The lenders foreclosed on the investment property, a fact Applicant did not learn of until after the ex-husband moved out of the house in summer 2010.

Applicant sought advice from realtors, attorneys, and other lenders about how to resolve the foreclosed property. Because the house was in foreclosure, the lenders would not communicate with her. Nevertheless, she has the means to deal with any deficiencies on the two mortgages once the foreclosure process is complete (Tr. 64).

Aside from the two mortgages, and the medical bill she was unaware of, Applicant has no trouble meeting her day-to-day expenses. Her coworkers and supervisors at both companies consider her extremely conscientious and trustworthy. They uniformly recommend her for her clearance.

## Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to

classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.<sup>3</sup>

### Analysis

The Government established a case for disqualification under Guideline F, but Applicant mitigated the security concerns. Applicant experienced financial problems because of her divorce and her uncooperative ex-husband. He stopped paying the two mortgages on the investment property and then filed for bankruptcy protection to evade his joint liability for the debt.<sup>4</sup> However, it appears that the financial fallout from this situation has been limited to the house and the two mortgages.

Applicant meets significant mitigating factors for financial considerations. While her financial difficulties are recent, they were limited to the one house, and the circumstances under which they occurred are unlikely to recur.<sup>5</sup> Applicant proceeded reasonably during the divorce and was unaware of the actions being taken by her ex-husband. This was clearly a circumstance beyond her control, and Applicant acted responsibly in addressing her debts under the circumstances.<sup>6</sup> Although the house was foreclosed upon, she remained current on her other expenses. While there is no evidence that she sought credit counseling, her professional qualifications as a controller make this less significant, and it does not otherwise appear that Applicant was

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<sup>3</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>4</sup>¶ 19(a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

<sup>5</sup>¶ 20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

<sup>6</sup>¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

living beyond her means in any regard.<sup>7</sup> The only unknowns in the case are whether there will be a deficiency when the foreclosure process is completed and whether the lender will forgive the debt, resulting in income to Applicant that may be taxable. However, Applicant appears able to resolve any remaining liability on the house.<sup>8</sup> Finally, given Applicant's favorable work and character references, her otherwise clean financial record, and the peculiar convergence of events that lead to the financial problems, the record does not suggest that Applicant's financial problems will recur. Accordingly, I conclude Guideline F for Applicant.

### **Formal Findings**

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraphs a-c:	For Applicant

### **Conclusion**

In view of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

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JOHN GRATTAN METZ, JR  
Administrative Judge

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<sup>7</sup>¶ 20(c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

<sup>8</sup>¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.