



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-10045

Appearances

For Government: Carolyn H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro se*

October 28, 2011

Decision

HARVEY, Mark, Administrative Judge:

Applicant had three delinquent real estate-related debts, pertaining to two investment properties. The three debts totaled about \$577,000 at the time the properties went to foreclosure. Applicant has the financial resources available to her to resolve these three debts; however, she does not have a responsible plan for resolving them. Financial considerations concerns are not mitigated. Access to classified information is denied.

Statement of the Case

On January 31, 2011, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (hereinafter SF-86) (Government Exhibit (GE) 1). On May 3, 2011, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to her, alleging security concerns under Guideline F (financial considerations) (Hearing Exhibit (HE) 1). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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) promulgated by the President on December 29, 2005. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and it recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On May 20, 2011, Applicant responded to the SOR. (HE 3) On July 22, 2011, Department Counsel was prepared to proceed. On August 24, 2011, the case was assigned to me. On September 7, 2011, DOHA issued a hearing notice setting the hearing for September 28, 2011. (HE 2) The hearing was held as scheduled. At the hearing, Department Counsel offered seven exhibits (GE 1-7) (Transcript (Tr.) 16), and Applicant offered 16 exhibits. (Tr. 17-18; AE A-P) I admitted GE 1-7 and AE A-P. (Tr. 16, 18) Additionally, I admitted the SOR, response to the SOR, and the hearing notice. (HE 1-3) On October 12, 2011, I received the hearing transcript.

Findings of Fact¹

Applicant admitted responsibility for the debts alleged in SOR ¶¶ 1.a to 1.c. (HE 3) Her admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 52-year-old employee of a defense contractor, who is seeking reinstatement of her security clearance. (Tr. 5; GE 1) In 1977, she graduated from high school, and in 1982, she received her bachelor's of science degree in business administration. (Tr. 5) In 1988, she was awarded a master's degree in business administration. (Tr. 5-6) In 1983, she married, and her children were born in 1993, 1996, and 1998. (Tr. 6; GE 1 at 21-23) She has held a secret clearance since June 2009. (Tr. 7)

Financial Considerations

In 2007, Applicant and her husband purchased three investment properties in Florida, and one each in Texas and Nevada. (Tr. 24-25) Applicant and her husband acted reasonably and responsibly in their resolution of the loans relating to the Florida properties.² Applicant and her husband are sophisticated real estate investors who have owned 14 properties since 1984. (Tr. 15) Resolution of three loans used to procure the

¹The facts in this decision do not specifically describe employment, names of witnesses, or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information. Unless stated otherwise, the sources for the facts in this section are Applicant's SF-86 (GE 1) or her October 11, 2010 Office of Personnel Management (OPM) investigative personal subject interview (PSI). (GE 2 at 4-12)

² In 2007, Applicant and her husband purchased three properties in Florida that were in preconstruction. (Tr. 52-54) The builder and bank had financial problems and Applicant lost money settling the debt. (Tr. 52-53) The funds for the settlement came out of a home equity loan on their residence. (Tr. 53) Applicant repaid the home equity loan. (Tr. 61)

investment properties in Nevada and Texas are the sources of the security concerns in this case.

The Nevada Property

Applicant and her husband purchased a residential-type investment property in May 2007 in Nevada for \$359,000 with a down payment of \$16,000. (Tr. 28-29; GE 2 at 4) This property was encumbered with a first loan of \$280,000 at a 7% fixed interest rate and a home equity line of credit (HELOC) for about \$56,000 with an adjustable, interest-only loan (interest rate varied from 3.5% to 5%). (Tr. 28-29; GE 3 at 11) She received a bonus or payment at the closing from the builder. (GE 2 at 4) The monthly payment to the lenders was about \$2,500. (Tr. 29-30) The tenant for the first three months paid monthly rent of \$1,500. (Tr. 30) The next tenant only paid \$1,375 per month. (Tr. 31) In January 2009, Appellant stopped making payments for four months on both mortgages. (Tr. 31) Applicant and her husband decided to stop making payments because his pay was reduced 10%, and he was furloughed ten days in 2009. (Tr. 31; GE 2 at 5) They also stopped making payments to get the bank's attention because the bank would not consider a loan modification while the payments are current. (Tr. 32) In 2009, they made four payments totaling \$9,277 on the first loan and six payments totaling \$1,847 on the HELOC. (Tr. 33; GE 3 at 17) However, their tenant made 11 payments totaling \$14,267. (Tr. 33; GE 3 at 17) Their tenant moved out in November 2009. (Tr. 33; GE 3 at 17) They did not have a tenant after December 2009. (Tr. 37; GE 2 at 17) In 2009-2010, they listed the property for a short sale initially at \$179,000 and then at \$159,000. (Tr. 34; GE 2 at 6) They also requested that the lender accept a deed in lieu of foreclosure. (Tr. 34) Applicant believes the deed in lieu of foreclosure was approved; however, for some reason the transaction was not completed. (GE 2 at 6; GE 3 at 11-12) The lender proceeded with the foreclosure in July 2010, and a trustee sale was attempted on August 2, 2010. (GE 2 at 7; GE 3 at 11, 12) However, the property was not sold and went into foreclosure. (GE 2 at 7) The lender provided an Internal Revenue Service (ISR) Form 1099-A, Acquisition or Abandonment of Secured Property, which included the following information: balance of principal outstanding of \$286,989; fair market value of property of \$325,453; date of lender's acquisition of property of August 2, 2010; and the borrower was personally liable for payment of debt. (AE G, P) It is unclear how the lender determined the fair market value. Applicant has not received a 1099-C from the IRS.

In sum for the Nevada property, Applicant's most recent payment to the creditor of the first loan of \$286,989 was \$2,194 in August 2009. (Tr. 37; GE 3 at 17) Her most recent payment to the creditor of the HELOC of about \$55,000 was \$154 in October 2009. (Tr. 37; GE 3 at 17) Once Applicant became employed by the contractor in 2009, she and her husband could afford the negative cash flow on the Nevada property; however, she concluded that continuing to make payments made poor business sense because the decline in value was so substantial that the property was a "lost cause." (Tr. 56-57) It was very unlikely that the property would appreciate enough to become profitable. (Tr. 56-57) If the creditor releases her from liability for the first loan, she plans to argue that the HELOC was merged into the first loan because they are both from Bank of America-related companies. (Tr. 37-38) Applicant argued that both loans should

be discharged through the foreclosure of the property, and that the two loans were not personal loans. (Tr. 38-39) She said she was not aware of the difference between an IRS Form 1099-A and a 1099-C. (Tr. 39) She did not provide documentation showing the sale price at the trustee sale.³ She did not provide any documentation showing that she was not personally responsible for any shortfall or delinquency resulting after the sale of the Nevada property.

The Texas Property

Applicant and her husband purchased a residential-type property from a builder in about July 2007 in Texas for \$193,000 with a down payment of \$10,000. (Tr. 39; GE 2 at 7; GE 3 at 13) The purchase was made when the home was in preconstruction. (Tr. 52) Their loan of \$193,000 was at a 9.25% fixed, interest-only loan. (Tr. 40) They planned to sell or “flip” the house as soon as it was built. (Tr. 40) They were unable to sell it and unable to rent it to a tenant for sufficient rent. (Tr. 41) From May 2008 until February 2010, they were able to rent the property for \$1,500 per month for a total rent received of \$31,500. (GE 3 at 16) Their mortgage payments during that same time period totaled \$22,046; however, they had missed some mortgage payments. (GE 3 at 16) From April 2009 to July 2009, Applicant made four monthly payments of \$1,728 in accordance with her loan forbearance agreement. (Tr. 43; GE 2 at 8; GE 3 at 16) The objective of these payments was to bring the loan to current status and to encourage the lender to reduce the interest rate on the loan. (Tr. 43) Then Applicant stopped making payments for six months (August 2009 to February 2010) because she was waiting for the lender to favorably modify their loan. (GE 3 at 16) During May 2008 to February 2010, the tenants made all monthly payments except for one payment, which was missed when no tenant was occupying the property. (GE 3 at 16) During that same time period, Applicant missed nine monthly payments to the creditor. (GE 3 at 16) In 2010, the tenants paid \$9,600, and Applicant paid the creditor \$7,920. (GE 3 at 16) From February 2010 to July 2010, Applicant made six, \$1,320 payments to the creditor in an attempt to establish a new forbearance and loan modification. (Tr. 44; GE 2 at 8; GE 3 at 16) At the end of the forbearance negotiation, Applicant received an offer from the lender with a balance of \$225,152 at the same interest rate of 9.25%. (GE 3 at 436, 439) Applicant was “insulted by their offer because they kept the interest rate at 9.25 and basically rolled in all the costs that they had incurred as well as, you know, all the late costs.” (Tr. 44) The lender’s offer, which included mostly principal and interest, indicated the additional charges totaled more than \$32,000. (GE 3 at 436) The new loan balance was \$235,000. (Tr. 44) She declined to accept this “slap in the face.” (Tr. 44)

Applicant put the property on the market for a short sale at \$150,000. (Tr. 45-46) Her tenant provided a buyer, who offered \$135,000. (Tr. 46) The lender wanted Applicant to provide \$15,000 and the lender would absorb the rest of the loss of about \$80,000 to 85,000. (Tr. 46, 58) Applicant had \$30,000 in savings; however, Applicant

³ Sometimes lenders bid the amount of their own loans at trustee sales. If this occurred, Applicant may not owe anything to the lender. Lenders take this action to support the market value of this property and other properties in the area when the lender has other mortgage loans.

counter-offered \$6,000 for her contribution to the settlement.⁴ (Tr. 46-47) The lender was firm about wanting \$15,000, and Applicant decided to “walk away” from their offer. (Tr. 47) She had about \$8,000 in excess rents, which included the tenant’s deposit of \$1,500 and she did not want to tap into the family savings to pay the lender. (Tr. 48) The lender foreclosed on May 2, 2011. (Tr. 45) Applicant had a tenant in the property in 2011. (Tr. 44) Applicant wrote her tenant a check for \$4,500 and returned his rent-deposit check for \$1,500 to reimburse their tenant for two months rent and to return the tenant’s security deposit. (Tr. 22; AE K) She did not provide documentation showing that she was not personally responsible for any shortfall or delinquency resulting after the sale of the Texas property. (Tr. 59-60)

Other Properties and Investments

Applicant and her husband purchased their residence in California in 1986. (Tr. 26) In 2006, they had a primary mortgage of \$206,000, and they borrowed \$330,000 secured by their home to invest in real estate, corporate, and stock opportunities. (Tr. 27, 50) Their corporate and stock investments did poorly and lost money. (Tr. 65-66) They currently have two loans secured by their residence in the amounts of \$639,000 and \$112,000. (Tr. 26) They paid the first loan down from \$690,000 to \$639,000. (Tr. 62) They pay an extra \$120 to \$1,000 extra on the first loan and \$1,200 extra on the second loan each month to reduce the loan principle. (Tr. 28) Their equity in their home is about \$200,000. (Tr. 68) Applicant and her spouse have about \$328,000 invested in stocks and bonds. (GE 2 at 12) On December 31, 2010, their mutual fund account showed a balance of \$256,882. (GE 3 at 20) On December 31, 2010, one IRA account showed a balance of \$76,251. (GE 3 at 21) On December 31, 2010, another IRA account had a balance of \$63,432. (GE 3 at 22)

Applicant owns a valuable piece of property in another state. They paid \$250,000 for the property in 1999. (Tr. 65) They have about \$370,000 in IRAs. (Tr. 68) They each put 12% of their income into 401(K) accounts, and each account has about \$45,000 in it. (Tr. 68) They have about \$30,000 in readily available cash. (Tr. 68)

Applicant’s current annual pay is \$111,972, and her husband’s annual pay is \$131,000.⁵ (Tr. 21-22; AE H, I) In October 2010, Applicant and her husband’s net

⁴ Applicant provided an email which indicated the buyer increased their offer by \$3,000 to \$138,000 and Applicant offered \$3,000 in attempt to satisfy the lender. (AE N at 10-14)

⁵ Applicant and her husband’s income increased substantially when she returned to the workforce in 2009. Their gross taxable income from wages and salary was \$127,049 in 2008 and \$193,491 in 2009, even though she did not work outside their home for a full year in 2009. (GE 3 at 26) On February 2, 2011, Applicant submitted a personal financial statement (PFS) in response to DOHA interrogatories, which was similar to the information provided to the OPM investigator during Applicant’s PSI. *Compare* GE 2 at 12 *with* GE 3 at 3. Applicant and her husband’s net salary was \$14,488, their monthly expenses were \$5,188, their monthly payments were \$5,650, and their net remainder after deducting the rental income on the foreclosed property was \$2,150. (GE 3 at 3) At her hearing, she provided a statement showing monthly net income of \$13,818, monthly expenses of \$12,981, and net remainder of \$837. (AE J) Their daughter’s monthly college expense of \$2,000 was a new expense, and their monthly mortgage payments of \$5,600 were their largest expense. (AE J)

monthly income was \$14,216 (includes rent from their Texas property). (GE 2 at 11) Total monthly expenses were \$10,099. (GE 2 at 11; GE 3 at 3) Their monthly net remainder was \$4,117. (GE 2 at 12) After deducting the rent income from the property in Texas, their monthly remainder is \$2,617. (GE 2 at 12) All credit card accounts are current. Applicant worked diligently to sell the Texas and Nevada properties, to renegotiate their loans, and to avoid foreclosure. (Tr. 69-70) This diligent effort did not include significant use of Applicant and her husband's income from employment, liquidation of part of their 401(K) accounts, or borrowing against their property in another state to comply with their contractual obligations on the three loans. She said the banks failed to show the same level of professionalism and responsibility to resolve these three debts. (Tr. 69-70) There is no evidence of security violations, reportable criminal offenses, or drug or alcohol abuse. (GE 1)

Character Evidence

Applicant provided letters from two managers or supervisors at her employment, a friend, and her senior pastor. (AE A-D, O) They describe her as diligent, meticulous, trustworthy, conscientious, ethical, loyal, honest, and responsible. She is a faithful wife and devoted mother. She has made substantial contributions to mission accomplishment. She has endeavored to resolve her financial problems. They recommended reinstatement of her security clearance.

Applicant's evaluations laud her as an "exceptional contributor" to her employer with strong communication skills. (AE E, F) She is intelligent, organized, diligent, responsible, and shows outstanding initiative and leadership.

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 that, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or 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. Adverse clearance decisions are made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. 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 not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concern is under Guideline F (financial considerations) with respect to the allegations set forth in the SOR.

Financial Considerations

AG ¶ 18 articulates the security concern 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.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant's history of delinquent debt is documented in her credit reports, her responses to DOHA interrogatories, her SOR response, and in her hearing transcript. Applicant's has three delinquent debts totaling about \$577,000 at the time the properties went to foreclosure. Her real estate debts have been delinquent for more than a year, as she stopped making payments on the Nevada property in October 2009, and she stopped making payments on the Texas property in July 2010. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five 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.

Applicant's conduct in failing to resolve three debts totaling about \$577,000 at the time the properties went to foreclosure warrants partial application of AG §§ 20(b), 20(c), and 20(d).⁶ Although there is no evidence of financial counseling, Applicant is knowledgeable about real estate and finances, and financial counseling is unnecessary for her. She has a master's degree in business administration. She showed some good faith when she admitted responsibility for the three real estate-related debts on her SF-86, to the OPM investigator, in response to DOHA interrogatories, in her SOR response, and at her hearing. Applicant's financial situation was damaged by the real estate downturn, which caused substantial reductions in the value of her five properties (three in Florida, one in Texas, and one in Nevada), her home, and some of her other investments. However, Applicant's financial circumstances have been relatively stable since she began her employment with the contractor early in 2009. She provided ample information of her extensive efforts to convince lenders that she was in a financial hardship and could not afford the monthly payments on her three debts. She attempted to convince the lenders that they should reduce the amount or the interest rate or both of her loans. She had an opportunity to resolve a \$235,000 debt through a short sale. The buyer would contribute either \$135,000 or \$138,000 and the lender wanted Applicant to contribute \$15,000. The lender was willing to lose about \$80,000 from the amount Applicant contracted to pay in the transaction. Applicant maintained that she should only pay \$3,000 to \$6,000, even though she had \$30,000 in savings and hundreds of thousands of dollars in other investments that could be utilized to resolve her delinquent investment debts. Applicant abandoned the two properties in Texas and Nevada, and the lenders have foreclosed. Applicant did not provide persuasive evidence that she is no longer liable on the three loans with a total possible delinquency of several hundred thousand dollars. Applicant has not met her burden of establishing that she has no financial liability on the three loans.

⁶The 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) 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)).

Applicant did not establish that she acted responsibly under the circumstances. Applicant did maintain contact with all of her creditors.⁷ However, there is no evidence that she made any payments on any of the three loans since July 2010. She has no intention of making payments at this time. There is insufficient evidence that her financial problem is being resolved. Financial considerations concerns are not mitigated under Guideline F.

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 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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

There are some facts supporting mitigation of security concerns. The downturn in real estate values, especially in Florida, Texas, and Nevada, is a circumstance beyond Applicant's control, which caused her and her husband to lose money on their real estate investments. It also caused her to lose money on some of her other investments and reduced the value of her home. Applicant has strong connections to the United States. She is a faithful wife and devoted mother. There is no derogatory information concerning Applicant's police records, any U.S. arrests, illegal drug possession or use, or alcohol-related incidents. She is loyal to the United States. Her employer considers her to be intelligent, organized, diligent, meticulous, trustworthy, conscientious, ethical, loyal, honest, and responsible. She has made substantial contributions to mission accomplishment. Her managers recommend reinstatement of her security clearance.

⁷“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.

Her demeanor, sincerity, and honesty at her hearing are important factors militating towards approval of his access to classified information.

The financial circumstances tending to support denial of Applicant's clearance are more significant than the factors weighing towards approval of his clearance at this time. Applicant failed to take reasonable actions to settle her three real estate-related debts. Instead, she and her husband chose to let the three debts go into strategic default. She and her husband recognized that it would be many years before the two real estate properties would appreciate sufficiently to be sold for the amount of money owed to the creditors. They made a business decision that either the creditors had to substantially improve the terms of the lending contracts or Applicant would default, even though they had ample resources to comply with the terms of their agreements. The problem now is that the status of the three loans is unclear. The lenders may seek judgments against Applicant and possibly garnish Applicant's pay. The lenders may have already released Applicant from liability or may release her from liability after receiving a settlement payment. We do know at this point the precise status of the three loans. We do know that Applicant did not show a good-faith effort to comply with the contracts she signed, and she had the means and opportunity to fully comply with the agreements she made. The contracts with the lenders do not permit the lender to keep part of the profit if the investment property appreciates in value, and the lender is not supposed to reduce the amount or interest rate of the loan on an investment property if the investment property depreciates in value. If Applicant and her husband reduced their standard of living and expenses, or reduced their payments into their retirement accounts or the additional payments on their home loans, they could have increased their net funds available to address the three debts. There is no evidence of any payments on the three loans after July 2010, even though Applicant has been employed for more than two years, and the family annual gross income from salaries is about \$242,000. Applicant has failed to provide sufficient evidence of progress resolving her three delinquent real estate-related debts to establish her financial responsibility.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has not fully mitigated the financial consideration 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

Subparagraphs 1.a to 1.c: 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.

Mark Harvey
Administrative Judge