



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



In the matter of: )  
)  
) ISCR Case No. 11-00027  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Marc G. Laverdiere, Esquire, Department Counsel  
For Applicant: *Pro se*

August 31, 2011

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Due to a decline in his business, Applicant’s spouse and Applicant fell behind in the mortgage payments on an investment property that they purchased in March 2005 for \$285,750. They tried to modify the loan without success, and a judgment of foreclosure was entered against them in February 2010 in the amount of \$316,381.44. A collection agency is pursuing them for \$50,000, but the debt is not likely to be a source of financial pressure for Applicant. Clearance granted.

**Statement of the Case**

On March 25, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F, Financial Considerations, which provided the basis for its preliminary decision to revoke her security clearance. DOHA acted under 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 (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

On April 19, 2011, Applicant responded to the SOR. On May 4, 2011, the case was assigned to me to schedule a hearing and consider whether it is clearly consistent with the national interest to grant or continue a security clearance for her. I scheduled a hearing for June 1, 2011, and it was convened as scheduled. Twelve Government exhibits (GE 1-12) and five Applicant exhibits (AE A-E) were admitted without objection. Applicant also testified, as reflected in a transcript (Tr.) received on June 15, 2011.

### **Findings of Fact**

The SOR alleged under Guideline F, Financial Considerations, that as of March 2011, Applicant owed a judgment of \$316,381 to a mortgage lender. Applicant admitted the allegation. Her admission is incorporated as a finding of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 52-year-old technician, who has worked for the same defense contractor since March 1978. She holds a confidential-level security clearance, which was last renewed in March 1995. (GE 1.)

Applicant married her current spouse in March 1995. She has an adult son from a previous relationship. (GE 1.) In June 1998, Applicant and her spouse bought their home with a mortgage of \$210,000. In October 2002, they refinanced with a new lender, taking on a conventional 15-year mortgage loan of \$203,000, to be repaid at \$2,070 per month. They have not been late in their mortgage payments, which are now about \$2,300 per month. (GE 11, 12; Tr. 34.) As of December 2010, the principal balance of the loan was \$104,161. (GE 11.) They owed about \$99,000 on the mortgage as of June 2011. (Tr. 40.)

In March 2004, Applicant and her spouse refinanced a \$75,000 joint home equity line of credit they had held since August 2000 through a new loan with a \$125,000 limit. They made their payments as agreed. (GE 12.)

In March 2005, Applicant and her spouse bought a home as an investment property. They took on a 30-year conventional mortgage loan of \$285,750 (SOR 1.a), to be repaid at \$1,369 per month. In January 2008, Applicant and her spouse refinanced their home equity loan with a new lender, taking on debt of \$338,000. They used over \$300,000 of the loan to purchase three undeveloped lots in the same locale as their investment property. (Tr. 42-45.) They planned on selling the land within a couple of years because property values were escalating in the area. (Tr. 44.) Applicant subsequently paid down the home equity loan by selling another property. (Tr. 45.)

Applicant and her spouse managed to make their payments on the home equity loan by paying only the interest on the debt each month, which was acceptable to the lender. (Tr. 41.) They also made their monthly payments on the mortgage for the investment property through July 2008. (GE 11, 12; Tr. 33, 35.) Applicant's spouse was a self-employed arborist, but his business had declined to where they could no longer afford the monthly payment, which by then was about \$1,800. (Tr. 48.) They stopped paying on the loan in August 2008 and requested a "workout" of their loan through the bank's loss mitigation department. In

late August 2008, they were denied on the basis of insufficient income. (GE 9.) As of November 2008, their account was 120 days delinquent. (GE 11.) In late May 2009, they listed the property with a realtor for a short sale. (GE 3.) A second request for a loan modification was denied in July 2009 because information required to complete the lender's review of the loan had not been received. (GE 8.) It is unclear in the record whether Applicant was at fault. Applicant and her spouse continued to pursue a loan modification as of December 2009. (GE 7.)

In February 2010, the mortgage lender obtained a judgment of foreclosure against Applicant and her spouse in the amount of \$316,381.44 (the \$285,750 principal balance plus interest and fees) on the investment property. A foreclosure sale was scheduled for early June 2010. (GE 4.) In March 2010, Applicant and her spouse retained the services of a law firm to act on their behalf in resolving the mortgage loan, including among other things, forbearance/workout and loan modification. (AE C.) In early April 2010, an attorney from the firm notified Applicant that the bank would not approve their application because the loan was 22 months in arrears, and they would have to pay half of the arrearage for the modification to be considered. (GE 6.) Yet in late April 2010, the lender moved to cancel the foreclosure sale set for June 2010 because Applicant and her spouse were involved in loss mitigation with the lender. By mid-May 2010, Applicant and her spouse had been unsuccessful in resolving the loan, so the lender had the foreclosure sale rescheduled for June 23, 2010. On June 21, 2010, the lender moved to cancel the foreclosure sale because the mortgage loan was under review to determine if Applicant and her spouse were eligible for any programs available to resolve the matter in lieu of foreclosure. Applicant and her spouse were determined ineligible for the Home Affordable Modification Program because the property was not their primary residence. (AE D.)

On September 21, 2010, Applicant executed an Electronic Questionnaire for Investigations Processing (e-QIP) for her security clearance. She indicated that the investment property was in foreclosure proceedings and that she and her spouse jointly owed a \$318,000 judgment for the delinquent mortgage. (GE 1.)

On October 8, 2010, the lender bought the property in foreclosure for \$42,100 (GE 5.) On October 12, 2010, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) about the delinquent loan. Applicant attributed the debt to the downturn in the economy, which led to a decline in her spouse's income. Applicant indicated that the investment property had not yet gone to auction. She and her spouse eventually discontinued negotiations with the lender in July 2010 because of a lack of progress on modifying the loan. Applicant indicated that she had no intent of repaying the debt balance because the bank would not negotiate, and the property was worth less than the loan debt. Applicant maintained that she was otherwise capable of meeting her financial obligations on time. (GE 2.) As of January 2011, Applicant's open credit card accounts were current. She owed a \$351 balance on one credit card. The principal balance of their home equity loan was \$164,804. Payments, which cover the interest only, were being made according to terms. (Tr. 41.) The mortgage on their residence was being paid on time as well. As for the defaulted mortgage on the investment property, the lender listed the balance on her credit record as zero, "foreclosure, collateral sold." (GE 11.)

On March 1, 2011, Applicant informed DOHA that the property was sold by the mortgage lender to a private investor on February 3, 2011, for \$63,000. She provided a personal financial statement, reflecting a net monthly remainder of \$495.28 based on net income of \$4,224.28, \$1,120 in expenses, and \$2,609 in debt payments (\$2,295.47 on their home loan and \$313.53 on the line of credit). (GE 2.)

Applicant's and her spouse's delinquent mortgage loan debt was sold, and a collection agency is pursuing them for \$50,000 of the loan balance. In late May 2011, Applicant and her spouse hired a bankruptcy attorney for advice on how to proceed. (Tr. 49-50.) Applicant has not contacted the collection agency about a possible settlement because of her spouse's illness. (Tr. 52.) Because of the foreclosure of their investment property, their home equity lender will let them borrow only another \$30,000 to \$35,000. (Tr. 54.) Their residence is worth about \$460,000. (Tr. 54.)

Applicant's net earnings fluctuate depending on whether she has overtime available. (GE 10; Tr. 37.) She is paid \$25.48 per hour and her take-home pay is around \$681 per week without overtime. (GE 10.) She earns between \$60,000 and \$60,500 annually. (Tr. 34.) She has \$30,000 in a Roth IRA. (Tr. 46.) By June 1, 2011, Applicant's spouse was unable to work because of his deteriorating medical condition. (AE A; Tr. 37.) To meet their obligations on time, they rely in part on funds he had in an account when he closed his business. (Tr. 37.) Their monthly expenses and debt payments total about \$3,763. (Tr. 38-40.) With her spouse at high risk of renal failure (AE A), Applicant will sell their home if necessary to pay the principal balance of their home equity loan, which comes due in January 2018. (Tr. 41.) They recently sold one of their three vehicles, a 2003 model-year sports car, to pay for her spouse's medical treatment. (Tr. 43.) The three undeveloped lots have been for sale for the past six months, but they have had no offers for the land. Each plot is worth about \$12,000. (Tr. 42-43.)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has 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). 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 required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall 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 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 that 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. Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern for Financial Considerations is set out in AG ¶ 18, as follows:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant’s and her spouse’s 2008 default on the investment property mortgage implicates disqualifying condition AG 19(a), “inability or unwillingness to satisfy debts.” The original lender, who foreclosed in 2010, is not pursuing Applicant or her spouse for the \$316,381 judgment. The creditor lists a zero balance on the account as of January 2011. However, their bad loan has been sold, and the current holder of the debt is attempting to collect \$50,000 from them.

Applicant has no record of any other delinquencies. AG ¶ 20(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,” is pertinent because of the isolated nature of the debt.

However, it is difficult to fully apply AG ¶ 20(a), given she and her spouse may yet be held liable for a sizeable portion of their loan deficiency.

AG ¶ 20(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,” applies in that the economic downturn led to the loss of business for her spouse such that they could no longer afford the \$1,369 mortgage payment. Her spouse’s deteriorating medical condition, which has made it difficult for him to work, is another factor outside of Applicant’s control which is mitigating of their failure to pay the debt, although AG ¶ 20(b) does not address the financial judgment concerns raised by their purchase on speculation of this property, and of three other undeveloped lots for \$300,000 using their line of credit.

AG ¶ 20(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,” does not apply because the debt is still outstanding with no plan in place to address it. However, Applicant did not walk away from her obligation. She and her spouse requested a “workout” of the loan almost immediately on realizing that they could no longer afford to make their monthly payment in August 2008. They continued to seek a modification of their loan from the lender, and they listed the property for sale in 2009. After the judgment of foreclosure was issued in February 2010, they retained an attorney to negotiate on their behalf with the lender toward a modification or settlement. After the bank bought the property in foreclosure, Applicant and her spouse put their undeveloped properties on the market. Although Applicant indicated in October 2010 that she did not intend to repay the defaulted mortgage, she and her spouse recently retained a bankruptcy attorney for advice on how to respond to current collection efforts. Her recent delay in addressing the debt is due to her spouse’s medical issues, which have understandably taken priority. AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” applies.

### **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 conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).<sup>1</sup> Applicant and her spouse took on a large amount of debt within the last six years to purchase investment property. While one has to question the wisdom in doing so, especially given Applicant’s spouse’s deteriorating medical condition, she had stable employment, and

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<sup>1</sup>The adjudicative process requires assessment of the following factors:

- (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.

he apparently had funds in his business account sufficient to make their investment mortgage payments. Applicant and her spouse made over three years of timely payments before the downturn in the economy had a destabilizing effect on their finances. Not only did her spouse's business suffer, but they also lost the equity in their investment properties.

Applicant candidly volunteered at her hearing that the current holder of the debt wants \$50,000 from her and her spouse, at a time when they can depend only on her income. This is a large debt in relation to her annual earnings of \$60,000 to \$65,000, so the risk of Applicant having to engage in illegal acts to generate funds must be considered. Applicant had monthly discretionary income of \$495.28 as of March 2011, based in part on her spouse's net salary of \$1,500 per month. While their monthly expenses had increased by only \$30 as of June 2011, her spouse was unable to work, and they had to rely on the funds, which have been diminishing, in his business account. Without knowing the current balance of his account, it is unclear whether they have the funds to make a reasonable settlement offer on the defaulted loan.

Applicant is a long-time defense contractor employee, who pays her living expenses on time. She has little credit card debt, and any balances are paid in full by their due dates. The mortgage default is not characteristic of her handling of her finances in that there are no other delinquent accounts. Applicant's and her spouse's home equity debt, which was about \$164,804 in December 2010, is not scheduled to come due until January 2018. She has \$30,000 in Roth IRA assets and some equity in her residence. She is willing to sell her home if necessary to pay her debts. If she is required to repay a sizeable debt to the current holder of the bad loan, she is likely to do so through legal means. After considering the evidence of record, I conclude it is clearly consistent with the national interest to continue Applicant's security clearance eligibility.

### **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 the record in this case, it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Elizabeth M. Matchinski  
Administrative Judge