



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



In the matter of: )  
)  
) ISCR Case No. 11-06407  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: *Pro se*

January 24, 2012

**Decision**

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate security concerns arising under Guideline F (Financial Considerations). Clearance is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on March 23, 2011. On August 30, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOHA acted under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

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 Applicant's security clearance. On September 19, 2011, Applicant answered

the SOR and elected to have her case decided on the written record in lieu of a hearing. On November 8, 2011, the Government compiled its File of Relevant Material (FORM) that contained documents identified as Items 1 through 11.

On November 9, 2011, DOHA forwarded to the Applicant a copy of the FORM with instructions to submit any additional information and objections with 30 days of its receipt. Applicant received the FORM on November 11, 2011 and did not submit any objections or additional matters within the allotted time period. The case was assigned to me on January 12, 2012. Items 1 through 11 are entered into the record.<sup>1</sup>

### **Findings of Fact**

Applicant is a 67-year-old employee of a defense contractor. Her e-QIP indicated that she has worked at her current job since June 2005. She obtained a bachelor's degree in 2005 and received a management certificate from a college in 2010. She divorced in 1986. She has three children, ages 31, 33, and 36. She has held a security clearance since at least 2006.<sup>2</sup>

The SOR alleged that Applicant had one foreclosed mortgage in the amount of \$172,000 (SOR ¶ 1.b) and two mortgages in the foreclosure process that were past due in the total amount \$42,000 with balances totaling \$347,000 (SOR ¶¶ 1.a and 1.c). In her Answer to the SOR, Applicant admitted each of the allegations. Her admissions are incorporated herein as findings of fact.<sup>3</sup>

During an interview with an Office of Personnel Management investigator on April 13, 2011, Applicant attributed her financial problems to a collapse of the housing market. In 2007 and 2008, Applicant purchased three condos with the intent of renting them and eventually selling them for a profit. They were located thousands of miles from where she resided and worked. She purchased the condos with adjustable rate mortgages. These properties had no second mortgages or home equity lines of credit. One of the mortgages was originally for \$162,360 (SOR ¶ 1.a), another was for \$176,300 (SOR ¶ 1.b), and the remaining one was for \$174,500 (SOR ¶ 1.c). Initially, the monthly mortgage payment on each condo was between \$600 and \$700. At that time, she was renting each condo for approximately the amount of its mortgage payment. She began experiencing difficulties in making the mortgage payments in 2009. Due to a downturn in the economy, the monthly mortgage payment on each condo went up to \$1,500 to \$1,700. She also had to pay homeowner association (HOA)

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<sup>1</sup> In the FORM, Department Counsel requested that I take administrative notice of Item 11, an Equifax Training Brochure copyrighted in 2002. This item is not an appropriate matter for administrative notice. It was entered into the record along with the other documents presented in the FORM.

<sup>2</sup> Items 3, 5, 6, and 7.

<sup>3</sup> Items 1 and 3. Substantial evidence of the delinquent mortgages is contained in credit reports dated March 31, 2011; August 16, 2011; and November 8, 2011. See Items 6, 9, and 10.

fees, repair bills, and several HOA assessments on these properties. The housing market would not support her increasing the rent to cover the higher mortgage payments and other expenses. She stated that she began using her savings to make the mortgage payments, but did not indicate how long she made those payments from her savings. She estimated that, at times, her out of pocket payments for the condos was several thousand dollars above the amount received in rent.<sup>4</sup>

In her response to interrogatories on July 21, 2011, Applicant indicated that she had arranged to have the monthly HOA fees (\$281 per condo) paid automatically from her bank account. She stated that the HOA made a change (details unknown) that caused the automatic payments to be discontinued unbeknownst to her. It took her months to clear up this issue with the bank. This problem resulted in the HOA assessing her late fees and penalties. As of mid-2010, she owed the HOA \$4,858 for one condo, \$3,421 for another, and \$5,116 for the third. When she submitted her response to the interrogatories a year later, she stated those charges were probably higher at that point. She attempted to make payment arrangements for these charges, but the HOA refused to work with her and demanded full payment. In August 2010, the HOA took action to have her condo tenants pay their rent directly to it. She indicated that, at that point, she could no longer make the mortgage payments.<sup>5</sup>

In her response to the interrogatories, Applicant also indicated that another major factor that negatively impacted her ability to make the mortgage payments was her loss of reserve funds. She invested her reserve funds in an investment club that was deemed a Ponzi scheme and was under investigation. She stated that she had used the reserve funds to help make out-of-pocket payments on the mortgages. However, she along with her friends lost all the money they invested in the club. However, the amount of reserve funds she lost is unknown.<sup>6</sup>

Applicant consulted with a real estate agent about short sales, but that was not a viable option because the condos would be listed for a third of their original purchase price and there was an excess of short sales in the local area. She also contacted a bank financial advisor and an attorney about her financial situation. She indicated the attorney asked if she wanted to keep these properties, but indicated "there was no sense in holding on to these properties that I had bought each for around \$190,000.00 and they are valued at \$47,000 each, with no buyer, no tenant's rent income."<sup>7</sup>

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<sup>4</sup> Items 3, 7, and 8.

<sup>5</sup> Item 8.

<sup>6</sup> *Id.* The status of the investigation into the investment club and details about the investment club, including the number of its members, are unknown. Applicant also indicated that loan modification was not an option because these were investment properties.

<sup>7</sup> Items 6, 7, and 8.

In her Answer, Applicant indicated that she had every intention of settling the alleged debts in an orderly and financially responsible way. She also stated that she is consulting with a foreclosure prevention counselor about conveying the condos involved in SOR ¶¶ 1.a and 1.c through a deed in lieu of foreclosure. However, she presented no documents reflecting any negotiations or offers regarding those efforts. Her Answer also indicated that she was in the process of disposing of the condo involved in SOR ¶ 1.b through a deed in lieu of foreclosure/short sale, but that property has already been foreclosed. No evidence was presented that the lenders rights to collect were limited by the terms of the mortgages, that they were willing to forgo efforts to collect the mortgage deficiencies, or that a deficiency judgment was precluded by local law.<sup>8</sup>

Applicant submitted a Personal Financial Statement (PFS) on July 21, 2011. The PFS indicated that her monthly net income was \$7,579 and that her monthly expenses and debt payments were \$7,401, which left her a net monthly remainder of \$178. The PFS did not list payments towards the three alleged mortgages. However, it did list that she is making monthly payments towards four other mortgages. She indicated that the balances of those four mortgages were \$395,304, \$244,571, \$139,843, and \$36,112. The latter mortgage was a second mortgage. These mortgages were opened in 2005 and 2006. Her monthly income included her salary, rent from properties, and social security payments. Her PFS also indicated that she had \$181,000 in a 401(k) account and \$11,800 in savings.<sup>9</sup>

Applicant's work performance evaluation for 2009 reflected that she met or exceeded expectations in her job. Her manager indicated that she is multi-talented and continually surprised him regarding how much work she can handle and still maintain high standards of excellence. Although her e-QIP indicated that she has worked for her current employer for the past six years, she stated in her Answer that she worked for that company for over 21 years. She stated that her financial problems are limited to the three alleged mortgages and indicated that she was current on her other financial obligations.<sup>10</sup>

## Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense 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. The U.S.

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<sup>8</sup> Item 3.

<sup>9</sup> Items 6, 8, 9, and 10.

<sup>10</sup> Item 3, 5, and 8.

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).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs 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 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, to reach his decision.

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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. 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.” See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or 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 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed 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

### 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

In 2007 and 2008, Applicant purchased three condos for investment purposes. The mortgages on the condos totaled over \$500,000. In 2009, she began experiencing problems in making the mortgage payments and eventually defaulted on the three mortgages. One mortgage has been foreclosed and the remaining two are in the foreclosure process. This evidence is sufficient to raise the above disqualifying conditions.

Four financial considerations mitigating conditions under AG ¶¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Based upon what is known about Applicant's financial situation in 2007, an overarching concern is her decision to purchase the three condos. Throughout her financial problems, she has been continuously employed in her current job. Prior to 2007, she was financially responsible for four mortgages totaling \$800,000. Her income, assets, and other liabilities in 2007 are unknown. In her 2011 PFS, she indicated her net monthly income was \$7,579, which included her salary, rent from properties, and social security payments. The PFS also indicated she was making monthly payments on the four mortgages that she obtained before 2007 and that she had a net monthly remainder of \$178. While that PFS was submitted three to four years after she purchased the three condos in 2007 and 2008, it is the best indicator in the record of what her financial situation was back then. After purchasing the three condos, she had seven mortgages totaling about \$1,328,990. The three condos were purchased with adjustable rate mortgages and were rented for the approximate amount of the mortgage payments. This evidence indicates that she was over leveraged and gave herself little flexibility to cope with upward adjustments in the mortgage rates, tenants vacating the condos, HOA assessments, or other expenses associated with condo ownership. When the mortgage rates were adjusted upwards, she was unable to make the payments. While speculative investments are not necessarily an indicator of bad judgment, the nature and level of Applicant's speculation raises doubts about her judgment that remain unresolved.

Applicant's default on the three mortgages is recent, ongoing, and casts doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed her financial problems to an economic downturn that resulted in a collapse of the housing market. That economic downturn was a condition beyond her control. She also indicated that her financial problems were negatively impacted by her bank stopping the automatic payments of her HOA fees and by her losing money in an investment club that was deemed a Ponzi scheme. However, it is unknown whether she monitored her bank statements to ensure the fees were paid or whether she researched the investment club before investing in it. Insufficient evidence has been presented to find these other events were conditions beyond her control. To obtain full credit under AG ¶ 20(b), both prongs of that mitigating condition, *i.e.*, conditions beyond the individual's control and responsible conduct, must be established. Upon experiencing financial difficulties, she reacted responsibly by using her personal savings to make mortgage payments and by examining the possibility of disposing of the condos through short sales, but details of those efforts are unknown. In particular, how long she used her savings to fund the mortgage payments is not known. After consulting with an attorney who asked if she wanted to keep the condos, she decided "there was no sense in holding on to these properties." What action the attorney could have taken to allow her to keep the properties is unknown. Based on the record evidence, I cannot find that Applicant acted responsibly under the circumstances. AG ¶ 20(b) partially applies.

During these financial difficulties, Applicant consulted with a bank financial advisor, an attorney, and a foreclosure prevention counselor. She indicated that she is attempting to resolve the delinquent mortgages through deeds in lieu of foreclosure, but provided no documentation indicating what action has been taken in that regard. The current status of those efforts is unknown. Additionally, no documents were presented to show that she would be relieved of the responsibility to pay for any deficiencies that may arise from the foreclosure proceedings. In short, she presented no convincing evidence of when, or if, her financial problems will be resolved. Based on the record evidence, I cannot find that her financial problems are being resolved, that they are under control, or that she initiated good-faith efforts to resolve them. AG ¶ 20(c) partially applies. AG ¶ 20(d) does not apply

### **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 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 considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has worked for her current employer for over 21 years. Her 2009 work performance evaluation indicated that she met or exceeded expectations in her job. Nevertheless, her financial problems are ongoing and significant. She presented no persuasive evidence of a clear plan for resolving her mortgage indebtedness. Moreover, her decision to purchase three condos in 2007 and 2008 raises unresolved questions about her judgment. After weighing all the evidence in the context of the whole-person concept, I find that Applicant's financial problems remain a security concern.



Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Therefore, I conclude Applicant has not mitigated the security concerns arising under Guideline F.

### **Formal Findings**

Formal findings 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 – 1.c:                      Against Applicant

### **Decision**

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

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James F. Duffy  
Administrative Judge