



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-06620
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel  
For Applicant: Lisa M. Goldblatt, Esquire

09/07/2012

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, exhibits, and testimony, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. Her eligibility for a security clearance is denied.

**Statement of the Case**

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP) on January 19, 2011. On October 28, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. 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 for SORs issued after September 1, 2006.

On December 19, 2011, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on June

14, 2012. On June 25, 2012, DOHA issued a Notice of Hearing, scheduling Applicant's hearing for July 9, 2012. Applicant retained counsel, and, at the request of her counsel, the hearing was rescheduled for July 12, 2012. The hearing was convened as rescheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced five exhibits, which were marked Ex. 1 through 5 and admitted to the record without objection. Applicant testified, called no other witnesses, and introduced four exhibits, which were marked as Ex. A through Ex. D and entered in the record without objection. After Applicant presented her case in chief, the parties agreed to a continuance until July 20, 2012, so that they could clarify and develop certain facts for the record.

When the hearing reconvened, Applicant introduced an additional exhibit, marked as Ex. E, which was entered into evidence without objection. Additionally, Applicant offered a summary spreadsheet, which was identified, marked, and entered in the record without objection as Hearing Exhibit (HE) 1. At the conclusion of the hearing, I agreed to leave the record open for three weeks, until close of business August 10, 2012, so that Applicant could, if she wished, provide additional information for the record. Applicant timely offered one additional exhibit, which was marked as Ex. F and entered in the record without objection. Department Counsel's transmittal memorandum, which stated he had no objection to the admission of Ex. F, is marked as HE 2. DOHA received the transcripts (Tr.) of the hearing on July 20, 2012, and July 30, 2012.

### **Findings of Fact**

The SOR contains seven allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.g.) In her Answer to the SOR, Applicant denied the SOR allegation at ¶ 1.a. She admitted the SOR allegations at ¶¶ 1.b. through 1.g. Applicant's admissions are entered as findings of fact. (SOR; Answer to SOR.)

Applicant is 51 years old, divorced, and the mother of two adult children. She holds a bachelor's degree in organization management, and she has been employed in information technology for approximately 15 years. She was awarded a security clearance in 2003. (Ex. 1; Tr. 48-49.)

Applicant was unemployed for six months in 2001;<sup>1</sup> she and her husband divorced in 2003. She received child support from her former husband for her son, born in June 1988, and her daughter, born in August 1991, until they reached 18 years of age. In 2005, Applicant's daughter was diagnosed with leukemia. Most of the daughter's medical expenses were covered by Applicant's health insurance. (Ex. 1; Tr. 49-52.)

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<sup>1</sup> Applicant was again unemployed from March 5, 2012, until May 31, 2012. (Tr. 35.)

Applicant is a home owner.<sup>2</sup> Both of her adult children now reside with her. Applicant provides college tuition and living expenses for her daughter. She also provides financial support for her son, a recent college graduate, who is using his income to repay his college education loans. (Ex. 1; Tr. 35.)

In 2006, when Applicant was earning approximately \$87,000 a year, she decided to invest in real estate. At the time, she had approximately \$30,000 in savings. At the end of each month, she had about \$500 in unallocated discretionary income. Applicant contacted a realtor and was approved for mortgages on two condominium apartments, hereafter identified as condominium "A" and condominium "B." The purchase price for condominium "A" was \$519,000 and the purchase price for condominium "B" was \$400,000. Applicant put a \$15,000 deposit on condominium "A." No deposit was required for the purchase of condominium "B."<sup>3</sup> (Tr. 45-46, 50, 53.)

Applicant thought she had cancelled the purchase of condominium "B" in order to purchase condominium "A." She believes she was tricked by the realtor, who later pled guilty to mortgage fraud in an unrelated matter. However, Applicant did not seek counsel, and she went forward and voluntarily purchased both properties. (Tr. 58-62.)

Applicant intended to rent the two properties, and with the money received in rent, pay the mortgages on the properties. After a time, however, her tenants moved out and she was unable to rent or sell the properties. (Ex. 2; Tr. 22-24.)

The SOR alleged at ¶ 1.a. that Applicant owed a \$5,526 credit card debt on an account that was delinquent and cancelled by the creditor. The debt appears on Applicant's credit reports of February, July, and October 2011. While Applicant denied the debt in her response to the SOR, at her hearing, she acknowledged that the debt represented a line of credit she obtained in order to pay her mortgage debts on her investment properties.<sup>4</sup> Additionally, she reported that she was making monthly payments of approximately \$100 to \$150 on the credit card debt and had reduced her indebtedness to \$3,400. However, she failed to provide credible documentation to corroborate her statement. (Ex. 3; Ex. 4; Ex. 5; HE 1; Tr. 22-24, 83-84.)

The SOR alleged at ¶ 1.b. that Applicant owned a property that was foreclosed upon by a bank, which then reclaimed the property to settle a mortgage obligation of \$410,000. The SOR alleged at ¶ 1.c. that Applicant was also responsible for an unpaid \$102,700 second mortgage, in collection status, on the foreclosed property. Applicant admitted both debts and stated that they applied to her ownership of condominium "B." (Tr. 81.)

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<sup>2</sup> Since 1985, Applicant has purchased two principal residences. (Tr. 57-58.)

<sup>3</sup> Applicant testified that she purchased condominium "B" before she purchased condominium "A." (Tr. 55-56.)

<sup>4</sup> Later in her testimony, Applicant stated she used the account alleged in SOR ¶ 1.a. to pay the mortgage associated with condominium "A." (Tr. 63.)

The SOR alleged at ¶ 1.d. that Applicant owed a property with a \$400,000 mortgage that was foreclosed upon by the creditor grantor. The SOR alleged at ¶ 1.e. that Applicant was also indebted to the creditor for an unpaid \$110,000 second mortgage on the foreclosed property. Applicant admitted both debts and stated that they applied to her ownership of condominium "A." (Tr. 82.)

The SOR alleged at ¶ 1.f. that Applicant was approximately \$8,312 past due on a mortgage with a \$411,000 balance, and the credit grantor had initiated foreclosure proceedings on the property. Applicant admitted this debt and stated that it applied to condominium "A." She further identified this debt as the current mortgage on condominium "A." (Tr. 82.)

The SOR alleged at ¶ 1.g. that Applicant was indebted on a \$114,000 second mortgage for condominium "A," which had been charged off and remained unpaid. Applicant admitted the debt, but she stated that the debt applied to condominium "B." She stated that the debt alleged at SOR ¶ 1.g. applied to the current mortgage on condominium "B." She failed to provide documentation to corroborate her statement. (Tr. 82.)

In response to DOHA interrogatories, Applicant stated that she had contacted the creditor identified in SOR ¶ 1.g. She stated that she had a verbal agreement with the creditor to pay \$300 month on the second mortgage debt. She further explained that she had leased the property to tenants for two years, and when the tenants moved out, she attempted, without success, to sell it. The creditor then initiated foreclosure. (Ex. 2.)

Applicant testified that after condominium "A" was foreclosed upon and sold, she owed a balance of \$411,000. She also testified that after condominium "B" was sold at a short sale, she owed a balance of \$114,000. (Tr. 64-65.)

At her July 20, 2012 hearing, Applicant stated that she had been unable to provide documentation showing payments on the two existing mortgages identified at SOR ¶¶ 1.f. and 1.g. She provided a spreadsheet showing a closed \$114,000 mortgage account, opened in January 2006 and closed in March 2009, as the current account for condominium "B." The spreadsheet also listed a closed \$411,200 mortgage account, opened in April 2006 and closed in March 2007, as the current account for condominium "A." Applicant stated that she did not know how much was past due on the two accounts. She stated she received monthly mortgage payment statements for the two properties and planned to make a payment of \$300 on the two mortgages each month. (HE 1; Tr. 87-98.)

In a post-hearing submission, Applicant provided documentation that appeared to show that condominium "B" had been sold for \$320,000 in May 2009. The status of condominium "A" was unclear. (Ex. F.)

Applicant's yearly gross salary is about \$105,000. Her monthly net salary is approximately \$4,000.<sup>5</sup> She estimated her monthly expenses as follows: mortgage payment on her personal residence: \$1,685; food and groceries: \$300; cable: \$86; cell phone: \$82; land-line telephone, \$85; electricity, \$100; gas, \$86; gasoline: \$220; automobile and motorcycle insurance: \$158; clothing, \$83; life insurance, \$40; and home repair insurance, \$55. Applicant's monthly living expenses total approximately \$2,979. (Tr. 99-112.)

Each month, in addition to the \$300 she pays to the two mortgage creditors, Applicant also pays about \$450 on debts arising from her two credit cards. These monthly debt payment expenses total \$750, leaving her with a net monthly remainder of \$271. (Tr. 108-109.)

Applicant also pays \$4,500 to \$5,000 each year for her daughter's college expenses. She has two savings accounts, one with a balance of \$2,500 and another with a balance of \$1,000. She estimates that she has about \$25,000 in her 401(k) account. She participated in financial credit counseling in the fall of 2011. (Tr. 89, 107, 115-116.)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized 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 Applicant's 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.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According

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<sup>5</sup> Applicant stated that her take home pay did not yet reflect a deduction for health insurance, but her employer was planning to make such a deduction, which would reduce the amount of her monthly take-home pay. (Tr. 99-101.)

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 in seeking 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 the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 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.

In 2006, with an annual income of \$87,000 and savings of approximately \$30,000, Applicant was approved for and purchased two condominium apartments as investment properties. The purchase prices of the two properties were \$519,000 and \$400,000, for a total of \$919,000. However, when an economic downturn occurred, she lost her tenants and was unable to acquire new ones. She was unable to sell the properties, and she lacked sufficient resources to pay the mortgages and meet her own living expenses. She fell seriously in arrears on her first mortgages on the two properties. The creditors initiated foreclosure proceedings. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. If the financially delinquent 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,” then AG ¶ 20(a) might apply. If “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,” then AG ¶ 20(b) might apply. If “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,” then AG ¶ 20(c) might apply. If “the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts,” then AG ¶ 20(d) might apply. Finally, if “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,” then AG ¶ 20(e) might apply.

The record shows that Applicant’s financial delinquencies occurred after she voluntarily purchased two condominiums in 2006 as investment properties. The record does not establish that Applicant’s current financial delinquencies have resulted from conditions beyond her control.

Applicant was unable to provide documentation establishing her financial interest in the two condominiums or her current financial responsibility for satisfying mortgage debts in the two properties. She also failed to provide documentation corroborating her assertions that she was paying \$300 each month to satisfy two mortgages associated with her condominium purchases. Applicant’s current financial delinquencies involve

substantial sums of money, occurred under circumstances that are likely to recur, and cast doubt on her current reliability, trustworthiness, and good judgment.

While she participated in financial credit counseling in the fall of 2011, it is not clear from the record that Applicant's financial situation is stable. She has not yet demonstrated priorities that emphasize careful financial record keeping, paying her existing debts, and avoiding additional financial delinquencies in the future. I conclude that AG ¶¶ 20(a), 20(b), 20(c), and 20(d) do not apply to the facts of Applicant's case.<sup>6</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 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 the relevant facts and circumstances surrounding this case.

Applicant is a well-educated professional. Her financial problems began when she was a mature adult. In 2006, she voluntarily undertook financial obligations that exceeded her income and financial resources, raising concerns about her motivation and her ability to avoid recurrence of financial delinquency in the future.

In responding to the SOR and at her hearing, Applicant was responsible for presenting evidence to explain or mitigate facts in the SOR allegations that she had admitted. She failed to do so, and she was therefore unable to meet her burden of persuasion and to demonstrate that she was security worthy.

Overall, the record evidence leaves me with questions and doubts about Applicant's judgment, reliability, and suitability for a security clearance. Accordingly, I

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<sup>6</sup> ¶ 20(e) is not raised by the facts of this case.



conclude, after a careful review of the facts of her case, the financial considerations adjudicative guideline, and the whole-person analysis, that Applicant failed to mitigate the security concerns arising from her financial delinquencies.

### **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
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Subparagraphs 1.a. - 1.g.:	Against Applicant
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### **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.

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Joan Caton Anthony  
Administrative Judge