



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



In the matter of: )  
)  
) ISCR Case No. 11-08063  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

05/10/2013

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On August 8, 2012, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on September 14, 2012, and elected to have her case decided on the written record. On December 31, 2012, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to

Applicant and it was received on January 15, 2013. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant provided additional information. Department Counsel had no objection and the documents are included in the record. The case was assigned to me on April 17, 2013.

### **Findings of Fact**

Applicant denied SOR ¶¶ 1.a and 1.b and admitted 1.c. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 52 years old. She is a college graduate. She has been married for 23 years and has three sons, two are in college and one is in high school. It is unknown if her college sons continue to reside with her. Applicant has worked for her current employer, a federal contractor, since 2000.

Applicant's primary residence is in State A (SOR ¶ 1.b). The debt in SOR ¶ 1.a is for a home equity loan for the primary residence. She has a vacation home in State B, and a rental property in State C. She also had another piece of undeveloped real estate in State C (SOR ¶ 1.c). In addition to Applicant's real estate mortgages, she also has numerous credit cards and other expenses, including federal income taxes, that she is making payments on that are not delinquent.

In 2007, Applicant and her husband had a large sum of money from an inheritance and an employment bonus Applicant received. They purchased real estate with the money. Applicant's husband worked in the construction business. He began experiencing employment issues in approximately 2007 or 2008, when the construction industry was in a downturn. It is unclear exactly when he lost his job, but Applicant was able to pay their expenses until sometime in 2009. Applicant's husband regained employment sometime in 2011 and has been employed since then.

The home equity loan in SOR ¶ 1.a is for \$196,000. Applicant has been in contact with the creditor numerous times. She disputes the amount she owes on this loan, which is now listed on her December 2012 credit report as being delinquent in the amount of \$35,285, with a balance of \$195,857.<sup>1</sup> She has not made the regular payment, which is now \$576 or the previous payment of \$525, since at least January 2011. Applicant believes the debt should be \$10,800 past due. She has requested an account balance from the creditor, but has not yet resolved her dispute. After numerous letters and attempts to negotiate resolving this debt, Applicant was presented with two options by the creditor. She could present a settlement offer or initiate a repayment plan. In August 2012, she presented a settlement offer of \$19,600 to resolve the debt. She advised the creditor she would obtain the funds from an early withdrawal of her 401(k) account. She also made a repayment offer until a decision was made on the settlement. In October 2012, the creditor agreed to accept her offer to pay \$100 month

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<sup>1</sup> Answer to FORM, Item K.

for six months. After six months of consecutive payments, the creditor will reevaluate Applicant's financial situation and make a determination on increasing her payments. The creditor also advised her that at any time her account could be transferred to a third party to service it.<sup>2</sup> The debt was transferred to another creditor, and Applicant has requested a payoff amount to settle the debt. Applicant provided copies of her \$100 payments for November 2012, December 2012, and January 2013. It is unknown what her future payments will be or if a settlement offer can be negotiated.

Applicant began falling behind on her real estate mortgage loan on her primary residence (SOR ¶ 1.b) in approximately April 2011. She contacted the creditor to negotiate a modification and repayment plan to the loan. She believed there were also errors in the escrow amounts owed and late fees. She was unable to get a loan modification due to the amount of the original mortgage. She withdrew money from her 401(k) retirement account to bring the mortgage current. Applicant provided a payment statement from the creditor that shows she was current in her payments on the mortgage in July 2012. However, the statement also shows an assessment of \$2,575 still owed in late fees. Applicant did not provide information about whether the late fees were resolved or paid. She did not provide additional supporting documents to show if she has continued to make her monthly mortgage payments on time since July 2012.<sup>3</sup>

Applicant defaulted on the real estate mortgage loan on the vacant lot (SOR ¶ 1.c) in the amount of \$328,000. She was unable to make the payments on the loan and it was proceeding to foreclosure. After attempts to resolve the debt through different real estate transactions and a previous unsuccessful short sale, the debt was finally resolved through a short sale in late 2012. This debt is reflected on her December 2012 credit report as "account paid for less than full balance." It is unclear if there are any tax implications regarding this account.<sup>4</sup>

In March 2010, Applicant obtained a modification to the mortgage loan on her rental property and reduced the monthly payments from \$5,500 to \$4,226. The loan payment changed to \$4,242 in February 2012. She provided information that the property was rented for 18 weeks during 2012. She rented the property for \$2,385 a week. She is paying this loan on time. It does not appear that the rental income covers the monthly mortgage. In addition, no information was provided as to other expenses that may be associated with the rental of this property.

On Applicant's 2012 personal financial statement (PFS), she listed her monthly household net income, including her income (\$15,816), her husband's salary (\$3,088) and rental income (\$2,385) as \$17,233. She showed her deductions were \$4,056, including her contribution to her 401(k). Her monthly expenses and debt payments show

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<sup>2</sup> Answer to FORM, Item K, L.

<sup>3</sup> Item 7 at I-38; Answer to FORM, Item F.

<sup>4</sup> Answer to FORM, Item M.

she had a net remainder of \$360. She did not include any miscellaneous expenses.<sup>5</sup> Applicant did not provide any information about other expenses associated with her vacation home. It is unclear if the utilities that are listed on her PFS are for her primary residence or include expenses associated with both homes. Applicant mentioned in her response that two of her sons are in college. There is no information as to whether they support themselves or if they receive any funds for subsistence or other college expenses. Applicant notes on her PFS that in 2012 she was making \$100 installment payments for her federal income taxes (\$5,000 balance) and \$772 installment payments on her state income taxes (balance \$5,000).<sup>6</sup>

Applicant provided a February 2013 PFS. On it she listed her monthly household net income, including her income (\$16,290), her husband's salary (\$2,954) and rental income (\$3,387) as \$20,462. She showed her deductions to be \$4,214, including her contribution to her 401(k). Her monthly expenses and debt payments show she had a net remainder of \$4,663. Applicant listed a \$2,045 monthly bonus. It is unknown if she receives this bonus every month and if she can expect to receive it in succeeding years. She did not include any miscellaneous expenses. She shows a reduction in debt, but a large portion was the defaulted rental lot that was resolved through a short sale. She also shows that she paid two credit card debts.<sup>7</sup> She is making \$100 monthly payments on her federal income tax debt and indicated she has paid her state tax debt.

Applicant provided two bank statements as part of her answer to Government Interrogatories. One was from April 16, 2012, to May 9, 2012 and the other was from May 17, 2012, to May 31, 2012. A review of the April 16, 2012 to May 9, 2012 statement shows a conservative estimate of expenditures for restaurants and other miscellaneous expenses to be in excess of \$500. This does not include expenses indicated from stores that are more likely clothing or other purchases. The May 17, 2012, to May 31, 2012 statement shows an estimate of over \$400 in miscellaneous expense. Applicant's budget does not include any amount for such expenses. It includes \$300 for groceries and \$100 for clothes. Without further detailed information about Applicant's budget, it is difficult to determine her actual monthly net remainder. She does not list that she has any money in savings or other investments. The only assets she lists on her PFS are the real estate mentioned, car/boat-\$50,000, and approximately \$73,000 in her 401(k).<sup>8</sup>

Applicant indicated that she has had financial counseling. In her answer to the FORM, she stated that she has "reduced or eliminated all non-essential expenses, entertainment, cable/DirecTV, eating out, going to the movies-have been reduced to the

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<sup>55</sup> Item 7 at I-12.

<sup>6</sup> It is unclear what tax years Applicant owed.

<sup>7</sup> Answer to FORM, Item C and D.

<sup>8</sup> Item 7 at I-40-41.

lowest level or completely eliminated.”<sup>9</sup> Applicant provided copies of her outstanding performance appraisals.<sup>10</sup>

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the 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, these guidelines are applied 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 an 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.

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<sup>9</sup> Answer to FORM page 9.

<sup>10</sup> Answer to FORM at Item M.

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. I have considered the following under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, or other financial analysis.

Applicant had delinquent debts she was unable or unwilling to pay. The debts were from an inability to meet her mortgage payment on her primary residence, failure to pay a home equity loan, and a defaulted mortgage on a vacant lot. Review of Applicant’s PFS from 2012 showed her income was stretched to cover these debts and other debts she owed. I find the above disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;

(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 withdrew money from her 401(k) to resolve her primary residence mortgage debt. It is unknown whether she is still responsible for the late fees that are noted on her August 2012 statement. She defaulted on the vacant lot real estate that was eventually sold through a short sale. She is paying \$100 a month on the home equity loan. The creditor will review her situation after six months to make a determination about repayment of the loan. She is hopeful to work out some settlement agreement with the creditor. Without additional information about Applicant's current finances, it is difficult to determine whether her financial problems are behind her. Her household income is substantial, but her expenditures are also. It appears she is paying \$100 a month on owed federal income taxes, but it is unknown what year or years are part of this installment agreement. It is unknown if she owes federal income taxes for 2012. Although Applicant has reduced some of her debt, she is still resolving her home equity loan that has been in default status for over two years, and there is insufficient evidence to conclude that her financial problems are unlikely to recur. AG ¶ 20 (a) does not apply because Applicant still has her home equity debt to resolve.

Applicant's husband was unemployed sometime in 2008. Applicant began experiencing financial problems due to his unemployment. He has been employed since 2011. Applicant contacted her creditors and attempted to resolve her debts. She was able to bring her mortgage on her primary residence current. She has not resolved her home equity loan, but has been making a monthly payment of \$100 on it. This plan was to last for six months and then a reevaluation of her financial situation would determine a new plan. The real estate debt on the vacant lot was resolved through short sale. Applicant's husband's unemployment was beyond her control. In order for the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant has partially resolved her past-due debt on her primary residence, but she failed to provide sufficient information to show the late fees are resolved. The short sale on the vacant lot is resolved, although there may be tax consequences to it. The home equity loan is not resolved. Applicant did not make

payments on this debt for two years. Her husband has been working for the past two years. She indicated in her PFS for 2013 that she has resolved other debts and now has additional money remaining each month. There is insufficient evidence to conclude she has acted responsibly toward resolving this debt. I find AG ¶ 20(b) partially applies.

Applicant indicated in her response that she has received financial counseling. Based on the information provided, I cannot conclude that there are clear indications Applicant's financial problems are under control. She still must resolve the home equity debt. Her PFS provided incomplete information as to her current finances. It appears she has reduced some of her debt, but the majority was because of the short sale of the vacant lot. I am not confident with the information provided that her financial situation is stable and under control. I find AG ¶ 20(c) partially applies.

Applicant made a payment to resolve her past-due debt on her primary residence through a withdrawal from her 401(k). I find this was a good-faith effort to repay the debt. However, it appears there is still a late fee that was owed. Applicant did not provide information about the status of that fee. I find AG ¶ 20(d) partially applies to that debt. A short sale on the vacant lot debt does not constitute a good-faith effort to repay the debt, but the debt has been resolved. The home equity debt has not been resolved. AG ¶ 20(d) does not apply to the home equity debt. Applicant disputes the amount she owes on her home equity debt in SOR ¶ 1.a, but admits she owes at least \$10,800. Her monthly payment of \$550 and now \$576 has not been paid for over two years. It appears she owes more than the amount she claims. She has not provided documented proof to substantiate her dispute, although she requested the creditor provide her with the balance she owes. I find AG ¶ 20(e) does not apply to the legitimacy of the debt, but there may be some question as to the amount. She did not provide information as to how she determined the amount owed.

### **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 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 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 is 52 years old. She is well respected in her profession and has an excellent work record. She began having financial problems when her husband was unemployed for approximately two years. Applicant earns a substantial income. She has several real estate holdings. When her husband was unemployed she had difficulty paying the mortgage on two of the properties and a home equity loan. She is still resolving the home equity loan. Applicant's PFS reflects that her finances are stretched. Although it appears she has eliminated some debt, questions remain about the stability of her finances. Her PFS shows she recently completed paying past-due state income taxes, and she is paying \$100 a month on past-due federal income taxes. I do not have further information about these debts. There is no dispute that she earns a healthy income, but she also owes a lot of money. She has no savings except her 401(k). The 2013 PFS does not provide sufficient detail or information for me to conclude that she is financially stable. Applicant has failed to meet her burden of persuasion. There is insufficient evidence to conclude her finances will not be a recurring issue. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

### **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 |
| Subparagraph 1.a:         | Against Applicant |
| Subparagraph 1.b:         | For Applicant     |
| Subparagraph 1.c:         | For 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge