



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



In the matter of:	)	
	)	
XXXXXXXXXXXXXXXXXX	)	ISCR Case No. 11-13301
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Pamela C. Benson, Esquire, Department Counsel  
For Applicant: *Pro se*

08/29/2013

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**Decision**

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HOWE, Philip S., Administrative Judge:

On August 25, 2011, Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP). On February 11, 2013, the Department of Defense (DoD) issued 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on February 18, 2013. She answered the SOR in writing on March 7, 2013, and requested a hearing before an administrative judge. Defense Office of Hearings and Appeals (DOHA) received the request on March 7, 2013. Department Counsel was prepared to proceed on April 16, 2013, and I received the case assignment on April 25, 2013. DOHA issued a Notice of Hearing on June 5, 2013, and I convened the hearing as scheduled on June 25, 2013. The Government offered Exhibits 1 through 6, which were received without objection.

Applicant testified and submitted Exhibits A through G, without objection. DOHA received the transcript of the hearing (Tr.) on July 11, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In her Answer to the SOR, Applicant denied the one allegation in the SOR. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is 51 years old, married, and has two adult children, a daughter and a son. Applicant works for a defense contractor. She has a high school education. (Tr. 19, 23, 24; Exhibit 1; Answer)

She and her husband own their home and a rental property, in which their daughter and her two children lived rent free or made a payment less than Applicant thought necessary to pay the mortgage. Applicant could not generate sufficient income with which to pay the mortgage on that house while her daughter lived in it. (Tr. 19, 23, 24; Exhibit 1; Answer)

The SOR alleges a mortgage debt of \$110,955 on the rental home owned by Applicant. That amount is shown as the mortgage on the September 2011 credit report submitted as an exhibit. The debt is shown as a foreclosure on the June 13, 2013 credit report with a zero balance shown on that record. That house used to be her primary residence until 2004. Applicant tried to negotiate lower payments or a smaller mortgage with the lender but was unsuccessful. She answered the allegation with information that the house was sold for \$90,000 and now she owes nothing on the debt because it was satisfied in the sheriff's sale. Applicant had difficulty paying the mortgage on that home because two sets of renters departed before the lease term expired. With the foreclosure and subsequent sale, this debt is now resolved as of November 2012. (Tr. 12-15, 18, 19, 21; Exhibits 2-6, A-G)

Applicant's husband was ill and out of work in 2009 and 2010. Their income suffered a decrease as a result of that medical situation. Applicant stated in a letter to the adjudicator of her initial case that she had several medical problems that also caused medical bills to accumulate. All the debts Applicant had prevented her from resolving her debts in a timely manner, according to Applicant. Her personal financial statement shows in August 2011 that her monthly expenses were \$5,403 with a gross monthly income of \$5,036. There is no information in the file about her current financial condition. (Tr. 16, 17; Exhibits 2-6)

Applicant had a judgment for \$8,100 by a bank against Applicant because she loaned her daughter money. Then her daughter could not repay Applicant, so she borrowed the money from a bank and paid her mother. Then the daughter did not repay the loan. The bank sued Applicant and obtained the judgment shown on the credit

record from June 2013. Applicant persuaded her daughter to sell her minivan for \$10,000 that was then used to pay the judgment. It was satisfied on January 21, 2011. (Tr. 25, 26; Exhibits F and G)

## **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 useful 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 (AG ¶ 2(a)). 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

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

Applicant accumulated \$110,955 in delinquent mortgage debt from 2010 to the present time that was unpaid. Applicant has only this one delinquent debt listed in the SOR.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Three conditions may be applicable:

- (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.

Applicant’s one financial delinquency arose from a rental home she owned. She could not maintain renters in it who would pay consistently the rent with which Applicant

paid the mortgage on the house. Her daughter also lived in the house for a while with her two children and paid little or no rent. Applicant continued to have difficulty paying the mortgage. Finally, in 2011 or 2012, the mortgage lender foreclosed on the house and it was sold. Applicant was able to negotiate the final resolution of the debt and it was resolved in November 2012.

On these set of circumstances, Applicant's finances suffered from economic circumstances beyond her control, being the unreliable tenants. She was also generous with her daughter, allowing her to live there with a low rent or no rent, and loaning her money the daughter could not repay. Applicant acted responsibly each time she needed tenants other than her daughter by seeking new tenants while seeking to renegotiate her mortgage and its terms with the lender. AG ¶ 20 (b) applies.

With the sale of the rental home and the resolution of the debt, Applicant's delinquent debt is no longer an issue. Therefore, there are clear indications from the evidence she presented that the financial problems are under control and being resolved. Applicant's daughter is not adversely affecting Applicant's financial condition at the present time. AG ¶ 20 (c) has partial application.

Applicant's resolution of the debt by the foreclosure and sale removed this obligation from her credit record. AG ¶ 20 (d) applies because Applicant otherwise resolved her debt.

### **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 an 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant worked to pay the

mortgage on her rental home. When she could no longer do so, the house was foreclosed and she resolved her debt with the lender by not contesting the sale. The debt is now satisfied.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ 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 all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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PHILIP S. HOWE  
Administrative Judge