



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



In the matter of:)
)
) ISCR Case No. 11-14425
)
Applicant for Security Clearance)

Appearances

For Government: Kathryn D. MacKinnon, Esq., Deputy Chief Department Counsel
For Applicant: Jay Ian Igiel, Esq.

06/26/2013

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude Applicant has not mitigated the security concerns raised under the guidelines for financial considerations and personal conduct. Her request for a security clearance is denied.

Statement of the Case

On November 13, 2012, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) that detailed security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992) as amended; and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

In her December 7, 2012 Answer to the SOR, Applicant denied all of the allegations under Guideline F and Guideline E. The Defense Office of Hearings and

Appeals (DOHA) issued a Notice of Hearing on May 14, 2013. At the May 30, 2013 hearing, I admitted five Government exhibits into evidence (GE 1-5). Applicant testified, and presented 22 exhibits, admitted into evidence as AE A-V. I held the record open to allow Applicant to submit additional documentation. She timely submitted five documents. I admitted the documents, without objection, as AE W-AA.¹ DOHA received the transcript of the hearing (Tr.) on June 11, 2013.

Findings of Fact

After a thorough review of the pleadings, Applicant's response to the SOR, and the evidence, I make the following additional findings of fact.

Applicant is 51 years old, single, and does not have children. She completed a bachelor's degree in public administration in 1986 and a master's degree in education in 2012. She is currently pursuing a doctoral degree. She is certified to teach grades 6 through 12. She also teaches at the college level when adjunct professor positions are available. She planned to begin classes in real estate the week after the hearing. She has worked for federal contractors since 2003 in the information technology (IT) field. When she completed her security clearance application in August 2010, she was employed by a defense contractor as an IT specialist. She is currently "in between contracts," but her security clearance is sponsored by a defense contractor. She has held a security clearance for ten years. (GE 1; AE T-V; Tr. 31-32, 79, 139)

FINANCIAL CONSIDERATIONS

In 2007,² Applicant attended a "real estate and wealth" seminar hosted by a well-known billionaire real estate developer. She testified, "And that's when he was encouraging everyone that now's a good time to buy, buy, buy." (Tr. 32) She testified, ". . . they made it sound very easy because at that time it was very easy to purchase with little or no money down." Applicant decided to become a real estate investor. She bought properties with little or no down payments, and "it was very easy to get into." (Tr. 32-34, 143-144)

After Applicant sold one of her homes and realized a profit of about \$50,000, she began purchasing additional properties. In September 2006³, she bought a residence for herself for \$531,000 (Property B, allegation 1.c). In January 2007, she

¹ AE Y is a signed version of the settlement agreement that appears in AE L.

² Applicant testified that she bought her first investment property in 2008, but her credit reports show that most of her mortgage accounts were opened in 2007. (GE 2, 5; AE S)

³ The evidence is unclear as to the purchase date of Property B. Applicant's 2013 credit report shows the account was opened in February 2007. However, I will use the date listed in Applicant's Petition filed against Lender B, which states that the property was purchased in September 2006. (AE K, S)

purchased a studio apartment she stated cost “almost \$250,000;”⁴ (Property A, allegation 1.d); and in April 2007, she purchased a condominium in state E for approximately \$250,000 (Property C, allegations 1.a, 1.b). (GE 2, 5; AE S; Tr. 87-88)

Applicant also bought two other properties that are not alleged under Guideline F.⁵ (GE 2, 5; AE S, Z; Tr. 87-88, 101-103)

- She purchased Property D in January 2007, with a first mortgage of \$133,520 and a second mortgage of \$33,380 from the same lender. Her mortgage started to become delinquent in 2010. She was 180 days past due as of June 2010. Her August 2010 credit report shows she was approximately \$7,700 past due, and that foreclosure proceedings had been initiated. The property was short-sold. Her 2013 credit report shows the status as “paid in settlement.” Applicant provided a form 1099-C showing the lender canceled \$30,380 in debt related to the second mortgage loan. (AE Z)
- Applicant bought Property E in February 2009 for \$406,423. The loan was 90 days delinquent in December 2009. As of the date of her August 2010 credit report, she owed \$28,090 in mortgage payments. The property was short-sold in October 2010 for \$250,000. Her 2013 credit report shows that the account was “paid in settlement.” The lender issued a form 1099-C indicating that a debt of \$173,134 was cancelled on October 5, 2010. (AE Z)

After Applicant purchased several properties, the real estate market suffered a sharp decline. She had difficulty renting her properties and could not meet her mortgage payments. At her August 2010 security interview, Applicant discussed delinquent mortgages on Properties B and E. She stated that she could not keep track of her payments because she was trying to make payments on two properties. She also stated that she could not afford to pay loans on two properties. She sought loan modifications from the lenders, and ultimately tried to short-sell her properties. (GE 4; Tr. 61, 143)

Starting in December 2009, Applicant experienced medical problems. In June 2010, her symptoms were diagnosed with an illness that included debilitating symptoms such as significant rapid weight loss. She had difficulty paying her medical bills. She

⁴ It appears from the evidence that the two mortgage loans totaled \$179,000. (AE S)

⁵ Unalleged conduct can be considered for certain purposes, as discussed by the DOHA Appeal Board in ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003). (Conduct not alleged in an SOR may be considered: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive § 6.3.)

testified she could not afford to pay for her health insurance while she was unemployed for several months in 2010. The file contains no information on the amount of her medical bills, or how they specifically affected her financial resources. (AE K; Tr. 71-75)

In January 2010, Applicant's employment contract ended. She testified that she was unemployed from January to June 2010, but during her security interview she stated that she was unemployed from April to July 2010. She spent her time while unemployed looking for a job, relaxing, and vacationing. She supported herself with savings and unemployment insurance. Although she testified at the hearing that she fell behind in her mortgage payments in 2010 because of this unemployment, Applicant stated during her security interview that the unemployment did not cause her any difficulties. (GE 4; AE K; Tr. 71-72, 139)

Applicant has not had formal financial counseling. However, she stated at her security interview that her realtor counseled her about the properties. In mid-2011, she retained a company to assist her in disputing credit report inaccuracies. The company informed her that she had 17 negative accounts. Over a period of one year, it disputed numerous accounts. (GE 4; AE Q, R; Tr. 75-79)

Applicant submitted her most recent personal financial statement (PFS) in response to DOHA interrogatories dated July 2011. Her gross annual income was approximately \$92,000. Her net monthly income was \$5,466. Her monthly expenses, including rent of \$3,500, totaled \$5,000. Her debt payments were \$1,050. At that time, she had a negative monthly net remainder (MNR) of \$584. However, Applicant listed her monthly cost for utilities in both the expense (\$400) and the debt (\$300) sections. After correcting this error, Applicant's MNR in 2011 was negative \$284. (GE 3)

Applicant is not presently working. She receives unemployment compensation, and supports herself with a "small settlement," until she accepts one of the job offers she has received. One offer is for \$92,000 annually. Applicant no longer owns real estate, and has no intention of investing in real estate in the future. She lives in a rental unit with a roommate and pays \$1,500 rent, \$2,000 less than in 2011. She works part-time in public relations when jobs are available. She has two cars, one of which is paid off. She purchased the other car in 2009 for \$26,600, and the loan is current. She has two credit cards, which are also current. (AE S-V; Tr. 59, 139-143)

Applicant's delinquencies appear in her credit reports dated August 2010, July 2012, and May 2013. The status of her SOR debts follows. (GE 2, 5; AE S)

MORTGAGE DEBTS

PROPERTY A (allegation 1.d) — \$35,000 (second mortgage); SHORT SALE

Applicant bought a studio apartment as an investment property in January 2007.⁶ She testified that the purchase price was “almost \$250,000.” Her 2013 credit report shows mortgages with two lenders—a first mortgage of \$143,200, and a second mortgage of \$35,800, for a total debt of \$179,000 (AE S; Tr. 60)

After the renter vacated, Applicant was unable to make her mortgage payments. She testified that she became delinquent in fall 2010, but her 2013 credit report shows that the second mortgage on her property was 150 days past due in October 2009. She testified that the property had lost significant value, and she sought a loan modification. At her security interview, she stated she stopped making payments because she believed she had to be delinquent in order to qualify for a loan modification. The lender denied her request for a modification. The first mortgage holder began foreclosure proceedings in November 2010. The original lender sold the first mortgage loan to another lender in 2011. That lender continued the foreclosure proceedings. Applicant requested to reinstate the loan. She was informed that reinstatement would cost \$7,816.52. (AE M) Applicant testified that she reinstated the loan. (GE 4; AE M, S; Tr. 60-65)

The house was sold via short-sale on March 29, 2013 for \$85,000. The lender holding the first mortgage received \$73,655. The holder of the second mortgage, cited in allegation 1.d, received \$3,890, and also provided a letter dated March 11, 2013 stating that it waived “any possible recourse as to any deficiency on the loan.” (GE 2, 5; AE M-O, R, S; Tr. 60-69)

PROPERTY B (allegation 1.c) — \$31,000 (second mortgage) SETTLED

Applicant purchased a property in September 2006 for approximately \$550,000 to use as her residence. She obtained an interest-only adjustable-rate loan, which allowed her to pay only the interest for the first ten years of the loan. During the real estate market decline, it lost about 50% of its value. Applicant received a loan modification from Lender A in 2007, which lowered her payments. In 2008, Lender B acquired Lender A. The lender granted Applicant a second loan modification in September 2009, which again lowered her payments. Shortly after the 2009 modification, Applicant's loan was pooled with other mortgages into a “collateralized mortgage obligation.” Servicing of the loan was transferred to Servicer A. The loan was 120 days past due as of November 2009, and 150 days past due as of March 2010. After Servicer A began handling the loan, Applicant realized a fee of approximately \$16,000 had been added to her debt because Servicer A was not honoring the 2009 modification. (AE K, S; Tr. 45-47, 54)

⁶ Applicant testified that she bought the property in 2009, but her credit report shows that the two loan accounts were opened in 2007. (GE 2, 5; AE S, Tr. 63)

In May 2010, Servicer A sent Applicant a Notice of Intent to Foreclose. Applicant retained a law firm and on August 20, 2010, the law firm informed Applicant that it had received the copy of the foreclosure documents that Applicant had sent, that the foreclosure was in process, but the house was not being sold. On October 14, 2010, Applicant notified the law firm that Servicer A informed her that the house foreclosed on October 8, 2010. The law firm advised Applicant to sue for unlawful foreclosure. (AE E, F; Tr. 47-52)

Applicant decided the law firm was non-responsive and unreliable. She hired another law firm in September 2010. In November 2010, Servicer A offered Applicant a forbearance agreement against the foreclosure, provided she paid \$21,000 to cure her arrearages, and \$5,500 monthly thereafter. When Applicant complained, Servicer A offered her \$20,000 for the keys to her property. Applicant paid the \$21,000 on November 17, 2010, but did not make the \$5,500 payment in December 2010. Servicer A immediately reinstated foreclosure proceedings, and set the foreclosure sale for March 1, 2011. Applicant's law firm filed suit for damages against Servicer A based on unfair and deceptive trade practices, citing numerous violations of the state D Consumer Protection Act. The petition alleged that Servicer A "ordered the commencement of a defective foreclosure action for the purpose of extorting excessive and unlawful fees against Plaintiff via the Forbearance Agreement. Using the threat of a defectively filed foreclosure, Defendant coerced Plaintiff into paying \$21,000 under a plan that it knew Plaintiff had no ability to repay." (AE G, K; Tr. 47-57)

As of December 31, 2012, Applicant accepted a settlement agreement. Under the agreement, Applicant was to vacate the property within 90 days, accept a \$20,000 payment, and provide the lender with the deed in lieu of foreclosure. The settlement resolved Applicant's debt, and the lender waived any right to additional fees (AE H-J, L, Y; Tr. 57-59)

PROPERTY C (allegations 1.a, 1.b) — \$44,000 past due (on \$214,000 first mortgage); \$38,000 (second mortgage) SHORT SALE

In 2007, Applicant attended a real estate conference where developers encouraged attendees to buy property in their developments. One developer paid for Applicant to travel to state E to view a property. It also offered a plan under which it would pay Applicant's mortgage payments for the first three years. In April 2007, Applicant paid approximately \$250,000 for Property C, a one-bedroom condominium located in state E, to use as a rental unit. She financed the property with a first mortgage loan of \$214,000, and a home equity line/second mortgage (HEL) for \$38,000.⁷ After about 18 months, the developer stopped making Applicant's mortgage payments, and subsequently filed for bankruptcy protection. Applicant's property value dropped to approximately \$30,000. She could not meet her mortgage payments with the rent she was able to charge. In 2010, she received \$4,680 in rental income from

⁷ Applicant testified that the home equity line was the second mortgage on this property. (Tr. 43)

the property. According to Applicant's 2013 credit report, her home equity line/second mortgage was 90 days delinquent as of July 2010. (AE S, X, Z; Tr. 34-38, 45)

Applicant retained a law firm. The firm's October 2011 letter notes that Applicant hired it to ". . . assist her in obtaining a loan modification and to defend her in the foreclosure action regarding the above subject property." It also stated that the property was not foreclosed "at this time." The lender did not agree to a loan modification, and began foreclosure proceedings in 2012. (AE A-C, S; Tr. 38-40)

However, the lender ultimately agreed to release the lien securing the property, based on a short sale offer of \$52,000. As of July 2012, Applicant owed \$260,749. On March 27, 2013, the property sold for \$49,000. The agreement applied \$15,011 to the first mortgage, and \$3,882 to the HEL/second mortgage. (AE B-D; Tr. 40-45)

JUDGMENT

Allegation 1.e - \$1,150, PAID. After Applicant sold one of her properties, the buyer filed suit against her in September 2011 to recover a security deposit. Applicant testified that she did not receive notice of the suit because she believes she was staying at her mother's home at the time because of her illness. On April 26, 2012, Applicant paid \$1,271 and satisfied the judgment. (AE P; Tr. 69-71, 131)

COMMUNICATIONS ACCOUNT

Allegation 1.f - \$150, UNRESOLVED. Applicant testified that a television satellite company mistakenly charged her for unreturned equipment. She testified that her credit repair company disputed the debt. Her 2013 credit report shows it has been in collection status since January 2011, but it does not show the account is disputed. The creditor has informed her that it would settle the account for \$75. Applicant did not provide evidence of payments or a payment arrangement. (AE S; Tr. 79-80, 131-132)

MEDICAL

Allegations 1.g, 1.h: \$253 each, UNRESOLVED. These debts went to collection status in September 2011. Applicant testified that they are related to her illness. She believes they should have been paid through her medical insurance. She is "80% sure" that the two debts are duplicates because the amount of the two debts is the same. Applicant's July 2012 credit report shows that one debt was assigned to collection in July 2011, and the other was assigned in January 2012; one debt was reported in September 2011, and the other in May 2012; the last activity occurred on one debt in December 2010, and the other in March 2011, and the debts have two different account numbers. However, Applicant's May 2013 credit report lists only one medical debt for this amount. Applicant testified that she is "in the process of making payment arrangements." (GE 2; AE S; Tr. 80-82, 97, 132-135)

CELL PHONE

Allegation 1.i - \$406 – UNRESOLVED. Applicant opened a cell phone account in 2011. It has been delinquent since February 2012, and has been in collection status since December 2012. Applicant disputes the amount because the company incorrectly applied roaming fees. She testified that she contacted the creditor, and that her credit repair company disputed the debt. However, she did not provide documentation showing her contacts. Her May 2013 credit report does not show the account is disputed. (GE 2, 5; AE S; Tr. 82-83, 135-137, 154-155)

BANK FEES

Allegation 1.j - \$51. UNRESOLVED. Applicant's bank charged her dormant-account fees. She testified that the bank is out of business and cannot be reached. Her credit report shows that the debt has been in collection status since May 2012. Applicant testified that she is "probably just going to have to pay it." She intended to pay it the week after the hearing, and was provided with an opportunity to submit evidence of payment. After the hearing, Applicant forwarded a June 13, 2013 letter from the creditor showing the debt is in dispute. (GE 2; AE S, AA; Tr. 85-86, 92, 155-156)

STUDENT LOAN

Allegation 1.k - \$1,734 – DEFERRED. Applicant financed her education using student loans. Her May 2013 credit report shows the most recent balance as \$89,312. She is currently enrolled in a doctoral program, and her loans are deferred. Her credit reports confirm her deferred status. (GE 2, 5; AE S; Tr. 83-85, 94-95)

PERSONAL CONDUCT

When Applicant completed her security clearance application in August 2010, the financial section asked whether, within the previous seven years, she had any foreclosures, any debts that were either 180 days past due, or currently 90 days past due. Applicant answered "No" to all of the financial questions, except the one concerning debts that were currently 90 days past due. In response to that question, she disclosed the following: a mortgage of \$250,000 that was "pending mitigation for modification" (Property C, allegations 1.a and 1.b), and a loan for \$400,000 that she noted was "approved for short sale." (Property E, not alleged in the SOR). She did not disclose that the Property B loan was 150 days delinquent as of March 2010; that she received a notice of intent to foreclose on Property B in May 2010; that the Property D loan was 90 days past due as of March 2010; or that foreclosure proceedings had been initiated on Property D. (GE 1, 5; AE S)

Applicant testified that she did not list all her property loans because she thought the questions on the application concerned only properties that she "was having financial issues with." She disclosed Property C because it was not yet

resolved. She did not disclose Property D because it was about to go to short sale, and she considered it sufficiently resolved so that it was not a “financial issue.” However, she did disclose Property E, which was also about to proceed to short sale at that time. She testified she did not disclose Property B because the law firm she hired told her it would work out a loan modification, so she did not believe that Property B was a “financial issue.” Applicant also testified that she had not seen her credit report when she completed her security clearance application. (Tr. 97-106)

At her September 2010 security interview, Applicant stated she did not disclose her financial delinquencies on her application because she thought all of her delinquencies would be resolved by the time she was interviewed. At the hearing, she said she did not list all of her debts because she was rushed to complete the application while at work and her manager and co-workers would not help her with the application. (GE 4; Tr. 97-106)

At her 2010 security interview, Applicant discussed Properties B and E. She said Property B was not in collection status because she was working with the lender. Later in the interview, the agent asked Applicant about the properties that she had not disclosed earlier in the interview--Properties A and D. In each case, Applicant stated she had stopped making payments because she was trying to obtain either a loan modification or a short sale. (GE 4)

Policies

Each security clearance decision must be a fair and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.⁸ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole-person” concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (financial considerations) and Guideline E (personal conduct).

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest⁹ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government

⁸ Directive. 6.3.

⁹ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.¹⁰ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as her or his own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.¹¹

Analysis

Guideline F (Financial Considerations)

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. . .

Applicant's debts stem primarily from her real estate investments. The SOR alleges delinquent loans on three properties that she purchased between 2006 and 2007 when the real estate values were climbing. Within a short period of about six months, Applicant assumed more than \$1,000,000 in mortgage loans. When the market crashed and her rental properties were vacant, she could not meet the mortgage payments. However, I conclude that, as to Property B, Applicant was the victim of a mortgage servicer who engaged in fraudulent and unfair business practices. I find for Applicant as to that loan. The following disqualifying conditions apply 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, and/or other financial analysis.

¹⁰ See *Egan*, 484 U.S. at 528, 531.

¹¹ See *Egan*; AG ¶ 2(b).

The Financial Considerations guideline also contains factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶ 20, especially the following:

(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

(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's debts are both numerous and recent. Two properties were sold only three months before the hearing through short sales. Of the small non-mortgage debts, two are resolved (allegations 1.e and 1.f) but the remaining five are not. As to recurrence, the housing crash and Applicant's real estate ventures are unlikely to recur. However, her response to the housing bubble that preceded the crash is troubling. She overextended herself by buying multiple properties, within a short period, with little or no money down. Although the record does not include specific information on her income in 2007, her income was \$92,000 in 2011, and likely less in the period of 2006 to 2007, when she was investing heavily in real estate. She admitted during her security interview that she could not afford to pay for even two properties simultaneously. Applicant's conduct shows a lack of good judgment, and a willingness to engage in financially risky behavior. AG 20(a) does not apply.

AG ¶ 20(b) concerns unforeseeable events that affect an applicant's ability to meet her financial obligations. Applicant was obviously affected by the depressed housing market, which made her properties difficult to rent or sell. Applicant could not predict or control this event, and it had a negative effect on her ability to pay her debts. She made efforts to resolve her property debts by seeking loan modifications and short sales from the lenders. Applicant was also diagnosed with a medical condition in 2010, which apparently affected her ability to handle her properties. She was unemployed in 2010, which was also beyond her control. However, she was unemployed for only a

few months, and told the agent at her security interview that it did not cause her any difficulties. For full application of this mitigating condition, an applicant must act responsibly in relation to the unforeseen circumstance. She hired a law firm in September 2010, to assist with the Property B loan. She did not hire a firm to dispute debts on her credit report until mid-2011. Other than these actions, Applicant sought loan modifications or short sales for her delinquent properties for several years between 2009 and 2013. AG ¶ 20(b) applies in part.

Applicant did not seek formal financial counseling. She tried to resolve her mortgage debts by obtaining loan modifications or short sales. Foreclosure was initiated on Property A in 2010 and Property C in 2012. Both properties eventually short-sold in 2013, about two months before the hearing. It appears from the evidence that Applicant has taken no definitive action to pay or set up payment plans for five of the smaller debts in the SOR. They have been delinquent or in collection status since 2011-2012. Applicant receives partial mitigation under AG ¶ 20(c).

Applicant retained a law firm and filed suit against Servicer A because of its unfair lending practices in regard to Property B. It appears from the evidence that Applicant's challenge was legitimate. The dispute is settled and the debt resolved. She also retained a firm to dispute other debts on her credit report in 2011. However, two of the non-mortgage SOR debts Applicant said she disputed are not listed in her 2012 or 2013 credit reports as disputed. Applicant did not dispute one of the SOR debts until after the hearing. She provided no documentation to show the basis for her belief that her debts were not valid. Applicant receives mitigation as to Property B under AG ¶ 20(e), but not as to her remaining debts.

Guideline E (Personal Conduct)

AG ¶ 15 expresses the security concern about personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The Guideline E allegations implicate the following disqualifying condition under AG ¶ 16:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment

qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

The Government alleges that Applicant deliberately failed to disclose all of her financial delinquencies on her 2010 security clearance application. She reported delinquent mortgage loans on two properties, but failed to report loans related to three other properties that were delinquent at the time. Applicant's statement on her application that she had only two properties, which were about to be resolved, presented a misleading picture of her financial status. She stated during her security interview that she did not list all of her debts because she thought they would be resolved by the time she had her security interview, indicating that she consciously decided not to reveal all of her mortgage delinquencies when she completed her application. AG ¶ 16(a) applies.

The following mitigation conditions are relevant:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

There is no evidence that Applicant informed any authorized government official that she wished to correct the answers on her security clearance application. Applicant's failure to be forthright with the government during a security clearance investigation cannot be considered minor. In addition, I cannot conclude that such conduct will not recur, because after failing to be forthright on her application, Applicant continued to state at the hearing that she failed to disclose all of her delinquent debts in 2010 because she thought all but two properties were resolved. Applicant's conduct casts doubt on her trustworthiness and good judgment. AG ¶¶ 17(a) and (c) cannot be applied.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of an applicant's conduct and all the circumstances. An 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 that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant is an intelligent, educated woman who has succeeded in several fields. However, during the housing bubble, she succumbed to high-pressure sales tactics at a real estate seminar, and followed a celebrity investor's advice to "buy, buy, buy." She engaged in risky financial behavior by obtaining loans on several properties over a short period in 2006-2007, with little or no money down. She became indebted for more than \$1,000,000. When the housing market crashed, she did not have sufficient funds to cover her vacant rental units, and her loans became delinquent. In 2009, Applicant bought another property for more than \$400,000, despite her existing high mortgage debt. Foreclosure proceedings were initiated on several properties.

Applicant was not candid about the true state of her financial affairs when she completed her 2010 security clearance application. It also appears from the investigative agent's summary of her security interview that she did not disclose several of her mortgage loans until after the agent confronted her with the details discovered during the investigation.

The record evidence fails to satisfy the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns raised by the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline F	AGAINST APPLICANT
Subparagraphs 1.a – 1.b	Against Applicant
Subparagraph 1.c	For Applicant
Subparagraph 1.d	Against Applicant
Subparagraph 1.e	For Applicant
Subparagraphs 1.f – 1.j	Against Applicant
Subparagraph 1.k	For Applicant
Paragraph 2, Guideline E	AGAINST APPLICANT
Subparagraph 2.a	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge