



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



In the matter of: )  
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 ----- ) ISCR Case No. 12-02905  
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 Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: Brian Cruz, Esquire

May 1, 2014

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On November 26, 2013, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. 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 for SORs issued after September 1, 2006.

On December 16, 2013, Applicant replied to the SOR (RSOR) in writing, and she requested a hearing before an Administrative Judge (AJ). The case was assigned to this AJ on February 10, 2014. DOHA first issued a notice of hearing on February 13, 2014, and the hearing was scheduled to be heard by video teleconference on March 12, 2014. The notice was amended on March 7, 2014, and the hearing was held at the DOHA Telework Site on April 3, 2014. The Government offered Exhibits 1 through 11, which were received without objection. Applicant testified on her own behalf and submitted Exhibits A through R, which were also admitted without objection. At the hearing, the record was kept open until April 17, 2014 to allow Applicant to submit

additional evidence. Two documents were received, and were identified and entered into evidence as Exhibits S and T. DOHA received the transcript of the hearing (Tr) April 11, 2014. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

### **Findings of Fact**

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 44 years old. She was first married from 1989 to 2000, and she has been married for the second time from 2001 to the present. Applicant has two adult sons. She is a Security Manager and has been employed by her current employer, a defense contractor, since 1990, with one year employment by another company in 2006 to 2007. Applicant is seeking a DoD security clearance in connection with her employment in the defense sector.

### **Guideline F, Financial Considerations**

The SOR lists two allegations (1.a. and 1.b.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. Both SOR debts will be discussed below in the same order as they were listed on the SOR:

1.a. This overdue debt is cited in the SOR for a mortgage account that went to foreclosure. The SOR alleges that a deficiency balance of \$73,123 is still owed. Applicant denied this SOR allegation in her RSOR. At the hearing, Applicant testified that this debt was for a second mortgage on a home that she and her husband purchased in 2005. They purchased the home as their primary residence with a zero down, adjustable rate mortgage. They also had a second mortgage from the same creditor. The house cost \$350,000 and the first mortgage was in the amount of \$270,000 and the second was \$80,000. Three months after they purchased the home Applicant's husband was laid off after working at this place of employment for 18 years. He was unemployed for approximately eight months. (Tr at 38-42.)

In December 2007, the mortgage rate increased from six percent to nine percent. They tried to refinance the loan to make the payments lower but they were denied. Six months later, the mortgage was scheduled to increase to 13 percent. They then tried to sell the house through a short sale, but they were unsuccessful. When they realized they could not refinance or resell the house they moved out of the house, but continued to list it with a real estate agent in an attempt to sell it. They tried to sell it for approximately \$180,00, even though they had purchased it for \$350,000 but they were not successful. The home was ultimately foreclosed in October 2008. (Tr at 42-43, 64-66.) Applicant testified that they moved out of the house before it was foreclosed, because she did not feel it was right to stay in the house if they could not pay the mortgage. (Tr at 68-69.)

Applicant testified that she spoke to the branch manager of the bank that held both mortgage accounts for their home, and asked him to review if she and her husband owed anything to the bank for either mortgage. (Tr at 43-45.) Exhibit M is a letter from the branch manager indicating that there is no active accounts on file for Applicant and her husband. Exhibit P, a full data credit report from TransUnion, Experian, and Equifax, dated February 28, 2014, shows that Applicant has no delinquencies from any of the three credit reporting agencies. Additionally, Exhibit P shows that there is \$0 past due and \$0 balance owed for both the first and second mortgages. I find that this debt has been resolved and it not due.

1.b. The SOR alleges that Applicant failed to pay property taxes in the approximate amount of \$6,000. Applicant denied this SOR allegation in her RSOR. Applicant averred that she was advised by her real estate agent that when the house was sold the new buyers would pay for the past property taxes. (Tr at 43-44.)

Applicant testified that she went to the treasurer's office for the county where the house is located to see if she and her husband owed any taxes. She was informed that everything on that property is current and no taxes are owed. (Tr at 48-49.) Exhibit N indicates that for the years the house was owned by Applicant, 2006 through 2009, the property taxes were paid and no taxes are owed. Finally, Exhibit O is the current property tax bill of Applicant's former property for fiscal year July 1, 2013, through June 30, 2014. It shows that there are no unpaid prior tax years. I find that this debt has been resolved and it not due.

Applicant testified that her current financial situation is stable. She and her husband both have full-time jobs that they have had for a long time. They have no other debts that are overdue. They also are empty nesters, and since they do not need a large house, they rent a town home near Applicant's place of employment, where they have lived for almost four years. (Tr at 37, 55-56.)

Applicant submitted six very positive and laudatory character letters from people who know her in her professional capacity. (Exhibits A through F.) Applicant was described by one of the vice-presidents of her employer as "an extremely accomplished Security Professional," and "she has demonstrated the highest standard of character, and has always treated others professionally and with respect." Applicant also submitted letters showing she has received awards and honors, as well as training certificates for her employment. (Exhibits I through L.) Finally, Applicant submitted two post-hearing documents to show that Applicant had no additional tax liability for the foreclosed mortgages. (Exhibits S and T.)

### **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. The administrative judge's over-arching 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, 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 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 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 notes several conditions that could raise security concerns and could potentially apply in this case. 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. I find that both of these disqualifying conditions did apply to Applicant in this case. The evidence has established that Applicant did initially incur delinquent debt when her house was foreclosed.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties. Under AG ¶ 20(b), it may be mitigating where, "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." As reviewed above, Applicant's financial difficulties occurred because her husband lost his employment shortly after they purchased their house, plus the interest rates on the mortgage increased from seven percent to nine percent to 13 percent within one year, and finally the downturn in the economy made it impossible to sell the house in 2008 for \$180,000 that they had purchased in 2005 for \$350,000. I find that Applicant did act responsibly to try to resolve the overdue debt, first by trying to sell the house and then when they became aware that they could not make payments or sell the house, she and her husband moved out so that she would not take advantage of the creditor by staying there without making payments. Ultimately, Applicant is not overdue on any debts. Accordingly, I find that this mitigating condition is applicable in this case.

Additionally, I find that ¶ 20(d) is applicable, since Applicant has "initiated a good-faith effort to repay her overdue creditors or otherwise resolve debts," and she now has no outstanding overdue debts. Finally, Applicant's current financial situation is stable, with all of her financial obligations being met in a timely and responsible manner. Therefore, I find Guideline F for Applicant.

## **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 access to a classified position 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. Based on the evidence establishing that Applicant has resolved the debts listed on the SOR, and her extremely positive letters of recommendation, I find that the record evidence leaves me with no significant questions or doubts as to Applicant's eligibility and suitability for a security clearance, under the whole-person concept. For all these reasons, I conclude Applicant has mitigated the security concerns under the whole-person concept.

### **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
Subparagraphs 1.a. and 1.b.:	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.

Martin H. Mogul  
Administrative Judge