



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



In the matter of: )  
 )  
 ) ISCR Case No. 14-04865  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Rhett E. Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

09/14/2016  
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**Decision**  
\_\_\_\_\_

CURRY, Marc E., Administrative Judge:

Applicant's financial problems stemmed from circumstances beyond her control. Given the responsible and diligent manner that she has attempted to ameliorate her financial problems, obtaining a Chapter 7 bankruptcy after exhausting other remedies, and continuously working with the holder of her home mortgage to modify her home loan, I conclude that she has mitigated the financial considerations security concern. Clearance is granted.

**Statement of the Case**

On February 17, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness 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) implemented by the DOD on September 1, 2006.

On April 20, 2015, Applicant answered the SOR, admitting all of the allegations and requesting a hearing. On October 22, 2015, Department Counsel amended the SOR, alleging nine additional allegations (SOR subparagraphs 1.c - 1.j). (Hearing Exhibit (HE I) On November 19, 2015, Applicant answered the Amended SOR, admitting the supplemental allegations. On May 4, 2016, Department Counsel received an e-mail from Applicant's employer that Applicant was selected to work on a classified contract and needed a security clearance. On May 23, 2016, Department Counsel again amended the SOR, changing the caption from ADP Case No. 14-04865 to ISCR Case No. 14-04865 and deleting any references to automatic data processing in the introductory paragraph. (HE II)

The case was assigned to me on April 11, 2016. DOHA issued a notice of hearing on May 10, 2016, scheduling the hearing for June 23, 2016. The hearing was held as scheduled. Department Counsel submitted five exhibits that I identified and received as Government Exhibits (GE) 1 through 5. I identified and received three exhibits that Applicant submitted (AE A - C), and I took administrative notice of three documents. (HE I - HE III) DOHA received the transcript (Tr.) on June 1, 2016.

### **Findings of Fact**

Applicant is a 47-year-old married woman. She earned a GED in 1990. Since then, she has taken some college courses in the field of information technology and network administration. Currently, she works for a defense contractor as a business analyst. (Tr. 31)

Between 2007 and 2012, Applicant incurred nearly \$700,000 of debt. Approximately \$600,000 of this debt constitutes the first and second mortgages on her home (SOR subparagraphs 1.a and 1.h). (Tr. 43) Applicant's financial problems began in the mid-2000s, a few years after her husband, a veteran, returned home from a combat deployment, suffering from various maladies, including post-traumatic stress disorder. (Answer, Attachment (Att.) B at 1) Applicant and her husband were dependent upon both incomes to make ends meet. Before her husband was deployed, he worked full-time. As he became increasingly incapacitated, his ability to work full time diminished.

By 2007, Applicant's husband was making significantly less income than he did before his deployment. Consequently, they began using credit cards to compensate for the income loss. That year, Applicant obtained a loan to consolidate multiple credit card accounts (SOR subparagraph 1.b). (Answer at 2) In 2008, Applicant attempted to obtain loan modifications of her mortgages. (Tr. 41) She successfully obtained a modification of the secondary loan, but not the primary loan. (Tr. 42) In 2009, the interest rates on her adjustable rate primary mortgage loan accelerated, increasing her mortgage payments by \$700 monthly. (Answer, Att. B2 at 3)

Despite Applicant's difficulties making ends meet, she continued to pay debts on time. (Tr. 30) She was able to do so, in part, by obtaining a modification of her

consolidation loan (SOR subparagraph 1.b) in 2010, and by withdrawing money from her savings account. (Answer at 2) In September 2011, Applicant was laid off from her job. (Tr. 30) Although she was able to partially offset her income loss with a part-time job obtained in April 2012 (GE 1 at 9), she was either unemployed, or underemployed for approximately a year until obtaining her current job in August 2012. (GE 1 at 9, 12; Tr. 30) Consequently, her debts became delinquent.

In November 2012, the primary mortgage on Applicant's home was foreclosed upon. (Answer, Att. B7 at 2) In response, Applicant sued the mortgagee alleging wrongful sale and foreclosure. (Answer, Att. B7) In January 2013, while the litigation was pending, the mortgagee requested that Applicant vacate the home. Applicant did not move. Instead, she drafted a proposal requesting that they work out a payment agreement whereupon she could remain in the home. The mortgagee did not respond. As of March 2015, a motion for default judgment, filed by Applicant, has been pending. (Answer, Att. B7) Currently, Applicant remains in the home. She has not made any mortgage payments while the litigation has been pending.

In March 2015, Applicant filed for Chapter 13 bankruptcy protection. (Answer at 2) The unsecured debts alleged in subparagraphs 1.b, and subparagraphs 1.d through 1.f were included in the filing. In September 2015, Applicant obtained an order converting the filing from Chapter 13 of the bankruptcy code to Chapter 7 of the bankruptcy code. In December 2015, the bankruptcy court discharged her unsecured debt, including SOR subparagraphs 1.b, and subparagraphs 1.d through 1.j. (AE A)

Applicant maintains a budget. (GE 5 at 19-20) She has approximately \$2,000 of monthly, after-expense income, and \$17,000 deposited between a checking and a savings account. (Tr. 69)

## **Policies**

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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."

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 for obtaining a favorable security decision.

## **Analysis**

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

Applicant's history of financial problems triggers the application of AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations."

The following mitigating conditions under AG ¶ 20 are potentially 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debt; 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 financial problems were not caused by irresponsible or profligate spending. Instead, they occurred after her husband, whose income she needed to help support their household, returned from a combat deployment suffering from post-traumatic stress disorder, a disability that progressively interfered with his ability to maintain steady, full-time employment. Applicant tried to offset this loss of income by refinancing several debts into a consolidation loan and using her savings to make ends meet. However, she totally lost control of her finances when she was laid off from her job in 2012. Unable to make ends meet, she decided to resolve her financial crisis through the federal bankruptcy court. Currently, all of her unsecured debt has been discharged. AG ¶ 20(b) and 20(d) apply.

Applicant's home mortgage remains in foreclosure status, and though she has remained in the home, she has not made any mortgage payments in more than two years. Conversely, she has been working actively trying to modify the mortgage with the mortgagee since she first fell behind on her payments. Currently, she is challenging the foreclosure in court and attempting to negotiate a resolution of the dispute.

It is not within the purview of this court to assess the merits of civil claims tangentially related to an applicant's security worthiness. However, given the comprehensive nature of Applicant's motion for a default judgment pleading in her civil case against the bank that foreclosed upon her mortgage (Answer, Att. B), and the fact that the case is still pending, her dispute appears, at minimum, to have a reasonable, good-faith basis. I conclude AG ¶ 20(e) applies.

Applicant has demonstrated that her finances are under control. She maintains a budget. She earns \$83,000 annually, has a combined \$17,000 deposited in two bank accounts, and now has approximately \$2,000 of after-expense income since the bankruptcy discharge. AG ¶ 20(c) applies.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

I conclude that mitigating circumstances such as the cause of Applicant's financial distress, the reasonable manner in which she confronted it, and the signs of stability indicated by her reserve income and her ample discretionary income outweigh the negative security ramifications of the foreclosure status of her home. Applicant has mitigated the financial considerations security concern.

### **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:

FOR APPLICANT

Subparagraphs 1.a - 1.j:

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.

MARC E. CURRY  
Administrative Judge