



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



In the matter of: )  
)  
) ISCR Case No. 15-05841  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel  
For Applicant: *Pro se*

11/16/2016  
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**Decision**  
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LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On April 5, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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 (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on April 14, 2016, and requested a hearing before an administrative judge. The case was assigned to me on July 15, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 15, 2016, scheduling the hearing for July 21, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without

objection. Applicant testified and submitted Applicant's Exhibit (AE) A, which was admitted without objection. The record was held open for Applicant to submit additional information. She did not submit any additional documents. DOHA received the hearing transcript (Tr.) on July 29, 2016.

### **Findings of Fact**

Applicant is a 38-year-old engineer for a defense contractor. She has worked for her current employer since February 2015. She is applying for a security clearance for the first time. She has a bachelor's degree that was awarded in 2000 and a master's degree that was awarded in 2005. She married in 2002 and divorced in 2006. She married her current husband in 2008. She has three children, ages seven, five, and two.<sup>1</sup>

Applicant bought a house in 2005 to be used as her home. It was financed with first and second mortgage loans. She bought an investment condominium in a tourist area the same year for about \$293,000. She paid about \$10,000 toward the sale and the remainder was financed with first and second mortgage loans from the same bank.<sup>2</sup>

The real estate market collapse affected both properties. Applicant moved with her husband to another state for his job in 2010. She was unable to sell her home for what was owed on the mortgage loans. The holders of the mortgage loans agreed to a short sale of the property and released Applicant from liability for any deficiency owed on the loans after the property was sold.<sup>3</sup>

Applicant was able to consistently rent her investment condominium until the collapse. The rental market was flooded with foreclosed properties. Applicant was unable to rent the property, and she could not afford the mortgage payments without the rental income. She stopped paying the mortgage loans in about 2010.<sup>4</sup>

The bank that held the mortgage loans sold the second mortgage loan to another financial institution. Both the original bank and the second financial institution agreed to a short sale of the condominium for \$30,000 in 2011. The original bank released Applicant from liability for the deficiency owed on the first mortgage loan after the property was sold. The second financial institution accepted \$3,000 from the sale to release the lien, but did not release Applicant from liability for the deficiency owed on the second mortgage loan. Applicant's attorney advised her not to pay the deficiency and wait until it was barred from collection by the statute of limitations. She believes the financial institution bought the second mortgage loan for less than it received in the

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<sup>1</sup> Tr. at 24-26; GE 1.

<sup>2</sup> Tr. at 20-21, 26, 29-30; Applicant's response to SOR; GE 2, 3.

<sup>3</sup> Tr. at 26-28; Applicant's response to SOR; GE 1-3.

<sup>4</sup> Tr. at 25, 28-31; Applicant's response to SOR; GE 2, 3.

short sale. The financial institution charged off the \$24,166 balance of the loan and took no steps to enforce the deficiency. It is now past the statute of limitations.<sup>5</sup>

Applicant's finances are otherwise sound. She successfully disputed owing the only other debt alleged in the SOR. She stated that she has learned a valuable lesson and that she does not intend to invest in real estate again.<sup>6</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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<sup>5</sup> Tr. at 20-24, 31-45; Applicant's response to SOR; GE 2-4.

<sup>6</sup> Tr. at 17, 19, 23, 45-48; Applicant's response to SOR; GE 2-4; AE A.

Section 7 of EO 10865 provides that adverse 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 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 under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant was unable to pay the mortgage loans on her investment property. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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 investment property lost most of its value in the real estate collapse. She was unable to rent it because of the glut of properties available. She retained an attorney who negotiated a short sale of the property. The holder of the first mortgage released Applicant from liability for the deficiency owed on the loan after the property was sold. The holder of the second mortgage loan accepted \$3,000 to release the lien on the property, but it did not release Applicant from liability for the deficiency. She followed her attorney's advice and waited until the loan was barred from collection by the statute of limitations. The financial institution charged off the loan and took no steps to enforce the deficiency before it was barred from collection.

Applicant's finances are otherwise sound. She has learned a valuable lesson, and she does not intend to invest in real estate again. Her financial decisions no longer reflect questionable reliability, trustworthiness, and judgment. AG §§ 20(a) and 20(c) are applicable. AG § 20(b) is partially applicable. AG § 20(e) is applicable to the successfully disputed 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 the applicant's conduct and all relevant 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.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

### **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
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Subparagraphs 1.a-1.c:	For Applicant
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### **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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Edward W. Loughran  
Administrative Judge