



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-03520
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

02/29/2016

**Decision**

LYNCH, Noreen A., Administrative Judge:

On January 21, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a review based on the written record in lieu of a hearing. The case was assigned to me on January 20, 2016. Department Counsel submitted a File of Relevant Material (FORM), dated September 28, 2015.<sup>1</sup> Applicant received the FORM on October 27, 2015. Applicant did not submit any response to the FORM. Based on a review of the case file, eligibility for access to classified information is denied.

---

<sup>1</sup>The Government submitted seven items for the record.

## Findings of Fact

In her answer to the original SOR, Applicant admitted the SOR allegation (1.a) under Guideline F. She also provided explanations. An amended SOR was included in the FORM.<sup>2</sup> Applicant did not respond to the additional allegations in the amended SOR 1.b-1.i.

Applicant is 33 years old. She is divorced and has one son. She graduated from high school in 1998, and she attends college at the present time. She served in the U.S. Air Force from 2000 to 2006, receiving an honorable discharge. (Item 3) Since 2007, she has been employed with her current employer. She completed an application for a security clearance in July 2013. (Item 3) She has held a security clearance since about 2008.

## Financial

The original SOR alleges an indebtedness to a mortgage company for a second mortgage that is past-due in the approximate amount of \$59,662.

Applicant acknowledged the foreclosure action on her home after her adjusted mortgage increased and she was unable to short-sell the home. She denied current responsibility for the mortgage based on a state non-recourse statute. Regardless of the state deficiency statute, there has been no evidence presented to substantiate Applicant's attempt or efforts to resolve the delinquent mortgage account prior to the 2011 foreclosure, or to show the status of her personal financial condition at the time leading up to the foreclosure. The record reflects that Applicant has been with her current employer since 2007. (Item 2)

Applicant's May 2014 response to interrogatories stated that she was still trying to make arrangements on the mortgage debt. She also listed some delinquent medical debts that she paid in 2014 and provided bank transaction printouts. (Item 6)

The amended SOR listed charged-off accounts totaling approximately \$16,070, and a mortgage account that has been foreclosed. The latest credit report reflects these additional delinquent debts. (Item 7) Applicant did not provide any evidence of payments or a plan to address these debts.

## Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible

---

<sup>2</sup>The Government moved to amend the SOR in the FORM based on new debts in a recent credit report in the record. Applicant acknowledged receipt of the SOR and the FORM on October 27, 2015. The motion to amend the SOR is granted.

rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." <sup>3</sup> The burden of proof is something less than a preponderance of evidence. <sup>4</sup> The ultimate burden of persuasion is on the applicant. <sup>5</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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." <sup>6</sup> "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." <sup>7</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information. <sup>8</sup> The decision to deny an individual a

---

<sup>3</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>4</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>5</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>6</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>7</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>8</sup> *Id.*

security clearance does not necessarily reflect badly on an applicant's character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

### **Analysis.**

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

The security concern for financial considerations is set out in AG ¶ 18:

Failure or an 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." It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant's second mortgage account on her home was past due in the amount of \$59,662. Her home went to foreclosure in 2011. She has incurred additional delinquent debt in the amount of \$16,070. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

The nature, frequency, and relative recency of Applicant's financial difficulty make it difficult to conclude that it occurred "so long ago." Applicant's reliance on the state deficiency statute does not provide mitigation. In her 2014 interrogatories she listed other delinquent debts that she was just addressing. However, new delinquent debts appear on the latest credit report. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. Applicant has worked since 2007. She did not provide any information that would allow this mitigating condition to apply. She did not produce any documentation that she acted responsibly under the circumstances.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. There is no evidence in the record to support actions taken by Applicant before her home went to foreclosure. The record

is silent as to financial counseling. FC MC AG ¶ 20(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) does not apply. Absent documentary evidence in support of efforts to resolve the mortgage or to deal with the mortgage company before the foreclosure of her home, her current financial status and future ability to meet financial obligations remain a question because there are no indications her financial problems are being resolved or under control. She has new delinquent debts contained in a recent credit report.

### **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.

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. As noted above, the ultimate burden of persuasion is on the Applicant.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is a 33-year-old single mother. She served in the military and received an honorable discharge. She has been employed since 2007. Her reliance on a state deficiency statute is not sufficient to mitigate the case as she has not presented any documentation to show she acted responsibly before the foreclosure.

Additionally, there is continuing evidence of an ongoing pattern of financial irresponsibility as shown in Applicant's previous delinquent debts paid as a result of financial interrogatories, and new delinquent debts as disclosed in the latest credit bureau report. The new delinquent debts were reported delinquent in 2014 and 2015, many reported months within her paying-off old delinquencies as noted in her interrogatory response. She has not provided any information to carry her burden of mitigation in this case.

The Government's evidence as contained in this FORM reflects Applicant's inability or unwillingness to fully meet her financial obligations. Applicants unresolved

