



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-03502
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Philip J. Katauskas, Esq., Department Counsel  
For Applicant: *Pro se*

09/30/2015

**Decision**

LYNCH, Noreen A, Administrative Judge:

On December 18, 2014, 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 September 17, 2015. Department Counsel submitted a File of Relevant Material (FORM), dated July 10, 2015.<sup>1</sup> Applicant received the FORM on July 17, 2015. Applicant submitted information in response to the FORM, which was marked and admitted into the record as AX A. Based on a review of the case file, eligibility for access to classified information is denied.

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

## Findings of Fact

In her answer to the SOR, Applicant admitted the factual allegations under Guideline F (Financial Considerations) with the exception of 1.c and 1.h of the SOR, and provided explanations. (Item 1)

Applicant is a 58-year-old employee of a defense contractor. She is a college graduate, married with two grown sons. (Item 5) She has worked for her employer since 1998, her clearance sponsor. She completed a security clearance application in 2013.

The SOR alleges eight delinquent debts totaling \$342,272. (Item 1) The majority of the debt is from past-due mortgages on four rental properties owned by Applicant.

Applicant attributes her delinquent debts to failure to live within her means. She notes that she is an advocate of lay-away plans and long-term payment arrangements to obtain what she wants. (Response to FORM) Specifically, Applicant has rental properties that she purchased as an investment for the future. She wanted to keep them until they could be sold at a profit and not a loss. At the time she purchased them, she believed real estate to be a sound investment.

As to the SOR allegation at 1.a for a past-due amount of \$7,624 on a real estate mortgage balance of \$103,593, Applicant contacted the loan company who is allowing a repayment plan. She notes that the actual mortgage balance is \$100,185. This rental property has been vacant and is in the process of being made ready for new tenants. The mortgage payment fell behind when there was no rental income. She provided documentation that she made a payment of \$860 in July 2015.

As to the SOR allegation at 1.b for a past-due amount of \$3,004 on a real estate mortgage balance of \$98,522, Applicant contacted the loan company who is allowing a repayment plan. She notes that the actual mortgage balance is \$97,690. This rental property, which has been vacant was vandalized. It is now being prepared for new tenants. Applicant keeps the company apprised of her intention so that she can avoid a short sale or foreclosure of the property. She submitted a payment that was made in the amount of \$1,129 in July 2015. (Response to FORM, EX A)

Applicant stated that, as to the alleged debt at 1.c, she is still working to resolve this. It was a rental property that foreclosed in 2014. The amount charged off was approximately \$50,977. There is documentation in the record that Applicant was issued foreclosure notice in 2012, and that a payment of \$52,393 was needed to avoid a foreclosure. Applicant stated that she had no notice before the auction of the home. She stated that she will try to settle this issue. She also denied that she owed the alleged amount.

As to the SOR allegation at 1.d for a past-due amount of \$1,746 on a real estate mortgage balance of \$41,736, Applicant admits there is a past-due amount. She states

that it is still delinquent, but the amount is about \$1,500. The reason it is delinquent is the same as the other rental properties.

Applicant does not admit being indebted to the company at 1.e for a past-due amount of \$1,582, with a total mortgage balance of \$19,883. She notes the account was sold to another company. She stated that she was sending payments to a new company but it was sold again. This account is a second mortgage on the rental property at allegation 1.a. Applicant's plan is to work with a consultant to address this issue.

Applicant states that she has a payment plan in place for the debt at 1.f that was charged off in the amount of \$11,152. She states that she pays \$84 a month. There was no documentation in the record to substantiate her assertions.

As to the SOR allegation at 1.g for an account charged off in the amount of \$10,294, Applicant states that the debt has decreased and that her agreed upon payment plan is up to date. She did not provide documentation that she is paying \$170 per month on the account.

Applicant has settled the account at 1.h in the amount of \$6,115 for \$2,100 in May 2014. She provided documentation to support her claim.

Applicant notes that she worked with a credit counselor at a bank last year, but she did not provide any specific information. She states that her ultimate plan is to sell the rental properties as soon as practical. She emphasized the fact that she invested in real estate and then bad economic times occurred should not be interpreted as poor judgment. She states that she and her husband together earn about \$145,000 a year and she has used her income and savings to keep the mortgages afloat. She states that she just needs more time and that real estate is not something that you can just sell overnight. She plans to consult with an attorney to help resolve some of the financial issues. (Response to FORM)

### **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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The United States 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>2</sup> The burden of proof is something less than a preponderance of evidence.<sup>3</sup> The ultimate burden of persuasion is on the applicant.<sup>4</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>5</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>6</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>7</sup> The decision to deny an individual a 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.

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<sup>2</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>3</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>4</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>5</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>6</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>7</sup> *Id.*

## 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 has substantial delinquent debt as a result of delinquent mortgages on various rental properties. Consequently, Financial Considerations Disqualifying Condition (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.

Applicant notes that the declining real estate economy has caused the financial difficulties with the mortgages. She would pay her mortgages with the money from her tenants. As the properties lacked tenants she could not always pay the various mortgages. She also had a second mortgage on one of the properties. She recently started making payments on several mortgages. She still has a substantial amount of unresolved debts. 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. As noted, Applicant answered that she invested in rental property with the idea that the rental income would pay the mortgages. She also noted that she does not deny "failure to live within one's means." She does not want to sell the properties at a loss. She wants to sell at a profit and notes that will take time. She has provided documentation that she recently started a repayment plan on two of the delinquent mortgages. One small account has been settled. She did not show responsible action in addressing the delinquent debts. This mitigating condition does not apply.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. She resolved the

debt in 1.h. Applicant receives partial credit due to her two payment plans. Applicant received financial counseling with one of the banks. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) does not fully apply.

### **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 seeking a security clearance.

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 58-years old. She is married and has held a position with her employer since 1998.

Applicant answered the FORM with a narrative that explained her investment properties and the failing economy. She planned to pay her mortgages with rental income. This is not, in and of itself, a bad thing. However, Applicant wants to sell her properties at a profit. Her plan is to pay the mortgages when she can sell the rental properties. She has made some recent efforts to address accounts. She has settled one account. However, she has a substantial amount of debt. Her financial problems are not under control and she presented no realistic plan for resolving them. I have doubts about her judgment and reliability based on the record. Any doubts must be resolved in favor of the Government.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

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NOREEN A. LYNCH.  
Administrative Judge