



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 14-06584 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Stephanie C. Hess, Esq., Department Counsel  
For Applicant: *Pro se*

12/30/2015

\_\_\_\_\_

**Decision**

\_\_\_\_\_

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On January 20, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 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 effective within the DOD for SORs issued after September 1, 2006.

On March 11, 2015, Applicant answered the SOR, and she elected to have her case decided on the written record in lieu of a hearing. On September 15, 2015, Department Counsel submitted the Government’s file of relevant material (FORM). The

FORM was mailed to Applicant, and it was received on October 6, 2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence and Items 3 through 7 are admitted into evidence. Applicant provided additional evidence that was marked as Applicant Exhibit (AE) A, and it was admitted into evidence without objection. The case was assigned to me on December 1, 2015.

### **Findings of Fact**

Applicant admitted all of the SOR allegations with explanations. I have incorporated her admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 45 years old. She holds bachelor's and master's degrees. She has worked for federal contractors since 1999 and has held her current position since 2007. She lists one period of unemployment from June 2003 to July 2003. She has not served in the military. She married in 2000 and has children ages 15 and 11 years old. Applicant has held a security clearance in the past.<sup>1</sup>

As part of a background investigation, Applicant was interviewed in August 2007. She disclosed to the investigator that in the fall of 2004 she failed to pay her mortgage and was served foreclosure papers from the lender. She became delinquent when there was an interruption of her income due to maternity leave. To avoid foreclosure, the lender agreed to modify the loan, increase her monthly payments, and add the delinquent payments to the balance of the loan. Her new monthly payments were between \$1,900 and \$2,000. She indicated during her interview that she had been current on the loan until February 2007.<sup>2</sup>

In June 2006, Applicant's spouse lost his job and received severance pay until December 2006. He received unemployment benefits of about \$1,200 a month. This was not enough income for Applicant and her spouse to pay all of their bills. They did not make their mortgage payments for the months February through May 2007. They again applied for a loan modification. The lender approved it and again added the delinquent balance to their mortgage loan. Their new monthly payment was \$2,118.<sup>3</sup>

Applicant completed a security clearance application (SCA) on July 27, 2012. She disclosed in her SCA that her husband had been unemployed for four years. Due to the reduction in their household income they were unable to make their mortgage payments and had applied for a loan modification. She indicated their financial problems

---

<sup>1</sup> Item 4.

<sup>2</sup> Item 5. I have only considered the matters alleged in the SOR for disqualifying purposes. All other matters will only be considered when analyzing the applicability of the mitigating conditions and the "whole-person."

<sup>3</sup> Item 5.

started in March 2009 and were resolved in August 2010. She wrote on the SCA: "Resolved loan was modified. Payments and interest rate were reduced to a manageable amount. Payments at the new rate are being made."<sup>4</sup> During her October 9, 2012 interview with a government investigator, she indicated she was unaware that her mortgage payments were past due and she was seeking a loan modification. SOR ¶ 1.a (\$238,169) is Applicant's mortgage that is in foreclosure status. In Applicant's response to interrogatories from March 2014, she indicated that she was updating her loan modification application, which included an updated budget, as required. In her answer to the SOR, Applicant stated that she is disputing the mortgage debt. Her credit report shows she made her last mortgage payment in January 2013. In response to the FORM, she stated the matter was now before a court. She did not provide any amplifying information as to the basis of her dispute or any documents to substantiate her actions to resolve the debt.<sup>5</sup>

Applicant disclosed on her SCA that she had traveled outside of the United States as a tourist to Haiti, Jamaica, and Mexico in September 2008. She traveled again as a tourist in September 2009 to Aruba and Dominica. The latter trip was taken during the March 2009 through August 2010 period when she indicated on her SCA that she was having financial problems. During her background interview on October 9, 2012, she provided updated information to the investigator stating she had traveled to the Bahamas for one to five days for tourism. No other amplifying information was provided regarding this information.<sup>6</sup>

Applicant disclosed in her SCA that she had a financial issue with the Internal Revenue Service (IRS). She checked "yes" to the question: "In the past seven (7) years you had your wages, benefits, or assets garnished or attached for any reason." Applicant indicated the amount involved was \$200 and stated: "IRS was attempting to collect on 2008 taxes, based on their estimate, prior to actual filing." She indicated the issue was resolved and stated: "Resolved. Taxes were filed, and IRS system was updated to reflect the filing." She listed the date the issue began as November 2011, and it was resolved in April 2012.<sup>7</sup>

On her SCA Applicant checked "no" to question 26, which asked if she had failed to file her federal, state, or local tax returns as required in the last seven years. During her most recent background interview in October 2012, she indicated the answer should have been "yes." She disclosed that she filed extensions with the IRS and her state for her 2010 and 2011 tax returns. She stated that as of the date of the interview, she was

---

<sup>4</sup> Item 4.

<sup>5</sup> Items 5, 6, 7, AE A.

<sup>6</sup> Item 4, 5.

<sup>7</sup> Item 4.

waiting for her 2009 refund. She did not explain why she was still waiting for her 2009 tax refund in 2012.<sup>8</sup>

In response to the March 2014 specific interrogatory inquiry that asked if Applicant had filed her federal tax returns for 2007 through 2012, she checked “yes.” It also asked for explanations for failing to file on time or why they had not yet been filed. Applicant responded:

We suffered financial losses due to medical and auto expenses that were unexpected. We contacted our tax preparer to inform them of our need to file extensions as well as work with them to get caught up on our filings. 2009, 2010 returns are being completed now. Any refunds will be used to pay the tax preparer and debts owed. We plan to file 2011, 2012, & 2013 this year (extension requests were submitted accordingly).<sup>9</sup>

Applicant did not explain what specifically kept her from filing her federal and state income tax returns for each consecutive year. She failed to explain what action she took after each extension expired. Her tax transcripts reflect that she requested an extension to file the 2007 federal income tax return, and it was granted until October 15, 2008. On June 15, 2009, the IRS sent an inquiry to Applicant because the extension had expired and she had not filed the 2007 tax return. According to the transcript, Applicant filed her 2007 federal income tax return on April 4, 2011. She received a refund.<sup>10</sup>

Applicant was granted an extension until October 15, 2009, to file her 2008 federal income tax return. She did not file it until December 31, 2012. She received a refund. The tax transcripts she provided indicated that no tax return was filed for 2009, 2010, 2011 and 2012.<sup>11</sup> Applicant further stated in her interrogatory response: “Filed 2007, 2008. Working to complete 2009 & 2010 returns now. The remaining years will be filed this year.”<sup>12</sup>

In Applicant’s answer to the SOR from March 2015, she stated she had filed her 2010 tax return and was working on filing the remaining returns. She provided a letter from a tax professional indicating that Applicant’s 2010 tax return was filed and they were working on 2011 and 2009. In her response to the FORM, she stated that the 2010 and 2011 tax returns were filed and she expected a refund. No official

---

<sup>8</sup> Item 4.

<sup>9</sup> Item 5.

<sup>10</sup> Item 5.

<sup>11</sup> Item 5.

<sup>12</sup> Item 5.

documentation was provided to verify the current status of Applicant's tax return filings, except as noted above.<sup>13</sup>

The judgment in SOR ¶ 1.b (\$1,832, filed November 2012) is for a time-share Applicant and her husband purchased. They were unable to make the payments due to unexpected expenses. In her response to interrogatories, Applicant stated she had contacted the creditor to address payment options for the delinquent balance. The creditor wanted payment in full, and she was unable to commit to paying the full amount due to lost wages and other financial obligations. It is unknown when she purchased the time-share. She stated that the time-share was not her primary residence, so she forfeited the property. In her answer to the SOR, Applicant stated "the judgment in this matter is being disputed." No documentation was provided as to the basis of her dispute or actions taken to dispute it.<sup>14</sup>

Applicant provided a personal financial statement that disclosed a monthly mortgage payment of \$2,054 and a notation that stated "modification requested." She does not include this amount in her monthly expenses. She calculated a remainder of income after paying her expenses as \$3,593, which would indicate that she had sufficient income to make her mortgage payment and have a remainder of \$1,539. Applicant did not provide amplifying information about her calculations or why she has defaulted on her loan.<sup>15</sup>

In her answer to the SOR, Applicant attributed her financial problems to loss of income resulting from a government shutdown, surgical/medical expenses, and unexpected auto repair expenses. She also attributed her financial problems to her husband's four-year unemployment. On her 2014 personal financial statement she listed that he was earning a salary. It is unclear when he became employed and if he still is employed.<sup>16</sup>

## **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 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, these guidelines are applied in conjunction with the

---

<sup>13</sup> Items 3, 5.

<sup>14</sup> Items 3, 5, 7.

<sup>15</sup> Item 5.

<sup>16</sup> Item 5.

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." 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, 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, and 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 that an applicant may deliberately or inadvertently fail to 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. I have considered the following under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant's mortgage is in foreclosure due to her failure to make the required payments since 2013. She has a judgment that was filed in 2012 that has not been paid. She failed to timely file her 2009 through 2013 federal and state income tax returns. Applicant has a history of being unable or unwilling to satisfy her debts. The above disqualifying conditions have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;
- (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 debts; 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 has not resolved the mortgage account (SOR ¶ 1.a) that is in foreclosure. She repeatedly had her loan modified and then was unable to make the payments. She admitted she failed to make her mortgage payments. She now disputes the debt and stated it is in the court system. She failed to provide evidence as to the basis of her dispute or documents to support her actions to resolve the issue. She admitted in her response to interrogatories that she owed the debt for the time-share she purchased and was unable to make the payments. She later indicated she disputed the judgment. She did not provide a reasonable basis to dispute the legitimacy of the judgment or provide documented proof to substantiate her dispute or evidence of her actions to resolve it. AG ¶ 20(e) does not apply.

Applicant has unresolved debts. She attributed her financial problems to her husband's unemployment, government shutdown, medical expenses, and vehicle repairs. These were conditions beyond her control. Applicant did not timely file her federal and state income taxes from 2009 to 2013. She failed to provide sufficient evidence to show her failure to file was beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant stated she sought a loan modification to resolve her delinquent mortgage debt, but failed to provide supporting documents. She did contact the time-share creditor, but could not meet the payment plan offered. She lists three periods when she was out of the country on vacation; two periods were during times when she indicated she was having financial problems. She failed to provide sufficient evidence that under the circumstances she acted responsibly to resolve the financial concerns. AG ¶ 20(b) partially applies.

Applicant did not provide evidence that she has received financial counseling. She did not provide sufficient evidence that her financial problems are being resolved or under control. Other than statements included in her answer to the SOR, interrogatories, and FORM, she did not provide any documents or supporting evidence that she initiated good-faith efforts to repay her creditors or otherwise resolve the debts. She admitted she owed the debts alleged and then later disputed them without explanation or supporting documents. Applicant provided some evidence that she has sought assistance in filing her delinquent income tax returns. Some of her federal income tax returns are now filed, but others remain unfiled. Applicant offered no explanation for why she repeatedly failed to timely file the returns even after she was put on notice that it was a security concern. AG ¶ 20(c) partially applies. AG ¶ 20(d) does not apply.

Applicant repeatedly neglected to timely file her federal and state income tax returns from 2009 to 2013, despite being aware that it was a concern. The tax transcripts she provided support that she has filed for some tax years, but others remain unfiled. She did not provide a reasonable explanation for her inaction regarding the timely filing of them. Applicant has had difficulty paying her mortgage for many years. Her conduct is recent and did not occur under circumstances that are unlikely to recur. Her actions cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not 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 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 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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 45 years old. She has been steadily employed since 1999 except for a short period in 2003. She has experienced financial problems regarding paying her mortgage for many years. She attributed her financial problems to her husband's lengthy period of unemployment, a government shutdown, medical issues, and car repairs. Applicant has had her mortgage loan modified more than once to allow her to prevent foreclosure. She purchased a time-share that she failed to pay and a judgment entered in 2012 is unsatisfied. She did not provide an explanation for repeatedly failing to timely file her federal and state income tax returns, even after she became aware it was a security concern. Some of them are now filed, but others remain unfiled. She has exhibited an unstable financial track record, which raises questions about her trustworthiness, reliability, and good judgment. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

### **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.c:                      Against 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Carol G. Ricciardello  
Administrative Judge