



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 14-04671
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah Minster, Esquire, Department Counsel  
For Applicant: *Pro se*

11/02/2015

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant submitted updated documentary evidence mitigating Guideline F security concerns. Applicant’s eligibility for a security clearance is granted.

**Statement of the Case**

On November 21, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued 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 (AG) effective within the DOD on September 1, 2006.

In a response to the SOR, dated December 10, 2014, Applicant admitted the sole allegation raised and requested a determination based on the written record in lieu of a hearing. On July 18, 2015, the Government issued a File of Relevant Material (FORM) that contained four attachments (“Items”). Applicant received the FORM on August 26, 2015, and she responded within the 30 days provided with a brief letter and two

attachments. The case was assigned to me on October 9, 2015. Based on my review of the case file and submissions, I find Applicant mitigated financial considerations security concerns.

### **Findings of Fact**

Applicant is a 67-year-old engineer who has worked for the same defense contractor since 1997. She has earned an associate's degree. A widow, she is the mother of two grown children.

At some time in 2008, Applicant co-signed a home loan for her daughter to be eligible to purchase a home. The original loan was for about \$210,500. Applicant stated that she had herself removed as co-owner on the house in October 2013 in order to help her daughter refinance the mortgage. (FORM, Item 3 at 2-4) In the interim, her daughter fell behind on the mortgage because her husband was not generating sufficient income to meet their monthly obligation. With approximately \$15,875 past due on the mortgage in February 2014, foreclosure was initiated.

SOR allegation 1.a concerns the past-due mortgage on the home that was in foreclosure status. The available information concerning this issue is limited, and found almost entirely in Applicant's response to the SOR (FORM, Item 1), notes from an investigative report (FORM, Item 3), and her response to the FORM. Applicant's SOR response comment is as follows:

Yes I was co-signer on my daughter's home mortgage with [Creditor Name #1]. We worked with [Creditor Name #1] and on May 22, 2014, she was approved for a loan modification and all paperwork was completed. The past due amount was eliminated and the interest rate was reduced, making her payments lower. All her home mortgage payments have been current since that date. [Creditor Name #1] has since sold the mortgage to [Creditor Name #2, plus address]. Please contact me if there are any further questions.

In response to the FORM, Applicant wrote:

Enclosed are bank statements of my daughter's mortgage account with [Creditor Name #2]. They show that her account was up to date as of [September 1, 2015]. Also enclosed is her payment history from June to the present date. The mortgage account is in the name of [daughter and Applicant, plus address and account number]. After her refinancing with [Creditor Name #1], the mortgage was sold to [Creditor Name #2].

Attached to this note is a printout from Creditor Name #2's website concerning the account referenced by Applicant in her comment. No names are cited in the account summary. (Response to the FORM, attachment 1). It cites to the loan number, property address, mailing address, original loan amount (\$224,315), unpaid principal balance

(\$177,300), loan origination date (September 23, 2008), first payment date (November 1, 2008), loan maturity date (May 2044) and interest rate. The second attachment reflects a transaction history from the same Internet site showing three months of payments, made on August 31, 2005, July 31, 2015, July 6, 2015, and June 19, 2015.

FORM, Item 4, is the February 2014 credit report supporting the allegation. Its reference to this debt does not reflect the same loan number. It can be assumed the account number it references is an internal account number for the collection effort. It does, however, reflect that the delinquent mortgage is in foreclosure status, is a joint mortgage, was opened in August 2008, and had an original balance of \$224,315. Consequently, Applicant's submissions appear to be related to the account at issue. Little more relevant information is available. No other notable adverse financial issues are raised in the FORM. The evidence indicates Applicant otherwise lives within her means.

### **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 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 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.

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 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard 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**

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant was co-signer on a mortgage that became significantly overdue. This is sufficient to raise two financial considerations disqualifying conditions:

AG ¶ 19(a) inability or unwillingness to satisfy debts; and

AG ¶ 19(c) a history of not meeting financial obligations.

Five conditions could mitigate these finance-related security concerns:

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;

AG ¶ 20(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;

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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

Based on the record as a whole, an adverse financial incident such as the one at issue is atypical for Applicant. Aside from the account at issue, in which she is a co-signer, she is otherwise a financially responsible individual. There is no evidence indicating that she is not currently reliable, trustworthy, or of sound judgment. Although Applicant voluntarily became a co-signer on her daughter's home loan, there is no documentary evidence indicating that incidents of this type are anything but rare. Moreover, Applicant showed good judgment in making moves to distance herself from ownership on the home, and in confirming that her daughter's efforts toward rehabilitating the mortgage were successfully completed. AG ¶ 20(a) applies.

The only reason given for the mortgage becoming past-due is Applicant's son-in-law's inability to generate sufficient income to pay for his wife's mortgage. There is no argument that this inability is related to a condition outside of the family's control. There is no evidence Applicant or her daughter has received financial counseling. Applicant does not dispute the debt at issue. Remaining at issue is whether Applicant's materials demonstrate that the issue has been resolved or is under control.

The two documents presented by Applicant to show that the mortgage is now current are the product of Creditor Name #2, the successor to the mortgage at issue. There is sufficient similarity between the terms of the loans reflected by Creditor Name #1 and Creditor Name #2 to conclude they represent the same debt. For example, they reflect that the delinquent mortgage is in foreclosure status, is a joint mortgage, was opened in August 2008, and had an original balance of \$224,315. These characteristics mirror aspects of the original mortgage to sufficiently link evidence of rehabilitation. Therefore, AG ¶¶ 20(c)-(d) 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 relevant circumstances. The administrative judge should consider the adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on 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 incorporated my comments under the guideline at issue 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 a 67-year-old widow who has worked for the same defense contractor since 1997. She is well educated, has raised two children, and co-signed on a mortgage to help her daughter and son-in-law acquire a home. When her daughter and son-in-law could no longer meet their financial obligations on the property, the loan was deemed past due and foreclosure procedures were instituted.

With the mortgage at issue refinanced by Applicant's daughter without her mother as co-owner, more favorable loan terms are now controlling. The arrearage has been eliminated as a result of the refinancing, and the daughter and her husband can manage the lower monthly payments. Applicant reliably has monitored these developments. Recently generated documents from the current collection entity for the original creditor reflect no delinquent balance. Indeed, those documents reflect a growing track record of timely payment on the rehabilitated, refinanced home loan.

The burden in these proceedings is on the applicant to provide evidence rebutting, refuting, or otherwise challenging documented evidence of delinquent debt. Applicant provided sufficient evidence to meet this burden. The evidence presented shows that Applicant's sole and atypical financial issue has been resolved. Financial considerations security concerns are mitigated.

### **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
Subparagraph 1.a:	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 a security clearance. Eligibility for access to classified information is granted.

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Arthur E. Marshall, Jr.  
Administrative Judge