

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Applicant is a 47-year-old employee of a defense contractor. A series of unfortunate events led to Applicant's financial problems, and ultimately to her filing and having her debts discharged in Chapter 13 bankruptcy (2002). Since her debts were discharged in June 2002, Applicant has been financially responsible. However, she has accumulated medical debts from unforeseen unemployment and medical emergencies. She has a budget and is paying the smaller debts as she can. Applicant has mitigated the financial considerations concern. She did not knowingly falsify her security clearance application. Thus, she has mitigated the security concerns under personal conduct and criminal conduct. Clearance is granted.

CASENO: 07-00116.h1

DATE: 09/26/2007

DATE: September 26, 2007

In re:	)	
	)	
	)	
-----	)	ISCR Case No. 07-00116
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
NOREEN A. LYNCH**

**APPEARANCES**

**FOR GOVERNMENT**

Daniel F. Crowley, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 47-year-old employee of a defense contractor. A series of unfortunate events led to Applicant's financial problems, and ultimately to her filing and having her debts discharged in Chapter 13 bankruptcy (2002). Since her debts were discharged in June 2002, Applicant has been financially responsible. However, she has accumulated medical debts from unforeseen unemployment and medical emergencies. She has a budget and is paying the smaller debts as she can. Applicant has mitigated the financial considerations concern. She did not knowingly falsify her security clearance application. Thus, she has mitigated the security concerns under personal conduct and criminal conduct. Clearance is granted.

## STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On May 4, 2007, DOHA issued a Statement of Reasons<sup>1</sup> (SOR) detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations), Guideline E (Personal Conduct) and Guideline J (Criminal Conduct) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR on May 30, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on June 29, 2007. I scheduled a hearing for September 12, 2007.

The hearing was convened as scheduled on September 12, 2007, via a video teleconference to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Government exhibits (GE 1-5) were admitted. Applicant's exhibits (AE A-G) were admitted into the record without objection. Testimony was taken from Applicant. Applicant had one witness testify on her behalf as reflected in the hearing transcript. The transcript (Tr.) was received on September 20, 2007.

## FINDINGS OF FACT

Applicant is a 47-year-old employee of a defense contractor. She graduated from high school in 1978. Shortly after that she was employed with an army depot from 1978 until 1980 and held a secret clearance.<sup>2</sup> She is married and has four children. Applicant has been with her current employer since April 2004.<sup>3</sup>

Applicant and her husband both worked during their marriage until Applicant's husband was severely injured in an automobile accident in October 1997. As a result of that accident, her husband is permanently disabled, and has never been able to return to work.<sup>4</sup> Although Applicant continued to work, she could not pay all the medical bills and other normal bills because her husband received no disability for two years, and they were living on Applicant's income. She filed for Chapter 13 Bankruptcy in October 1998. Under that plan she made payments successfully and the case was discharged in 2002.<sup>5</sup>

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<sup>1</sup>Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive).

<sup>2</sup>GE 1 (Security Clearance Application, dated July 20, 2005).

<sup>3</sup>*Id.*

<sup>4</sup>Tr. 21; AE E (Social Security Benefit Statement).

<sup>5</sup>Tr. 60.

From 1983 until August 2002, Applicant was engaged in steady employment. However she was laid off from her employment, and remained so until the end of 2003.<sup>6</sup> In February 2003, her three children were involved in a very serious automobile accident. Two of the children suffered very serious injuries.<sup>7</sup> Her son required extensive facial surgery. Since she was unemployed, Applicant had no medical insurance to cover any medical or hospital costs.

In the middle of 2003, Applicant's other son developed spinal meningitis. He was gravely ill for two years.<sup>8</sup> She could not obtain health insurance for him due to the pre-existing condition. He remained at home and was home schooled. Despite the severe injuries and illness her three children are now in college. Applicant has supported them and her husband by living on food stamps and unemployment insurance.<sup>9</sup>

Applicant has \$27,770 in delinquent debt.<sup>10</sup> The majority of the debt is for unpaid medical bills. (Allegations 1.b-bb, with the exception of 1.d, 1.e, 1.h, and 1.i which are paid). Applicant did not receive notices for the medical bills until she looked at a credit report after her security clearance application. The alleged debts in the SOR were listed as "medical provider." She immediately researched her credit and called to find out what the debts were for and if they were with a collection agency. Applicant learned that \$11,491 was owed to a particular hospital and that \$12,876 was to another hospital for surgery that her son had in 2003.<sup>11</sup>

Applicant contacted a company for debt consolidation. However, she was referred to another organization. When she contacted them, she learned that they required a fee before a repayment plan could be developed. She could not afford the fee.<sup>12</sup>

In 2003, Applicant and her husband separated and divorced in 2004.<sup>13</sup> However, they remarried shortly after. One of the telephone bills in allegation 1.f is disputed because she was not living at the address where the bills were sent.

Applicant started a financial counseling course and is almost finished. She has developed a budget and was advised not to do a repayment plan, but rather to pay off her smallest debts first. She has already paid the following debts: allegation 1.d for a television service (\$189); allegation 1.e for a credit account (\$655); allegation 1.h for an electric bill (\$363); and allegation 1.i. for a land line (\$162).

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<sup>6</sup>Tr. 19.

<sup>7</sup>AE B (Newspaper Article, dated February 2003).

<sup>8</sup>AE C (Newspaper Article, dated September 2006).

<sup>9</sup>Tr. 26.

<sup>10</sup>GE 5 (Credit Bureau Report); Tr 31.

<sup>11</sup>GE 4 (Answers to Interrogatories).

<sup>12</sup>Tr. 76.

<sup>13</sup>Tr. 52.

In 2004, Applicant started her current employment. She is described as a very hard working and honest person. She needs a security clearance to retain the employment. Her colleague, who has known Applicant since the 1990's attests to Applicant's character and ability to handle situations. She takes pride in her work, and is intelligent.<sup>14</sup> She has never had any difficulty maintaining her positions of responsibility during the last 20 years.

Applicant's current net monthly income, which includes her husband's disability pay, is \$2,770. After expenses, she has a net monthly remainder of \$170.85. She is current on her mortgage and car payments. Her vehicle will be paid in full soon and she will have more income to pay her delinquent debts.<sup>15</sup>

In 2005, when Applicant answered Section 28 (a) and (b) concerning any delinquent debts more than 90 or 180 days overdue, she answered "no." She did not know that she had any at that time. In fact, she did list in Section 27 her bankruptcy and an unpaid bill from 2004. Applicant was credible in her explanation at the hearing that she had no intent to deceive the government. She honestly had not seen a credit report and did not realize that any medical accounts were listed. She did not receive any notice for the telephone or utility bill because she had moved to a different address during her separation and divorce from her husband. I found her answers reasonable and her testimony credible.

## POLICIES

"[N]o one has a 'right' to a security clearance."<sup>16</sup> As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information."<sup>17</sup> The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."<sup>18</sup> An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.<sup>19</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>20</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. It is merely an indication that the applicant has not

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<sup>14</sup>Testimony of witness at Tr. 97.

<sup>15</sup>Tr. 87; AE A (Financial Statement).

<sup>16</sup>*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>17</sup>*Id.* at 527.

<sup>18</sup>Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

<sup>19</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>20</sup>*Id.*; Directive, ¶ E2.2.2.

met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.<sup>21</sup>

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in the Directive and AG ¶ 2(a).

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions section below.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

### **Guideline F: Financial Considerations**

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.

Applicant's history of delinquent debts, resulting in bankruptcy, establishes Financial Considerations Disqualifying Condition (FC DC) 19(a) (*inability or unwillingness to satisfy debts*) and FC DC 19(c) (*a history of not meeting financial obligations*). Her admissions and credit reports confirm the delinquent debts since the bankruptcy discharge in 2002.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC 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*), FC MC 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*), FC MC 20(c) (*the person 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 FC MC 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Although FC MC 20 (a) does not provide a temporal or specific definition of what constitutes "recent" conduct, Applicant's overall conduct with creditors does not cast doubt on her current reliability, trustworthiness and good judgment. She has shown sufficient unusual circumstances to

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<sup>21</sup>Exec. Or. 10865 § 7.

establish that her financial problems are “unlikely to recur.” Applicant suffered a period of unemployment, loss of her husband’s income due to a severe injury in a car accident and two individual incidents of injuries/ illness for her three children. These were all beyond her control and she acted in a responsible manner. I find that FC MC 20(a) is partially applicable. FC MC 20(b) is applicable for the reasons stated above.

FC MC 20(c) applies due to the counseling course that Applicant is attending. She also pursued information on a repayment plan prior to her new decision to pay only the smaller debts first.<sup>22</sup> She has paid some of the debts listed in the SOR. She also merits some credit for using bankruptcy, which is a legal means for resolving his debts.<sup>23</sup> Bankruptcy substantially reduced her debts, and accordingly reduced her potential vulnerability to improper financial inducements.

### **Guideline E: Personal Conduct**

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

On July 20, 2005, Applicant, in response to Section 28 (a) and (b) concerning financial delinquencies answered “no.” When she responded to the questions, she did not know that the medical bills or any other accounts were overdue. She had never received any notices of these accounts. She listed her bankruptcy and another unpaid bill in Section 27.

Under DC 16 (a), the government established that Applicant omitted a material fact from her answer to Section 28. She denied that she deliberately or knowingly falsified an answer to her security clearance application. When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an Applicant’s intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence regarding an Applicant’s intent or state of mind at the time the omission occurred. For DC

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<sup>22</sup>The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6, an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

<sup>23</sup>See ISCR 04-07360 at 2 (App. Bd. Sept. 26, 2006) (stating partial credit was available under FC MC 6 for debts being resolved through garnishment).

16 (a) (*deliberate omission, concealment, or falsification of relevant and material facts from an personnel security questionnaire.....*) To apply, the government must establish that Applicant's omission was deliberate. I do not find that this was a deliberate falsification. I find in favor of Applicant for personal conduct.

### **Guideline J Criminal Conduct**

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By it's very nature, it calls into question a person's ability to comply with laws, rules and regulations.

Based on my conclusion that Applicant did not falsify her answers on her security clearance application, as discussed under Personal Conduct. There is no basis for a Criminal Conduct Disqualifying Condition. The allegations under Criminal Conduct are found in favor of Applicant.

### **Whole Person Analysis**

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive and AG ¶ 2(a). I have also considered all the evidence, and every finding of fact and conclusion discussed above.

A series of unfortunate events led to Applicant's financial problems, and ultimately to her filing bankruptcy. Applicant used a legally available option to address her debts. As stated above, bankruptcy eliminated Applicant's debts, and accordingly reduced her potential vulnerability to improper financial inducements. In 2003, Applicant suffered more loss. Her children were in a serious car crash and later her son developed meningitis. She lost her steady employment and her husband was not able to return to work due to his permanent disability. Applicant did the best she could to raise her family and pay her bills. The stress of these conditions resulted in a short divorce for Applicant and her husband. They are now together. Applicant had successfully completed her Chapter 13 repayment plan which attests to her commitment to pay her debts.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on her financial issues, personal conduct, and criminal conduct. She is eligible for a security clearance.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a:-1.bb: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Paragraph 3. Guideline J:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

**DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Noreen A. Lynch  
Administrative Judge