

DATE: December 13, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 07-00685

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

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred approximately \$8,000 in delinquent debt, including charged off collection accounts from medical providers. She provided documentation concerning her payments in her repayment plan to her creditors, and thus mitigated the security concerns raised under the financial considerations guideline. Applicant's eligibility for a security clearance is granted.

STATEMENT OF THE CASE

On May 2, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating that it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.¹ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued.

On August 10, 2007, Applicant submitted a notarized response to the SOR, and elected to have her case decided at a hearing. On October 18, 2007, the case was assigned to me. A Notice of Hearing was issued on October 30, 2007. At the scheduled hearing on November 16, 2007, the Government introduced eleven exhibits (GX 1-11) into evidence without objections. Applicant testified and introduced Applicant Exhibits (AX) A into evidence without objection from Department Counsel. I left the record open until December 2, 2007, for Applicant to submit additional information. She submitted such documentation, which is marked as AX B and entered into the record without objection. DOHA received the transcript (Tr.) on November 26, 2007.

FINDINGS OF FACT

Applicant admitted allegations in subparagraphs 1.a through 1.j in her SOR response under Guideline F. The admissions are incorporated as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 45-year-old employee of a defense contractor. She left high school and married at age 18. Her husband died in 1983 and she was left a widow. Her husband was the sole support of the family. As a result, when he died, she had a son to support. On March 31, 1999, she completed her security clearance (SF 86) application.² Applicant has held a secret level security clearance for ten years.³ She has worked for her current employer since 2002.⁴

Applicant worked at minimum wage jobs and began taking college courses in 1988 to improve her work skills. She could not support herself and her son on her earnings. She had no choice but to file for bankruptcy in 1989. She filed Chapter 13 rather than Chapter 7 so that she could pay her creditors. She satisfied the debts in the mid 1990's.⁵

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

²GX 1 (Security Clearance Application, dated March 31, 1999).

³Applicant's answer to SOR, dated, August 10, 2007.

⁴*Id.*

⁵Tr. 21.

In 1993, Applicant remarried. She accepted the financial responsibility in the marriage for 14 years. Her husband did not work nor accept responsibility for the household debts. In fact, he squandered the household money. In 1994, Applicant's daughter was born with a congenital birth defect which required extensive medical care, including several surgeries. Some of the medical bills involved hospitalizations of two months or longer. Applicant paid what she could but the health insurance did not cover the remainder of the various bills to specialists and other providers.⁶

In 1996, Applicant started to work on line for various companies located in different states. She worked but did not receive W-2s or 1099s from the companies.⁷ She tried to contact the companies but they did not respond. She filed her taxes despite not having the correct forms. The IRS contacted her about the back taxes. She elected a lien on her house. She has now started to pay the back taxes after an arrangement with the IRS.⁸

In 2003, Applicant's husband was diagnosed with HIV. Applicant was also diagnosed three months later. In six months she was diagnosed with Hepatitis C. She contracted the conditions from her husband. She had chemotherapy for 50 weeks. She traveled 150 miles for that treatment. She did not miss work and paid her bills. She used her credit cards to help pay for some bills.⁹

She lived with her parents during the separation before her divorce because her husband would not leave the marital home although Applicant paid the monthly mortgage.¹⁰ Her husband had a drug problem. They finally divorced in July 2007. After the divorce, her ex-husband stole some checks from Applicant. Her husband also had not paid the utility bills and Applicant found herself responsible for another \$400 of debt.

Applicant is now living in her home with her youngest daughter who is 12 years old. She has \$25,000 left on the mortgage and approximately \$60,000 in equity. She does not receive regular child support payments, although she is entitled to it by court order, because her ex-husband does not work.

Applicant's debts in the SOR total approximately \$8,000. She earns approximately \$3,100 net per month working a regular schedule. She has a net remainder per month of approximately \$800.¹¹ She is current on her monthly bills and owns her automobile.

⁶Tr. 22.

⁷Tr. 24.

⁸Tr. 56.

⁹Tr. 25.

¹⁰*Id.*; Tr. 45.

¹¹Tr. 54.

The current status of Applicant's alleged debts listed in the SOR is as follows:

SOR ¶	Type of Account/Amount	Status	Evidence
1.a	Tax Lien \$6,054	Payment plan \$248	AX B
1.b	Medical account \$54	Unknown	Tr. 57
1.c	Medical account \$474	Settlement plan	AX B
1.d	Collection account \$233	PAID	AX B, Tr. 52
1.e	Collection account \$503	Plan for Repayment	AX A
1.f	Collection account \$756	Unknown	Tr. 64.
1.g	Medical account \$1,936	Duplicate	Letter 6/29/07 ¹²
1.h	Credit account \$1608	Plan for Repayment	AX B; Tr. 64
1.I	Cell phone \$198	PAID	AX B
1.j	Bankruptcy 1989	Discharged 1994	GX 3

Applicant is highly regarded by her employer. The President of the contractor company highlights the ethical and moral behavior of Applicant, as well as impressive skills. She manages five employees and is responsible for direct deposit of a payroll which averages \$200,000 biweekly. The president is aware of Applicant's financial difficulties. He attests to her capability with additional responsibilities in his absence. She has a stellar attendance record despite her medical and personal issues.¹³

POLICIES

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."¹⁴ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

¹²The File contains a letter from Applicant dated June 29, 2007 explaining the medical bills and a garnishment from wages for most of them. Her daughter had so many medical bills that some of them were unknown to Applicant.

¹³AX B (Letter from Employer)

¹⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security 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 ¶ 6.3 of the Directive, and AG ¶ 2(a).

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance.”¹⁵ An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.¹⁶ An administrative judge should consider the following factors: (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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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.¹⁷

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.¹⁸ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.¹⁹ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”²⁰ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.²¹ The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F of the revised Adjudicative Guidelines (AG) most pertinent to the evaluation of the facts in this case.

¹⁵ Directive, ¶ E2.2.1.

¹⁶ Directive, Revised Adjudicative Guidelines (AG) ¶2 (a)(1)-(9).

¹⁷ *Id.*

¹⁸ Directive, ¶ E3.1.14.

¹⁹ Directive, ¶ E3.1.15.

²⁰ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²¹ Directive, ¶ E2.2.2.

Guideline F (Financial Considerations) The Concern: *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.*²²

In this matter, the government provided substantial evidence that Applicant accrued delinquent debts with an approximate total balance of \$8,000. She admits there are still outstanding debts, and her 2007 credit report confirms her alleged debts. 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 the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her. I considered the 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*). It does partially apply because Applicant's difficulty with finances in 1989 has been resolved through her Chapter 13 bankruptcy and payment plan in approximately 1994. The debt that accrued after that time was in large measure due to emergency medical situations and her husband's inability to handle money. Applicant is now divorced and she has been diligent in paying debts over the years. Her health is now stable and she lives within her means.

Applicant's debts are the result of medical problems for her daughter and herself. She also divorced her second husband because he did not support the family financially, squandered money and even stole checks from Applicant after the divorce. Her first husband died and left her to support herself and her son with few work skills. Applicant filed Chapter 13 Bankruptcy as a result and paid all her creditors through the repayment plan which ended in the mid 1990's. 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*) applies.

I have considered the remaining mitigating conditions. 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 under control*); FC MC AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*); FC MC 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*)

Applicant has received some financial counseling from her boss and developed a structured plan to resolve these debts. She has an arrangement with the IRS to pay the lien; she has paid several of the debts and is researching the unknown medical accounts. She is researching the debts to locate the collection companies. Her resolve and determination as shown through her successful Chapter 13

²²AG ¶ 18.

repayments are evident. There are clear indications that the financial problem is being resolved or is under control.

After her daughter was born with a medical problem, Applicant was faced with numerous medical bills. This contributed to her inability to pay on her older debt. She paid her medical bills and provided for her family. Applicant has a job with a good, stable income. She divorced her second husband. She has a solid plan and the determination to resolve her debts. She has made good faith efforts to resolve all her delinquencies.

Whole Person

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence and the "whole person" in evaluating Applicant's security clearance determination. Applicant has a very good work history and review from her employer. She provides for her family and her daughter who have major medical problems. Her inability to initially stay on her repayment plan did not cause her to give up. She has made good faith efforts to resolve her delinquent debts. The issue is not whether Applicant is still legally liable for any or all of her outstanding debts, but whether she has presented sufficient evidence of extenuation, mitigation or changed circumstances to warrant a favorable security determination. Applicant has mitigated the government's concerns under Guideline F. It is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

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
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant

Subparagraph 1.j:

For Applicant

DECISION

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

Noreen A. Lynch
Administrative Judge