

DATE: December 14, 2007

In re:)
)
)
 -----) ISCR Case No. 04-10774
 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 incurred approximately \$20,000 in delinquent debt as a result of a 2003 divorce and a medical emergency for her daughter. 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 July 23, 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. Applicant answered the SOR on and elected to have a hearing before an administrative judge. The case was assigned to me on October 22, 2007. I scheduled a hearing for November 29, 2007.²

The hearing was convened as scheduled on November 29, 2007, via 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 1-10) were admitted. Applicant exhibits (AE) A-L were entered into the record without objection. Testimony was taken from Applicant and two witnesses as reflected in the hearing transcript. The transcript (Tr.) was received on December 10, 2007.

FINDINGS OF FACT

Applicant admitted allegations in subparagraphs 1.b, 1.e, 1.f, 1.g, and 1.h, in her SOR response under Guideline F. The admissions are incorporated as findings of fact. She denied the other allegations because the debts were paid. 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 43-year-old employee of a defense contractor. She received her GED in 1981. She is divorced with three children. She has worked for her current employer since 2004.³ On May 18, 2004, she completed her security clearance (SF 86) application.⁴

In 2003, Applicant's daughter needed her help when she became pregnant and then ill and could not work. Applicant sent her money for food and rent.⁵ In that same year Applicant was divorced. Applicant's sons live at home and she was supporting them. As a result of the divorce, she was entitled to \$1,200 monthly child support but her ex-husband stopped paying. Applicant was

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).

²Applicant waived the 15 day notice.

³GE (Application for Security Clearance (SF 86), dated May 18, 2004).

⁴*Id.*

⁵Tr. 23.

earning a low hourly wage at that time. She consulted an attorney about going to court to enforce the child support order but did not have sufficient money to pay for the legal services and court costs.⁶

Applicant's debts in the SOR total approximately \$20,000. There are numerous delinquent consumer accounts from the period 2004 after the divorce. Applicant maintains that she was paying all her creditors in a timely manner until she lost some of the child support income. She did not wish to file bankruptcy. She paid some of her children's medical bills but was not able to pay all of them. She had difficulty paying all her debts due to her lowered income after the divorce. When her daughter became pregnant and needed Applicant's help financially, Applicant helped her daughter.

Applicant has paid several debts listed in the SOR and is on a structured repayment plan on the other debts with the exception of two. Two of those in repayment will end in December 2007. She is currently working to establish a repayment plan for the last two bills. This should begin in January 2008.

She earns approximately \$1,860 net per month. Her net remainder after expenses and all debt repayment is approximately \$300 a month. She is current on her automobile payment. Her children do not live at home any more. She is in a stable position with her job and the government contractor.

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

SOR ¶	Type of Account/Amount	Status	Evidence
1.a	Collection account \$106	Disputed/Paid	AE B
1.b	Collection account \$385	Repayment \$50 mo ⁷	AE C
1.c	Collection account \$1,262	Paid	AE D
1.d	Collection account \$494	Paid	AE E
1.e	Collection account \$5,811	Not paid	Tr.42
1.f	Collection account \$1,000	Repayment \$100 mo	AE F
1.g	Collection account \$1,665	Not Paid	AE A.
1.h	Credit account \$9,257	Repayment \$100	AE G and H

Applicant supervisor praises her as an excellent employee who has a good work ethic. She further describes her as very trustworthy and recommends her highly. Applicant's supervisor has no

⁶Tr. 25.

⁷The last payment is due December 13, 2007. Thus, as this decision is issued, the account will be paid in full.

doubt that Applicant would be a good candidate for a security clearance.⁸ She has known her for about five years. Applicant's attendance is good and she has great attention to detail.⁹

Applicant's co-worker, who is an administrator in Human Resources, works closely with Applicant. She had nothing but praise for Applicant and would trust her fully with classified information.¹⁰

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."¹¹ 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.

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."¹² An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.¹³ 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.¹⁴

⁸Tr. 56.

⁹Tr. 57.

¹⁰Tr. 60.

¹¹ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

¹² Directive, ¶ E2.2.1.

¹³ Directive, Revised Adjudicative Guidelines (AG)¶2 (a)(1)-(9).

¹⁴ *Id.*

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.¹⁵ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.¹⁶ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹⁷ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.¹⁸ 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.

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.*¹⁹

In this matter, the government provided substantial evidence that Applicant accrued delinquent debts with an approximate total balance of \$20,000. She admits there are still some outstanding debts. Her 2005 and 2007 credit report confirm 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 apply because Applicant’s four debts are in a repayment plan. Several are paid and the delinquency occurred due to her divorce in 2003.

Applicant’s debt occurred as stated above due to an event beyond her control. Her divorce and then the medical emergency for her daughter was in the same year (2003). She paid her bills as best

¹⁵ Directive, ¶ E3.1.14.

¹⁶ Directive, ¶ E3.1.15.

¹⁷ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁸ Directive, ¶ E2.2.2.

¹⁹AG ¶ 18.

as she could. Thus, there is evidence to support the 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*).

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*) applies in this case. FC MC AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) also applies. 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*) applies as well.

Applicant has not received financial counseling but developed a structured plan to resolve these debts. Although there are still two debts that are not paid, there are clear indications that the financial problem is being resolved or is under control.

She documented her payment plan and has reduced her debts. She now has a stable, good income. She has a solid plan and the determination to resolve her debts.

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 excellent recommendations from her supervisor. She had three children to support after her divorce in 2003. Despite a low paying job, she managed. When her daughter had an emergency medical condition, Applicant came to her rescue financially. She had two sons in her home also. The child support was not always received as ordered. She has made good faith efforts to resolve her delinquent debts. Her steady income and her determination will allow her to continue to remain solvent. 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

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