

KEYWORD: Financial

DIGEST: Applicant has a history of indebtedness, which he addressed by securing a higher paying job as well as a part-time job. He also sought financial counseling and has embraced the notion of remaining financially solvent. Applicant presented sufficient information to explain, extenuate, or mitigate the security concern. Clearance is granted.

CASENO: 05-02407.h1

DATE: 09/14/2007

DATE: September 14, 2007

In Re:)	
)	
)	
-----)	ISCR Case No. 05-02407
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
ROBERT J. TUIDER**

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of indebtedness, which he addressed by securing a higher paying job

as well as a part-time job. He also sought financial counseling and has embraced the notion of remaining financially solvent. Applicant presented sufficient information to explain, extenuate, or mitigate the security concern. Clearance is granted.

STATEMENT OF THE CASE

On September 24, 2003, Applicant submitted a Security Clearance Application (SF 86).¹ On March 6, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised.²

The SOR alleges security concerns under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In an answer dated and notarized on April 7, 2007, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on May 22, 2007. On June 7, 2007, DOHA issued a notice of hearing scheduling the case to be heard on July 11, 2007. The hearing was held as scheduled. On July 20, 2007, DOHA received the transcript (Tr.). I left the record open until July 20, 2007 to afford the Applicant an opportunity to submit additional material. Tr. 74-79, 91. He timely submitted additional material, which was marked and appended to the record.

FINDINGS OF FACT

In his reply to the SOR, Applicant admitted all indebtedness. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

¹Government Exhibit (GE) 1(Standard Form (SF) 86, Security Clearance Application) was signed by Applicant on September 24, 2003.

²On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant's case.

Applicant is 41 years old.³ He graduated from high school in June 1984. Tr. 62. He attended community college from August 1984 to May 1986, and was awarded an associate of arts degree in computer science. He served in the U.S. Army from November 1986 to August 1997, and was honorably discharged. Tr. 65. He was previously married from October 1989 to September 1998. That marriage ended by divorce. He has two sons from his first marriage, ages 16 and 12. He pays \$892 per month in child support plus their health care insurance premiums. He remarried in September 2005 and he has a one-year-old daughter from his current marriage. Tr. 22-23. He has been employed by a defense contractor as a senior applications engineer since August 2006. Tr. 45. He has also taken on a part-time job as a security guard.

Applicant has successfully held a security clearance that was initially granted shortly after enlisting in the Army. Tr. 16. He is seeking to retain a security clearance for his current employment.

Applicant has a history of financial problems. The SOR lists 17 unpaid debts ranging from \$34 to \$18,760, exceeding \$40,000. Two of the largest debts are for automobile loans in which Applicant fell behind during his separation and divorce from his first wife. Of those 17 debts, Applicant has paid off four debts, made payment arrangements on 8 debts, and attempting settlement of five debts. Two debts listed in the SOR are duplicates.

Applicant attributes the debts to bad management by him and his ex-wife, the break-up of a relationship with a girlfriend after his divorce, expenses associated with his mother passing away in 2004, and costs of moving after his divorce, and break-up with his then girlfriend. One of the larger debts was for loan he co-signed for an automobile his ex-wife kept. The automobile was repossessed after she failed to make payments and Applicant was held responsible for the debt. After he remarried, his second wife had a difficult pregnancy that lead to additional unplanned expenses.

To overcome his indebtedness, he sought and secured a better paying job and has taken on a part-time job. His post-hearing materials show an earnest effort to document good-faith attempts to achieve financial stability. He recognizes the importance of overcoming his indebtedness and the adverse impact non-payment of debts may have on his clearance. He is also enrolled in and is receiving financial counseling. His budget reflects a net remainder of \$654 per month. Tr. 57. With his higher paying job and part-time job, Applicant is able to support his family and address his past due debts. His most recent work performance evaluation indicates above average performance.

POLICIES

In an evaluation of an applicant's security suitability, an administrative judge must consider the "Adjudicative Guideline for Determining Eligibility For Access to Classified Information" (Guideline[s]), which sets forth adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC), which are used to determine an applicant's eligibility for access to classified information.

³GE 1, *supra* n. 1. is the basis for the facts in this paragraph, unless otherwise stated.

These Guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these guidelines in conjunction with the factors listed in the adjudicative process. Guideline ¶ 2. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Guideline ¶ 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) 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."

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." Guideline ¶ 2(b). 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts by "substantial evidence,"⁴ demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).⁵

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to

⁴ "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁵ "The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or 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.

The scope of an administrative judge's decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. Executive Order 10865, § 7.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

Under Guideline F for financial considerations,⁶ a security concern typically exists due to significant unpaid debts. 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 or unethical acts to general funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

The record evidence supports a conclusion that Applicant has a history of financial problems. His history of financial problems is a security concern because it indicates inability or unwillingness to satisfy debts⁷ and a history of not meeting financial obligations⁸ within the meaning of Guideline F. The record is more than sufficient to establish these two disqualifying conditions.

Applicant received credit in mitigation. The most pertinent mitigating condition is the fourth MC⁹ of Guideline F, because Applicant has made a good-faith effort to repay or settle the 17 debts listed in the SOR. His good-faith effort is established by his actions. He sought out and secured a better paying job and took on additional part-time job. He also receives credit in mitigation under the second MC¹⁰ as a result of his wife's difficult pregnancy, his mother's death, and his separation and

⁶Revised Guidelines at 13-14 (setting forth the disqualifying and mitigating conditions).

⁷DC 19(a) is "inability or unwillingness to satisfy debts."

⁸DC 19(c) is "a history of not meeting financial obligations."

⁹MC 20(d) "is the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

¹⁰MC 20(b) "the conditions that resulted in the financial problem were largely beyond the persons control (e.g. . . . unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances."

divorce from his first wife. Lastly, Applicant receives credit under the third MC for getting to the source of his problem and that is understanding how he got into financial trouble and learning how to manage his finances by taking a financial counseling course.¹¹

And unlike many applicants in financial cases, Applicant verified his actions by providing substantial documentary proof of payment or settlement of his debts. Applicant has addressed his financial problems, has cash left over, and is otherwise living within his means. Although he can be faulted for taking too long to address his indebtedness, he has since taken action to minimize and overcome concerns about his financial situation. His history of successfully maintaining a security clearance without incident stemming back to his Army service and his positive employment record weigh heavily in his favor in assessing his security eligibility under the “whole person” analysis.

Based on the record evidence as a whole, Applicant presented sufficient evidence to explain, extenuate, or mitigate the financial considerations security concern. Likewise, he has met his ultimate burden of persuasion to obtain a favorable clearance decision.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my “careful consideration of the whole person factors”¹² and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guideline. Applicant has mitigated and overcome the government’s case. For the reasons stated, I conclude he is eligible for access to classified information.

FORMAL FINDINGS

SOR ¶ 1 - Guideline F: For Applicant

Subparagraphs a - q: For Applicant

DECISION

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

Robert J. Tuidor
Administrative Judge

¹¹MC 20(c) “the person has received counseling or is receiving counseling for the problem and /or there are clear indications that the problem is being resolved or is under control.”

¹²See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).