

KEYWORD: Financial

DIGEST: Applicant is a 44-year-old help desk analyst employed by a federal contractor. She had a history of delinquent debts. She filed and successfully completed a Chapter 13 bankruptcy plan. She established a plan of action for her finances with her mortgage broker. All delinquent debts were paid. She successfully mitigated the security concerns about financial considerations. Clearance is granted.

CASENO: 05-03206.h1

DATE: 06/29/2007

DATE: June 29, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 05-03206
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
CHRISTOPHER GRAHAM**

APPEARANCES

FOR GOVERNMENT

Caroline H. Jeffreys, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 44-year-old help desk analyst employed by a federal contractor. She had a history of delinquent debts. She filed and successfully completed a Chapter 13 bankruptcy plan. She established a plan of action for her finances with her mortgage broker. All delinquent debts were paid. She successfully mitigated the security concerns about financial considerations. Clearance is granted.

STATEMENT OF THE CASE

On May 19, 2000, Applicant submitted a Security Clearance Application (SF 86).¹ The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6 ¶ E3.1.2 *Defense Industrial Personnel Security Clearance Review Program (Directive)*, dated January 2, 1992, as amended, DOHA issued a Statement of Reasons (SOR) on March 30, 2006, detailing the basis for its decision – security concerns raised under Guideline F (Financial Considerations) of the Directive. The President issued revised adjudicative guidelines (AG) on December 30, 2005. DoD implemented them effective September 1, 2006. Pending official amendment/reissue of DoD Directive 5220.6, the AG are to be used in all cases when the SOR is issued on or after September 1, 2006. Because the SOR was issued prior to September 1, 2006, DOHA policy requires that this case proceed under the former guidelines.

Applicant answered the SOR in writing on May 30, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on February 1, 2007, and a Notice of Hearing was dated on February 16, 2007. I convened a hearing on March 7, 2007, to consider whether it is clearly consistent with the national interest to grant or continue Applicant's security clearance. The government offered eight exhibits, marked as Exhibits 1-8. Applicant offered no exhibits. I kept the record open until March 23, 2007, to allow Applicant the time to file additional documents. She filed nine documents, received March 23, 2007, that were marked as Applicant's Exhibits A-I. The government objected to Exhibits B and E, which were sustained. The government filed one exhibit marked as Exhibit 9, and without objection it was admitted. Applicant's Exhibits A, C, D, F, G, H, and I are admitted. DOHA received the transcript (Tr.) on March 15, 2007.

FINDINGS OF FACT

Applicant admitted the allegations contained in SOR subparagraphs 1.a., 1.b., 1.c., 1.e., 1.f., and 1.k. She denied all other allegations. The admissions are incorporated herein as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact:

Applicant is a 44-year-old help desk analyst employed by a federal contractor.² She was divorced in 1994, and has three children.³ She is a high school graduate, she has no military service, and she has held a security clearance since 1993.⁴

The SOR detailed Applicant's financial history, including bankruptcy filings and a list of delinquent debts, as follows:

¹Government Exhibit 1, Standard Form (SF) 86, Security Clearance Application, dated May 19, 2000.

²Tr. at 12, 15.

³*Id.* at 12.

⁴*Id.* at 13-14.

SOR ¶	Debt	Amount	Current Status
1.a.	Chapter 13 bankruptcy 11/16/99		Discharged 6/19/03
1.b.	Chapter 13 bankruptcy 11/7/03		Dismissed 8/16/04
1.c.	Chapter 13 bankruptcy 10/27/04		Discharged 7/13/2006
1.d.	Judgment	\$714	Paid ⁵
1.e.	Collection account	\$2551	Paid ⁶
1.f.	Collection account	\$291	Paid ⁷
1.g.	Collection account	\$380	Paid ⁸
1.h.	Returned check	\$149	Paid ⁹
1.i.	Returned check	\$110	Paid ¹⁰
1.j.	Returned check	\$29	Paid ¹¹
1.k.	Foreclosure was stopped	\$20,258	Payments current ¹²
1.l	Charged off account	\$71	Paid ¹³

Applicant's second Chapter 13 bankruptcy petition was dismissed because her attorney had been disbarred.¹⁴ She continued it by refiled in October 2004, and she completed the plan successfully and she was discharged on July 13, 2006.¹⁵ The real estate foreclosure that was listed in SOR subparagraph 1.k. was stopped, she still owns the property, and her payments are current.¹⁶ She sought assistance from a mortgage broker, who helped her improve her credit report, established

⁵*Id.* at 18; Applicant's Exhibit D (Real estate Closing Statement, dated May 30, 2006) at 1-5.

⁶*Id.* at 19; Applicant's Exhibit D, *supra*, note 5, at 1-5.

⁷*Id.*

⁸*Id.*

⁹*Id.* at 20.

¹⁰*Id.*

¹¹*Id.* at 21.

¹²*Id.*

¹³*Id.*

¹⁴*Id.* at 17.

¹⁵ Applicant's Exhibit C (Notice of Completion of Chapter 13 Plan, dated July 13, 2006) at 1-4.

¹⁶*Id.* at 20.

a budget for her, assisted her with building more discretionary income, and to work toward the establishment of a savings account.¹⁷ She refinanced the property and paid the debts listed in SOR subparagraphs 1.d. and 1.e.¹⁸ Her delinquent debts have been resolved.

POLICIES

In an evaluation of an applicant's security suitability, an administrative judge must consider Enclosure 2 of the Directive, 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.

These adjudicative 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 below. An administrative judge's overarching 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 meaningful decision.

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Directive ¶ E2.2.1: (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.

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 the issuance of the clearance is "clearly consistent with the interests 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by "substantial evidence." The government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive. Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to the applicant to produce evidence and prove a mitigating condition.¹⁹ Directive ¶ E3.1.15 provides, "The applicant is responsible for presenting witnesses and

¹⁷ Applicant's Exhibit A. (Mortgage Broker Letter, dated March 22, 2007) at 1-2.

¹⁸ Applicant's Exhibit D, *supra*, note 5, at 1-5.

¹⁹ "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

other 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.” The burden of disproving a mitigating condition never shifts to the government.²⁰

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 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. Applicant’s allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance 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.” Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. 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.

CONCLUSIONS

The government established its case under Guideline F. Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. arises where there is (*A history of not meeting financial obligations.*) Similarly, FC DC E2.A6.1.2.3. applies where the information shows an (*Inability or unwillingness to satisfy debts.*) The available information demonstrates Applicant has a history of not meeting her financial obligations. She has been delinquent in paying his debts, since at least 1999.

Various conditions can mitigate the security concerns arising from financial difficulties. The Directive sets out Financial Considerations Mitigating Condition (FC MC) FC MC E2.A6.1.3.4. (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*) applies. She sought help in refinancing her home and established a plan with her mortgage broker to set her on sound financial footing. Her delinquent debts are paid and she has her financial affairs under control.

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).

²⁰See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, [evaluates] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and [decides] whether Applicant [has] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

FC MC E2.A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve bad debts*) is also applicable. Applicant has demonstrated a consistent effort through the use of a wage earner plan in bankruptcy and through mortgage refinancing and she is resolve her indebtedness. I conclude Guideline F for 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 eligible for a security clearance.”²¹ “Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”²² In evaluating Applicant’s case, in addition to the disqualifying and mitigating conditions, I also considered the “whole person” concept in evaluating Applicant’s risk and vulnerability in protecting our national interests.²³ Applicant has taken the necessary steps to resolve her indebtedness. The totality of the record raises no reasonable and persistent doubts about Applicant’s ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. I conclude it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by 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
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant

DECISION

²¹Directive ¶ E.2.2.1.

²²*Id.*

²³*Id.*

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

Christopher Graham
Administrative Judge