

KEYWORD: Financial

DIGEST: Applicant incurred significant, unpaid debts, following the loss of his job in 2001 and attendant medical insurance. At the same time, his wife and daughter required significant medical care. After eight months of unemployment or part-time employment, he returned to work full-time. He is the sole provider for his family. He has paid many of his smaller debts and has established payment plans on other debts, which he regularly pays. He has mitigated the government's security concerns regarding his personal finances under Guideline F. Clearance is granted.

CASENO: 06-17234.h1

DATE: 06/30/2007

DATE: June 30, 2007

In re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 06-17234
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
MARY E. HENRY**

APPEARANCES

FOR GOVERNMENT

Richard Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred significant, unpaid debts, following the loss of his job in 2001 and attendant medical insurance. At the same time, his wife and daughter required significant medical care. After eight months of unemployment or part-time employment, he returned to work full-time. He is the sole provider for his family. He has paid many of his smaller debts and has established payment plans on other debts, which he regularly pays. He has mitigated the government's security concerns regarding his personal finances under Guideline F. Clearance is granted.

STATEMENT OF THE CASE

On October 6, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, 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 Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. 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 Applicant. Specifically, the SOR sets forth security concerns arising 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. On November 16, 2006, Applicant submitted a notarized response to the allegations. He requested a hearing. He submitted a supplemental notarized response on December 13, 2006.

DOHA assigned this case to another administrative judge on January 16, 2007, and transferred this case to me on April 25, 2007. DOHA issued a notice of hearing on May 17, 2007, which he timely received. I held a hearing on June 5, 2007, immediately following Applicant's return from an overseas work assignment. The government submitted 5 exhibits (GE), which were marked and admitted into evidence as GE 1-5, without objection. Applicant submitted 14 exhibits (App Ex), which were marked and admitted into evidence as App Ex A-N, without objection. Applicant testified. I held the record open for Applicant to submit additional documentation, which he timely did. He submitted 4 additional documents, which were marked and admitted as App Ex O-R, without objection. The hearing transcript (Tr.) was received on June 21, 2007.

FINDINGS OF FACT

Applicant admitted subparagraphs 1.a. 1.d, 1.f, 1.g, 1.k, 1.p, and 1.q under Guideline F of the SOR. He neither admitted nor denied subparagraphs 1.c, 1.h., 1.s, 1.t, and 1.w, and asserted that subparagraph 1.i. was the same as subparagraph 1.g. under Guideline F of the SOR.¹ His admissions

¹Applicant's response to the SOR, dated November 16, 2006, at 1-2, and his supplemental response, dated December 13, 2006, at 1-2.

are incorporated as findings of fact. The remaining allegations are deemed denied.² After a complete review of the evidence in the record and upon due consideration, I make the following findings of fact.

Applicant, a 37-year-old man, works as a technician and crew chief for a Department of Defense contractor. He has been employed with his company for almost five years. He filed an application for a security clearance (SF-86) in May 2005.³

Applicant married in 1996. He has an 11-year-old son and a 10-year-old daughter. He graduated from college with a Bachelor of Science degree in 1997 and anticipates receiving a masters degree shortly. After college graduation, he worked steadily until April 2001, when his employer laid him off due to a reduction in force. During the next eight months, he worked part-time. He also received unemployment benefits. He obtained employment in December 2001 and has worked regularly since then.⁴

In 2001, his daughter required kidney surgery. His wife suffers from multiple medical problems, including back problems and gall bladder problems, which prevent her from working. One year ago, her back problems deteriorated significantly, requiring her to undergo surgery as did her gall bladder. After her surgery, she remained bedridden for sometime. His daughter required expensive dental work last summer. In January 2006, his father-in-law died unexpectedly. In March 2006, he purchased a larger home so that his mother-in-law could live with his family.⁵

Applicant currently earns \$44,000 a year, but anticipates that his salary will increase \$15,000 to \$20,000 a year after he receives his masters degree. His monthly net pay is approximately \$2,400. In March 2007, he received approximately \$485 in additional net pay and in May 2007, an additional \$642 in net pay for overtime. His mother-in-law contributes \$600 a month towards the family housing costs. His job requires him to travel for significant periods of time, for which he receives per diem income to cover his out-of-town living expenses. Any excess per diem is used for household expenses. His monthly expenses total approximately \$3,500. He used this year's tax return to pay bills.⁶

A review of Appellant's credit reports dated September 21, 2006, January 9, 2007, and the SOR shows 23 unpaid debts totaling \$19,824.⁷ The current status of these debts is as follows:

SOR ¶	Account/ Amount	Status	Evidence
1.a.	Collection account \$ 742	Paid	App Ex H, J, Q; Tr. at 32-34

²*Id.*

³GE 1 (Applicant's application for a security clearance, dated May 6, 2005) at 1.

⁴Tr. at 20-21, 24, 51.

⁵*Id.* at 19, 21-24.

⁶*Id.* at 47-52.

⁷GE 4 (Credit report, dated September 21, 2006); GE 5 (Credit report, dated January 9, 2007).

1.b.	Medical bill	\$ 50	Paid	App Ex A; Tr. at 25-27
1.c.	Medical bill	\$ 85	Paying monthly	App Ex J; Tr. at 35-36
1.d.	Electric bill	\$ 345	Payment plan	App Ex K, Q; Tr. at 37-39
1.e.	Credit card	\$ 369	Paid	App Ex G; Tr. at 30-31
1.f.	Collection account	\$2,235	Payment plan	App Ex I; Tr. at 33-35
1.g.	Collection account	\$6,822	Payment plan	App Ex J, L; Tr. at 38-40
1.h.	Medical bill	\$ 95	Payment plan	App Ex K; Tr. at 37-39
1.i.	Collection account	\$5,107	Same as 1.g.	Tr. at 38
1.j.	Medical bill	\$ 323	Paid	App Ex B; Tr. at 28
1.k.	Medical bill	\$ 282	Payment plan	App Ex K; Tr. at 37-39
1.l.	Medical bill	\$ 58	Paid	App Ex C; Tr. at 28-29
1.m.	Medical bill	\$ 493	Paid	App Ex D; Tr. at 29
1.n.	Medical bill	\$ 278	Paid	App Ex E; Tr. at 29-30
1.o.	Collection account	\$ 81	Unpaid, Admits	Tr. at 40-41
1.p.	Medical bill	\$ 34	Payment plan	App Ex K; Tr. at 37-39
1.q.	Medical bill	\$ 108	Payment plan	App Ex K; Tr. at 37-39
1.r.	Medical bill	\$ 274	Paid	App Ex F; Tr. at 30
1.s.	Credit card	\$ 926	Paid	App Ex J, M, R; Tr. at 42-44
1.t.	Cable bill	\$ 496	Paying monthly	App Ex J; Tr. at 45
1.u.	Medical bill	\$ 114	Unpaid, unknown creditor	Tr. at 41-42
1.v.	Medical bill	\$ 297	Unpaid, unknown creditor	Tr. at 41-42
1.w.	Collection account	\$ 210	Paying monthly	App Ex J; Tr. at 45

Applicant began contacting his creditor's last fall. He has negotiated settlements on some of his outstanding debts and established payment plans for other debts. He challenged several debts, which he does not recognize. He paid other debts in full. Since he is the sole provider in his household, he pays each debt as he can. He paid several debts with his bank debit card. Two medical debts listed in the SOR are unknown to him. The credit reports do not identify the name of the creditor. Rather, the credit reports simply show a medical bill as unpaid.⁸

⁸GE 4, *supra* note 7, at 1-4; GE 5, *supra* note 7, at 1-4; Tr. at 29-30, 41-42.

Applicant's supervisor describes him as trustworthy and reliable. He started his current employment as a Technician I. He has been regularly promoted and is now a crew chief. His supervisor would trust him with any available company project.⁹

POLICIES

The revised Adjudicative Guidelines set forth disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. An administrative judge need not view the revised adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, are intended to assist the administrative judge in reaching fair and impartial common sense decisions. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the revised AG should be followed whenever a case can be measured against this policy guidance. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.¹⁰

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.¹¹ The government has the burden of proving controverted facts.¹² The burden of proof is something less than a preponderance of the evidence.¹³ Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.¹⁴ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁵

⁹App Ex N (Undated letter); Tr. at48-49.

¹⁰Directive, revised Adjudicative Guidelines (AG) ¶ 2(a)(1)-(9).

¹¹ISCR Case No. 96-0277 at 2 (App. Bd., July 11, 1997).

¹²ISCR Case No. 97-0016 at 3 (App. Bd., Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

¹³*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁴ISCR Case No. 94-1075 at 3-4 (App. Bd., Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

¹⁵ISCR Case No. 93-1390 at 7-8 (App. Bd. Decision and Reversal Order, Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

No one has a right to a security clearance,¹⁶ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹⁸ 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.” The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.¹⁹ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth 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. (AG ¶ 18.) Applicant has significant unpaid debt, some of which has remain unpaid for a number of years. Based on the evidence of record, DC ¶ 19 (a) *inability or unwillingness to satisfy debts* and DC ¶ 19 (c) *a history of not meeting financial obligations* apply to all allegations in the SOR, except 1.u and 1.v. In light of Applicant’s denial of these allegations, the government has not established its case because the identify of the creditor is not shown in the credit reports. Thus, the Applicant has not way of knowing if he owes these debts.

Applicant’s employer laid him off from his job in April 2001. He did not obtain full-time employment until 8 months later. In the same year, his young daughter required kidney surgery. In addition, his wife experienced continuing and ongoing medical problems, which prevented her from working. Many of his unpaid bills are medical, and are the result of his wife’s multiple medical problems. His unemployment caused him to get behind in his bills some time ago. His wife’s health and inability to work have contributed to his financial problems. MC ¶ 26 (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* applies.

Although Applicant has never met with a financial counselor, he has contacted many of his creditors. He negotiated settlement payments for some debts, paid other debts, and made

¹⁶*Egan*, 484 U.S. at 531.

¹⁷*Id.*

¹⁸*Id.*; Directive, revised AG ¶ 2(b).

¹⁹Executive Order No. 10865 § 7.

arrangements to make monthly payments on several other debts. He started making the monthly payments he arranged in November 2006. As a result, some debts have been paid. He continues to pay on others each month. He used his income tax return to pay some of his debts. Thus, MC ¶ 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 is under control* and MC ¶ 20 (d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* apply.

Applicant challenged the legitimacy of three debts in his response to the SOR. He acknowledged owing one debt, but did not recognize the other two debts. His challenge to these debts in his response to the SOR is insufficient to trigger the application of MC ¶ 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.*

Whole Person Analysis

Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Thus, in reaching this decision, I have considered the whole person concept in evaluating Appellant's risk and vulnerability in protecting our national interests.

Applicant is the sole financial provider for his family. Since his college graduation, he has worked steadily and regularly, with the exception of eight months in 2001. He lost his job in 2001 as a result of a reduction in force. His job loss impacted his ability to meet his monthly financial obligations and to provide appropriate medical insurance for his family. Since returning to work full-time, he has slowly improved his finances. His monthly bills are current. When his widowed mother-in-law came to live with his family, he needed to purchase a larger home as his home was too small. His house payments increased. Even with the increased house payment, he has been able to slowly repay some of his outstanding debts and make small monthly payments on other debts.

Applicant anticipates that his income will increase after he receives his masters degree. His employer respects his work abilities and has shown appreciation through regularly promotion over a short period of time. He is a responsible individual. I have weighed the mitigating factors, the reasons for his debts, his current family situation, his efforts to repay his old debts on a tight budget, and his employer's confidence in him. I find that the overwhelming weight of the evidence indicates that he is a person of integrity, who is trustworthy. He would not act in a manner which would harm his employer or the government. I conclude that he has mitigated the government's concerns about his finance. Accordingly, Guideline F is found in favor of Applicant.

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:

SOR ¶ 1-Guideline F :
Subparagraphs a-w:

FOR APPLICANT
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 a security clearance for Applicant. Clearance is granted.

Mary E. Henry
Administrative Judge