

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 58-year-old armed security officer employed by a federal contractor. She had 18 unpaid debts and a state tax lien. She gave two false answers on her security clearance questionnaire. Her financial exigency occurred because of a serious illness and resulting disability of her daughter, aggravated by the repossession of her car and loss of her employment due to this security clearance process. She successfully mitigated the security concerns about Guideline F (financial considerations) and Guideline E (personal conduct). Clearance is granted.

CASENO: 06-18503.h1

DATE: 06/13/2007

DATE: June 13, 2007

In re:)	
)	
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-----)	ISCR Case No. 06-18503
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
CHRISTOPHER GRAHAM**

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 58-year-old armed security officer employed by a federal contractor. She had 18 unpaid debts and a state tax lien. She gave two false answers on her security clearance questionnaire. Her financial exigency occurred because of a serious illness and resulting disability of her daughter, aggravated by the repossession of her car and loss of her employment due to this security clearance process. She successfully mitigated the security concerns about Guideline F (financial considerations) and Guideline E (personal conduct). Clearance is granted.

STATEMENT OF THE CASE

On November 14, 2005, Applicant submitted an electronic 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 modified, and Department of Defense Directive 5220.6 ¶ E3.1.2 *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified, and revised, DOHA issued a Statement of Reasons (SOR) on September 18, 2006, detailing the basis for its decision – security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. The President issued revised adjudicative guidelines (RAG) on December 30, 2005. DoD implemented them effective September 1, 2006. Pending official amendment/reissue of DoD Directive 5220.6, the RAG are to be used in all cases when the SOR is issued on or after September 1, 2006. Because the SOR was issued after September 1, 2006, DOHA policy requires that this case proceed under the new guidelines. Applicant answered the SOR in writing on November 14, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on December 18, 2006. The Notice of Hearing, dated January 26, 2007, was issued to convene a hearing on February 14, 2007,² to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The government offered five exhibits, marked as exhibits 1-5, received without objection. Applicant offered no exhibits. DOHA received the hearing transcript (Tr.) on February 23, 2007.

FINDINGS OF FACT

Applicant denied all of the allegations contained in SOR except subparagraph 1.s. Her admission is incorporated herein as a finding of fact. I make the following additional findings of fact.

Applicant is a 58-year-old armed security officer employed by a federal contractor.³ She has been divorced since 1985, has three emancipated children, and is a high school graduate.⁴ This is her first application for a security clearance.⁵

Applicant accumulated \$35,383 of unpaid debt, which included \$13,787 for a deficiency on a repossessed automobile, and another debt of \$11,569 which she does not recognize as her

¹Government Exhibit 1, Standard Form (SF) 86, Security Clearance Application, dated November 14, 2005.

²Tr. at 5.

³*Id.* at 19, 21.

⁴*Id.* at 19-20.

⁵*Id.* at 20.

obligation.⁶ She also had a state tax lien of \$2,854. She indicated she would be contacting the taxing authority to make repayment arrangements.⁷ The total delinquent debts were \$38,237.

Many of the debts were incurred because of a daughter's serious illness. After delivering a baby, on January 14, 2004, Applicant's daughter lapsed into a coma lasting from January 16, 2004, to August 2006,⁸ as a result of preeclampsia.⁹ Also, her kidneys and liver shut down and her weight dropped from 145 pounds to 79 pounds after the baby was born. Eighteen doctors provided care. Applicant was working 16, to sometimes 18 hours a day in one city, then driving back to her hometown to check on her daughter and granddaughter (a distance of about 130 miles each way). She had no family that could provide financial assistance. During this time her car was repossessed. After her daughter recovered, she helped provide living quarters for her daughter and granddaughter. She made sure that her granddaughter had day care. Her daughter now requires an occupational physical therapist because of a stroke that put her into a coma and caused her left side to be paralyzed.¹⁰ Applicant did what she thought was right and paid the bills she felt were most important. As a result of a denial of her security clearance, she lost her job.¹¹

On November 14, 2006, she filed a Chapter 7 bankruptcy petition. She attended her discharge hearing on December 20, 2006.¹² With the filing of her completion certificate for a required financial management course on February 7, 2007, Applicant was waiting to receive her discharge order canceling the debts listed in SOR subparagraphs 1.a. through 1.r.¹³

Applicant falsified material facts on an Electronic Questionnaires for Investigations Processing (e-QIP), executed by her on November 14, 2005. Her response to question "**27: Your Financial Record b.** In the last 7 years, have you had your wages garnished or had any property repossessed for any reason?", she answered "No." She failed to list the repossession as set forth in SOR subparagraph 1.g.

On the same form, Applicant listed only two but not all debts in response to question "**28. Your financial delinquencies b.** Are you currently over 90 days delinquent on any debt(s)? She

⁶SOR

⁷Tr. at 32.

⁸*Id.* at 33.

⁹Preeclampsia is a disorder that occurs only during pregnancy and the postpartum period and affects both the mother and the unborn baby. Affecting at least 5-8% of all pregnancies, it is a rapidly progressive condition characterized by high blood pressure and the presence of protein in the urine. Swelling, sudden weight gain, headaches and changes in vision are important symptoms; however, some women with rapidly advancing disease report few symptoms. Preeclampsia Foundation (<http://www.preeclampsia.org/>, October 31, 2006) at <http://www.preeclampsia.org/about.asp>.

¹⁰*Id.* at 34.

¹¹*Id.* at 11-15.

¹²*Id.* at 16.

¹³Government Exhibit 4 (Docket Report, U.S. Bankruptcy Court, dated December 6, 2006) at 1, 4-6; Government Exhibit 5 (Docket Report, U.S. Bankruptcy Court, dated February 14, 2007) at 1, 4-5.

listed the debts set forth in SOR subparagraphs 1.o. and 1.p., but failed to disclose the delinquent debts set forth in subparagraphs 1.a. through 1.n, 1.q., and 1.r. Applicant claimed she could not remember all of the debts and only listed the two that she could remember.¹⁴

POLICIES

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

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. Guidelines ¶ 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.¹⁵

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Guidelines ¶ 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."¹⁶ 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.

¹⁴*Id.* at 32.

¹⁵Guidelines ¶ 2(c).

¹⁶Guidelines ¶ 2(b).

In the decision-making process, facts must be established by “substantial evidence.”¹⁷ The Government initially has the burden of producing evidence to establish a case which demonstrates, 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 and prove a mitigating condition. Directive ¶ E3.1.15 provides, “The applicant is responsible for presenting witnesses and 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.¹⁸

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 and the Guidelines include, by necessity, consideration of the possible risk that 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.¹⁹

CONCLUSIONS

Guideline F—Financial Considerations

Guideline ¶ 18 articulates the Government’s concern concerning financial problems. “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

¹⁷“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).

¹⁸*See* 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, 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).

¹⁹Executive Order 10865, § 7.

information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”

Two Financial Considerations Disqualifying Conditions (FC DC) could raise a trustworthiness concern and may be disqualifying in this case: “inability or unwillingness to satisfy debts,” and “a history of not meeting financial obligations.” Guidelines ¶ 19(a) and (c).

Five Financial Considerations Mitigating Conditions (FC MC) under Guidelines ¶ 20(a)-(e) are potentially applicable:

(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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

Based on my evaluation of the record evidence as a whole, I conclude Guideline ¶ 20(a), (c), and (e) do not apply. The debts continued to be delinquent until recently, there is no evidence of Applicant seeking counseling, and there is no basis to dispute most of the indebtedness. However, Guideline ¶ 20 (b) and (d) are applicable. The financial problems resulted from the serious and continuing illness and disability of her daughter and Applicant’s need to assist her child and grandchild with adequate living facilities. Compounding the problem was the repossession of her car during a time when she was commuting 130 miles each way to work. An additional hardship was caused by the loss of her job because of the denial of her security clearance.

Applicant otherwise resolved her debts by filing a chapter 7 bankruptcy petition. With the debts eliminated in bankruptcy, she is left only with the state tax lien of \$2854. She indicated she would make payment arrangements with the taxing authority, and I believe she will repay this obligation.

Guideline E—Personal Conduct

Under Guideline ¶ 15, “conduct involving...lack of candor [or] dishonesty...can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process...” One personal conduct disqualifying condition is particularly relevant and may be disqualifying in this case. Guideline ¶ 16(a) provides, “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.”

The concern under Guideline E (Personal Conduct) is that conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard sensitive information.”²⁰ Applicant’s SF 86 had incorrect answers to questions 27 and 28. However, Applicant denied that she intentionally falsified the answers by not including most of her delinquent debts. She claimed she did not remember them at the time she completed the application in November 2005. However, based on my review of the record, including her truthful disclosure of the automobile repossession, two delinquent debts, and her comment in the Remarks section that the credit report showed other debts were paid, in addition to her strong denial of the falsification allegation, I believe Applicant’s omissions were negligent and not intentional. Hence, the evidence does not establish deliberate falsification.

Whole Person Analysis

In addition to the enumerated disqualifying and mitigating conditions, I have considered the general adjudicative guidelines related to the whole person concept under Guideline ¶ 2(a). Applicant has made progress resolving her debts and appears committed to paying the state tax lien. She is 58 years old, sufficiently mature to be fully responsible for her obligations.

After weighing the disqualifying and mitigating conditions and all of the facts and circumstances, in the context of the whole person, I conclude she has mitigated the security concerns pertaining to financial considerations and personal conduct. I have no concerns about her reliability, judgment, and honesty. The totality of the circumstances and her actions in light of the hardships she encountered lead me to conclude she is a person of character. This record raises no reasonable and persistent doubts about Applicant's ability to protect sensitive information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. I find Guideline F and Guideline E for Applicant, and conclude it is clearly consistent with the national interest to grant or continue her security clearance.

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:

²⁰Guidelines ¶ 15.

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
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant

DECISION

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