

KEYWORD: Financial; Alcohol

DIGEST: Applicant, a 38-year-old supply technician employed by a defense contractor, developed financial problems. In April 2002 she lost her job. Two months later she was in an automobile accident that totally incapacitated her cohabitant, the father of her two children. She filed a Chapter 7 bankruptcy petition in November 2002. She obtained gainful employment in October 2004. She filed a Chapter 13 wage earner petition in 2006 to stop the foreclosure of her home. In September 2006, she received a personal injury settlement resulting from the accident. All debt payments are current. She had minor alcohol-related incidents in 1995 and 2006. She successfully mitigated the security concerns about financial considerations and alcohol consumption. Clearance is granted.

CASENO: 06-18640.h1

DATE: 08/09/2007

DATE: August 9, 2007

In re:	)	
	)	
	)	
-----	)	ISCR Case No. 06-18640
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
CHRISTOPHER GRAHAM**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant, a 38-year-old supply technician employed by a defense contractor, developed financial problems. In April 2002 she lost her job. Two months later she was in an automobile accident that totally incapacitated her cohabitant, the father of her two children. She filed a Chapter 7 bankruptcy petition in November 2002. She obtained gainful employment in October 2004. She filed a Chapter 13 wage earner petition in 2006 to stop the foreclosure of her home. In September 2006, she received a personal injury settlement resulting from the accident. All debt payments are current. She had minor alcohol-related incidents in 1995 and 2006. She successfully mitigated the security concerns about financial considerations and alcohol consumption. Clearance is granted.

## STATEMENT OF THE CASE

On January 12, 2005, Applicant submitted a Security Clearance Application (SF 86).<sup>1</sup> 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, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, DOHA issued a Statement of Reasons (SOR) on October 10, 2006, detailing the basis for its decision – security concerns raised under Guideline F (Financial Considerations) and Guideline G (Alcohol Consumption) of the Directive. The President issued revised adjudicative guidelines (Guidelines) on December 30, 2005. DoD implemented them on September 1, 2006. Pending official amendment/reissue of DoD Directive 5220.6, the Guidelines are to be used in all cases when the SOR is dated on or after September 1, 2006. Because the SOR was issued after September 1, 2006, DoD policy requires that this case proceed under the revised guidelines.

Applicant answered the SOR in writing on November 3, 2006, and requested a decision without a hearing. Department Counsel submitted a file of relevant material (FORM) in support of the government's case, a copy of which was received by Applicant on March 14, 2007. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by April 14, 2007. She filed a response which was received by DOHA on April 12, 2007. The case was assigned to me on July 26, 2007.

## FINDINGS OF FACT

Applicant admitted the allegations contained in the SOR. The admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 38-year-old supply technician employed by a defense contractor. She is divorced and has two children.<sup>2</sup> She has no prior military service, and this is her first application for a security clearance.<sup>3</sup>

### **Financial Considerations**

Applicant has two children, a daughter, age 9, and a son, age 5, that she is raising on her own. On April 5, 2002, she lost her job of 14 ½ years due to company downsizing. On July 14, 2002, she and the children's father were involved in an automobile accident that left him in a near vegetative state. He cannot talk or walk and resides in a nursing home. At the time of the accident, the children were nine and one-half months and four. Applicant was left with \$10,000 in medical bills that her insurance did not cover, and she was also left without the second income that was used

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<sup>1</sup>Item 3 (Security Clearance Application (SF 86), dated January 12, 2005).

<sup>2</sup>*Id.* at 1.

<sup>3</sup>*Id.* at 3, 5.

to support the children. Bankruptcy was the only option available at the time. Following the accident, she spent every day with the children's father tried to rehabilitate him because he was not getting medical rehabilitation. She did this until January 2003, when she returned to school. She enrolled in a local technical institute, to be a medical billing specialist. She graduated with a 4.0 GPA. While she was in school, she received unemployment benefits. She graduated in December 2003, and continued to search for a job but was unable to get anything until March 2004. She went to work for some doctors that she had interned for, but was paid nine dollars an hour, which was insufficient to allow her to stay current with her bills. She was hired by her current employer in October 2004.<sup>4</sup>

In 2002, Applicant filed a voluntary petition for Chapter 7 bankruptcy.<sup>5</sup> Her delinquent debts totaled approximately \$28,831.<sup>6</sup> These debts were originally discharged on April 10, 2003. As a result of the car accident, Applicant received a settlement of \$35,288.26. Upon her motion, the Chapter 7 bankruptcy case was reopened, and \$10,840.76 was paid to the trustee in bankruptcy. She received \$24,447.50 in September 2006. The Chapter 7 case was closed on December 20, 2006.<sup>7</sup>

In March 2006, Applicant was about eight months behind on her mortgage payments. She filed a voluntary petition for Chapter 13 bankruptcy on May 10, 2006.<sup>8</sup> Applicant's petition listed one creditor, a savings and loan home mortgage. Applicant's Chapter 13 plan was confirmed on October 5, 2006. Applicant had paid the bankruptcy trustee \$935.01, and was to pay \$273.84 per month for 57 months starting in September 2006. She owed about \$11,964 in arrearage to the savings and loan.<sup>9</sup> Applicant submitted a case report from the bankruptcy trustee that covered the period May 10, 2006 to March 27, 2007. That report shows monthly payments paid by Applicant and that her plan was current though the latter date.<sup>10</sup>

### **Alcohol Consumption**

In March 1995, Applicant was arrested and charged with failed failure to stay in line and driving under the influence of alcohol. Her alcohol level was .07, under the legal limit. She voluntarily completed an alcohol education program. The case was placed on the Stet docket and ultimately dismissed.<sup>11</sup> On February 11, 2006, she was charged with public drunkenness. She had consumed several beers and driven from a bar to a convenience store. She fell asleep in the car and

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<sup>4</sup>Response to the FORM, dated April 2007, at 1.

<sup>5</sup>Applicant's Answer, dated November 3, 2006, at 1-2.

<sup>6</sup>Item 3, *supra*, note 1, at 5.

<sup>7</sup>Item 7 (Docket Report, Bankruptcy Court, dated January 10, 2007) at 2-4.

<sup>8</sup>Item 4 (Subject Interview, dated March 28, 2006) at 2.

<sup>9</sup>*Id.*

<sup>10</sup>*Id.*

<sup>11</sup>*Id.* at 1.

was arrested by police. She was fined \$75 and paid \$194.50 in court costs.<sup>12</sup> She stated that she does not drink at home, rarely gets out to have a drink, does not keep alcoholic beverages in the house, and she's never had an alcohol-related problem with her employment.<sup>13</sup>

## 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 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 guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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 considers all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. Guideline ¶ 2(c).

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, facts must be established by "substantial evidence."<sup>14</sup> The Government initially has the burden of producing evidence to establish a case which demonstrates,

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<sup>12</sup>*Id.*

<sup>13</sup>*Id.*

<sup>14</sup>"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 (4<sup>th</sup> Cir. 1994).

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 present "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." 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).<sup>15</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in 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. 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

### **Financial Considerations**

Guidelines ¶18. 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts

Guidelines ¶19. Conditions that could raise a security concern and may be disqualifying include:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Guidelines ¶ 20. Conditions that could mitigate security concerns include:

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<sup>15</sup>"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).

(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; and

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

The government established its case under Guideline F. Financial Considerations Disqualifying Conditions (FC DC) Guidelines ¶19 (a) (*Inability or unwillingness to satisfy debts*) and FC DC Guidelines ¶19 (c) (*A history of not meeting financial obligations*) are applicable. The available information demonstrates Applicant has a history of not meeting her financial obligations from 2002 to 2006. She filed bankruptcy in 2002 after losing her job, and after her children's father was totally incapacitated in an automobile accident. She was behind on her mortgage payments and filed a Chapter 13 bankruptcy case in 2006, pending receipt of her settlement. The disqualifying conditions are applicable.

On the other hand, the conditions that led to these problems were largely beyond her control. Applicant lost her job, and the children's father, with whom she was cohabitating, was totally incapacitated in a 2002 automobile accident. She was left without his income, \$10,000 in medical bills not covered by insurance, and with two young children to raise. This series of events was a tragic series of events that is not likely to recur. When she finally received a settlement for her injuries, she paid the chapter 7 bankruptcy trustee, and with the remainder, paid her delinquent debts, with the exception of her mortgage arrearage, which she is paying through a Chapter 13 plan. These events were beyond her control, and she has acted responsibly, given the circumstances. She has made a good-faith effort to pay her bills and all evidence points to the fact that she now has her finances under control and is current on all of her debts and bankruptcy plan payments. Mitigating conditions Guidelines ¶ 21 (a), (b), and (d) apply. I conclude Guideline F for Applicant.

### **Alcohol Consumption**

Guidelines ¶ 21. The Concern. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

Guidelines ¶ 22. Conditions that could raise a security concern and may be disqualifying include:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.

Guidelines ¶ 23. Conditions that could mitigate security concerns include:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.

Applicant's 1995 alcohol incident was not prosecuted, as her blood alcohol level was below the minimum standard. She voluntarily entered an alcohol education program. In the 11 years until the second alcohol incident in 2006, Applicant endured the hardships that were detailed in the discussion about financial considerations, *supra*. I believe neither event casts doubt on her current reliability, trustworthiness, or good judgment. She has never been found to be alcohol dependent or to suffer any disqualifying effects from alcohol. She stated that she does not drink at home, rarely gets out to have a drink, does not keep alcoholic beverages in the house, and she has never had an alcohol-related problem with her employment. Guidelines ¶ 23 (a) applies and I conclude Guideline G 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.”<sup>16</sup> “Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”<sup>17</sup> 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.<sup>18</sup> I considered her age (38), her unemployment, and what might cause her to be in financial distress. She availed herself of bankruptcy protection on two occasions. She lost her job, then her cohabitant was incapacitated, causing loss of his income for the children. She spent many months attempting to provide him with rehabilitation therapy. She attended training courses to improve her employability. She started a lower-paying job in a medical practice before finally get a good job with her current employer. She has reached the point where all debts are current, except for her mortgage arrearage, which she is paying through a Chapter 13 bankruptcy trustee. She has made a successful good-faith effort at resolving indebtedness.

The alcohol incidents were years apart, are aberrant behavior, and do not cause me concern about her trustworthiness or reliability. What is important is that notwithstanding the crises in her life, she has persevered and has her life under control. Therefore, the totality of the record leads me to conclude that Applicant has the ability and the reliability to protect classified information, and can 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**

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<sup>16</sup>Directive ¶ E.2.2.1.

<sup>17</sup>*Id.*

<sup>18</sup>*Id.*



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
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