

KEYWORD: Financial

DIGEST: Applicant has a history of indebtedness, which he addressed by first retaining the services of a credit counseling service and making single payments to that service. Unfortunately, that service failed to pay his creditors. Applicant's situation became so dire, he filed for chapter 7 bankruptcy. Applicant and his wife have taken debtor counseling courses and have established a budget demonstrating they have the wherewithal to maintain financial stability. Two of Applicant's three children have severe medical problems. Applicant presented sufficient information to explain, extenuate, or mitigate the security concern. Clearance is granted.

CASENO: 06-19876.h1

DATE: 09/27/2007

DATE: September 27, 2007

In Re:)	
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-----)	ISCR Case No. 06-19876
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

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

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Russell J. Heiple, Esq.

SYNOPSIS

Applicant has a history of indebtedness, which he addressed by first retaining the services of a credit counseling service and making single payments to that service. Unfortunately, that service failed to pay his creditors. Applicant's situation became so dire, he filed for chapter 7 bankruptcy. Applicant and his wife have taken debtor counseling courses and have established a budget demonstrating they have the wherewithal to maintain financial stability. Two of Applicant's three children have severe medical problems. Applicant presented sufficient information to explain, extenuate, or mitigate the security concern. Clearance is granted.

STATEMENT OF THE CASE

On November 15, 2005, 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 Guidelines 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 May 24, 2007, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on July 7, 2007. On August 1, 2007, DOHA issued a notice of hearing scheduling the case to be heard on August 23, 2007. The hearing was held as scheduled. On September 5, 2007, DOHA received the transcript (Tr.). I left the record open until September 7, 2007 to afford the Applicant an opportunity to submit additional material. He timely submitted additional material, which was marked and appended to the record.

FINDINGS OF FACT

¹Government Exhibit (GE) 1(Standard Form (SF) 86, Security Clearance Application) was signed by Applicant on November 15, 2005. The Government also offered GE 2, an SF 86, submitted on June 2, 1999.

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.

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.

Applicant is 43 years old.³ He graduated from high school in June 1984. Tr. 16-17. He served in the U.S. Army from August 1984 to May 1988, and held a secret clearance. Tr. 17-18. He served in the U.S. Army Reserves from August 1997 to December 1999, and held a secret clearance. He served in the National Guard from December 1999 to December 2003, and held a top secret clearance. AE C. He married in June 1999 and has three children, two daughters, ages four and three, and a son, age one. He is employed by a defense contractor as an associate analyst and seeks a security clearance as a condition of employment.

Applicant and his family live in a depressed area with a high unemployment rate. Their four-year-old daughter has asthma, and their one-year-old son has been diagnosed with vascular ring, which is a condition where the large blood vessels coming from his heart are abnormally arranged and are compressing his breathing tubes. Treatment for this condition is surgical manipulation of the blood vessels so that they no longer compress the breathing tubes. Treatment is costly and long term. AE A.

Applicant has a history of financial problems. The SOR lists 11 unpaid debts ranging from \$875 to \$6,985, exceeding \$32,000. These debts were primarily incurred on family or household items such as food, uncovered medical expenses, home computer, windows and siding for their home, and home improvements. The majority of these debts were incurred in the 2004-to-2005 time frame. Applicant's wife handled the family budget during this time and found herself reallocating their limited resources and was unable to stay afloat. Unknown to Applicant, she resorted to opening credit card accounts and began using borrowed money to make payments. To make matters worse, she lost her \$9 an hour job as a telemarketer when she was eight months pregnant with their third child.

After the birth of her third child, Applicant's wife developed and experienced severe post partem depression. While in this condition, she suddenly left her husband and children in September 2006 and she remained away until November 2006. During her absence, Applicant cared for their three young children with the help of his mother-in-law while he worked full time. To make matters worse, Applicant's young son required extensive medical treatment. To ensure his son received the necessary care, he was required to take time off from work without pay to make numerous trips to a major medical facility a considerable distance from his home.

Applicant's wife eventually did return to the family home and sought professional help for her depression. Applicant recognized he was in financial trouble and in June 2005 sought the services of a professional credit counseling company. Pursuant to an agreement with that company, the company agreed to consolidate Applicant's debts, and Applicant was required to make monthly payments to the credit counseling company. Applicant made payments to the company for six months until he discovered the company had not made any payments on his behalf to any of his creditors. AE A.

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

Applicant's financial situation had deteriorated to the point where he felt he had no option left other than to seek bankruptcy relief. In January 2006, Applicant consulted and retained the services of bankruptcy lawyer. His bankruptcy lawyer counseled Applicant to cease making any further payments to his creditors. Unfortunately, his bankruptcy lawyer did not file Applicant's chapter 7 bankruptcy petition until March 2007. It took considerable coaxing from Applicant's counsel representing him at hearing to prompt his bankruptcy lawyer to file and complete the necessary work. Applicant was granted a discharge of all his debts in July 2007.

Upon Department Counsel's review of Applicant's March 2007 bankruptcy petition (GE 8), he noted the debt listed in SOR ¶ 1.e. was not included on Applicant's petition. Applicant submitted post-hearing materials that addressed this point. Applicant's bankruptcy attorney drafted a letter indicating the debt in question was, in fact, discharged. Having reviewed Department Counsel's post-hearing comments, I resolve any doubt about this debt in favor of Applicant. AE D. As such, I have concluded all debts listed in the SOR were discharged in bankruptcy.

Applicant and his wife have completed a debtor education program offered through a credit counseling service. Additionally, Applicant completed a personal financial management course. Applicant submitted a budget showing a net remainder of \$438. AE D. Applicant also submitted six letters/certificates that demonstrate his value as an employee and his superb work ethic. AE B. Applicant's family budget does not contain any luxury items, but is rather bare-boned and accounts for only the life necessities required to maintain two adults and three small children.

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.

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 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

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).

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. Applicable mitigating conditions under Guideline F include the second⁹, third¹⁰, and fourth mitigating conditions. While Applicant is ultimately responsible for incurring debt, several factors are noteworthy. Recognizing Applicant should have used better oversight in managing his family budget, I cannot ignore the reality of Applicant's situation. At the time these debts were incurred, his wife managed the family budget and he was working full time. While managing the budget, Applicant's wife was experiencing severe depression. She admitted opening credit card accounts for the purpose of using the lines of credit to pay other debts. From the evidence presented, none of the debts Applicant incurred could be construed as "extravagant," but rather were related to sustaining the household and family. Applicant's wife lost her modest income as a telemarketer when she was eight months pregnant with their youngest child.

To make matters worse, Applicant and his wife were faced with more than the usual challenges as parents of young children when their four-year-old daughter was diagnosed with asthma, and their one-year-old son was born with the very serious condition of vascular ring. When Applicant realized he was in financial trouble, he wanted to repay his creditors and sought the services of a professional credit counseling service. For six months, he diligently paid that service only to later find out that the service did not pay his creditors and he was in deeper financial trouble than he was

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(b) is "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, . . . , unexpected medical emergency, . . . or separation), and the individual acted responsibly under the circumstances."

¹⁰MC 20(c) is "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."

before he started the process. Reluctantly, he sought the services of a bankruptcy attorney and again was “let down” when his bankruptcy attorney took over a year to file his bankruptcy petition. Applicant’s security clearance attorney apparently was able to assist Applicant’s bankruptcy attorney to file the necessary paperwork to initiate bankruptcy proceedings.

In September 2006, Applicant’s wife suddenly left Applicant and his three young children. To Applicant’s credit he continued to work full-time, and cared for his children with the help of his mother-in-law. When his wife returned, Applicant and his wife sought to return to normalcy through counseling and professional assistance. Both Applicant and his wife have sought financial counseling and are equipped with the tools to avoid financial pitfalls. Applicant has addressed his financial problems, has cash left over, and is otherwise living within his means. Although one can attempt to fault him 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 and National Guard service, his positive employment record, and mettle he showed by caring for his three small children 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”¹¹ 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 or 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 - k: 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. Tuidier
Administrative Judge

¹¹See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).