

KEYWORD: Financial

DIGEST: Applicant is a 30-year-old controller for a federal contractor. In 2003 she had a child and her husband lost his job. They got behind in their payments and accumulated delinquent debts. Applicant took out a loan on her 401k pension plan and a credit union loan to repay all of the delinquent debts, except one that she is making monthly payments on. She and her husband live within their means and are now saving money and repaying their loans. Applicant has mitigated the security concerns raised under Guideline F, financial considerations. Clearance is granted.

CASENO: 06-19911.h1

DATE: 08/29/2007

DATE: August 29, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-19911
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
CAROL G. RICCIARDELLO**

APPEARANCES

FOR GOVERNMENT
Nichole Noel, Esq., Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

_____ Applicant is a 30-year-old controller for a federal contractor. In 2003 she had a child and her husband lost his job. They got behind in their payments and accumulated delinquent debts. Applicant took out a loan on her 401k pension plan and a credit union loan to repay all of the delinquent debts, except one that she is making monthly payments on. She and her husband live within their means and are now saving money and repaying their loans. Applicant has mitigated the security concerns raised under Guideline F, financial considerations. Clearance is granted.

STATEMENT OF CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan.2, 1992), (Directive), 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 of the revised Adjudicative Guidelines issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006.¹

In a sworn statement dated November 6, 2006, Applicant responded to the SOR allegations. Applicant elected to have his case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on May 30, 2007. The FORM was mailed to Applicant on June 4, 2007, and received on June 19, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit any additional material. The case was assigned to me on August 20, 2007.

FINDINGS OF FACT

Applicant is a 30-year-old controller who has worked for a federal contractor since August 2005. She graduated from college in 1999. In 2002 she married and in 2003 she had a child. Sometime in 2003 her husband lost his job. The couple experienced financial difficulties and got behind on paying their credit cards. Applicant obtained a loan from her 401k pension account and another loan from her credit union. She anticipates that the 401k loan will be repaid this year and the credit union account is on a four-year repayment schedule. She used the proceeds from these loans to repay their delinquent debts.²

Applicant provided documentation to substantiate repayment of the debts listed in SOR ¶¶ 1.b, 1.e, and 1.h.³ Her credit reports indicate a zero balance on the debts listed in SOR ¶¶ 1.g. and 1.i.⁴ The debts listed in SOR ¶¶ 1.a, 1.c and 1.f, she admitted owing and stated they were paid in full on July 31, 2001, November 3, 2006, and October 26, 2006, respectively. The debt in SOR ¶ 1.d she

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended.

²Item 8.

³*Id.*

⁴Item 7.

set up a monthly repayment plan and is repaying.⁵ She made an initial payment of \$1,000 on October 31, 2006, and is paying \$500 monthly.

Applicant and her husband both have good jobs and they are saving money. Her husband saves approximately 15% each pay period and she saves approximately 10% of her pay. With their continued savings they anticipate having a healthy financial safety net in the event of an unexpected emergency.⁶

POLICIES

“[N]o one has a ‘right’ to a security clearance.”⁷ As Commander in Chief, the President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.”⁸ The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”⁹ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹⁰ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹¹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹² The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.¹³ 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.¹⁴

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being

⁵Item 8

⁶*Id.*

⁷*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁸*Id.* at 527.

⁹Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

¹⁰ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹¹*Id.*

¹²*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

¹³Executive Order 10865 § 7.

¹⁴*See* Exec. Or. 10865 § 7.

eligible for access to classified information.¹⁵ “Substantial evidence” is “more than a scintilla but less than a preponderance.”¹⁶ The Guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.¹⁷

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.¹⁸ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹⁹ “[S]ecurity clearance determinations should err, if they must, on the side of denial.”²⁰

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline, are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Financial Considerations

Financial Considerations are a security concern because 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.

Based on all of the evidence, Financial Considerations Disqualifying Condition (FC DC) 19(a) (*inability or unwillingness to satisfy debts*) and FC DC 19(c) (*a history of not meeting financial*

¹⁵See *Egan*, 484 U.S. at 531.

¹⁶See *v. Washington Metro. Area Transit Auth.*, 36 F.3rd 375, 380 (4th Cir. 1994).

¹⁷See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996)

¹⁸See Directive ¶ E3.1.15.

¹⁹ISCR Case No. 01-207000 at 3 (App. Bd. Dec. 19, 2002)

²⁰*Egan*, 484 U.S. at 531; see Guidelines ¶ 2(b).

obligations), apply in this case. Applicant had debts that were delinquent and she was unable to satisfy them in a timely manner.

I have considered all of the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC 20(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*), FC MC 20(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*), FC 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 FC MC 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant has paid all but one of her delinquent debts. The remaining debt is on a repayment plan that she is paying. Applicant and her husband ran into financial problems when they had their first child and he lost his job. During this period they got behind in debts. They are now both employed in good jobs and have taken two loans to repay their delinquent debts. They are repaying their loans and it appears they have a solid financial plan. I find FC MC 20(a) and (c) apply in that the conditions and behavior that resulted in their financial problems are unlikely to recur and were beyond their control. In addition, under the circumstances they acted responsibly. They obtained reasonable loans satisfying most of their debts and have affordable repayment plans for their remaining debt and their loans. They are saving money and have a financial safety net if an unexpected expense occurs. Applicant made a good-faith effort to repay her creditors, and I find she has repaid all of them except one, which is on a repayment plan. In addition, there are clear indications that Applicant's financial problems are in the past. Therefore, I find FC MC 20(c) and (d) also apply.

The Whole Person Analysis

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

In addition to considering the specific disqualifying and mitigating conditions under the Guidelines, I have also considered the adjudicative process factors listed in ¶ 2a (1)-(9) of the Guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Specifically these are: (1) the nature, extent and seriousness of the conduct; (2) the circumstances and 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 extent to which participation was 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. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the Guidelines should be followed whenever a case can be measured against this policy guidance.

I considered all evidence provided and also considered the “whole person” concept in evaluating Applicant’s risk and vulnerability in protecting our national interests. Applicant and her husband ran into financial problems when he lost his job around the same time they had a baby. She took a loan against her 401k pension plan and a credit union loan and paid their creditors. They have an affordable repayment plan and both are working and saving a portion of their income. I find Applicant has mitigated the security concerns raised by financial considerations concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F is decided for 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:

Paragraph 1	Financial Considerations (Guideline F)	FOR APPLICANT
	Subparagraph 1.a.-1.i:	For Applicant

DECISION

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

Carol. G. Ricciardello
Administrative Judge