

KEYWORD: Financial

DIGEST: Applicant is unable to mitigate financial considerations concerns that arose following the submission of her security clearance application that identified outstanding debts exceeding \$20,000.00. She sought chapter 7 bankruptcy protection and is awaiting receipt of her bankruptcy discharge. She has yet to establish a budget and a financial track record establishing financial responsibility. Clearance is denied.

CASENO: 06-20725.h1

DATE: 05/31/2007

DATE: May 31, 2007

In Re:	)	
	)	
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SSN: -----	)	ISCR Case No. 06-20725
	)	
Applicant for Security Clearance	)	

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

**APPEARANCES**

**FOR GOVERNMENT**

Daniel F. Crowley, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

\_\_\_\_\_Applicant is unable to mitigate financial considerations concerns that arose following the submission of her security clearance application that identified outstanding debts exceeding \$20,000.00. She sought chapter 7 bankruptcy protection and is awaiting receipt of her bankruptcy discharge. She has yet to establish a budget and a financial track record establishing financial responsibility. Clearance is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On February 22, DOHA issued a Statement of Reasons (SOR)<sup>1</sup> detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on March 21, 2007, and elected to have a hearing before an administrative judge.

Department Counsel indicated he was ready to proceed on April 11, 2007, and the case was assigned to me on April 13, 2007. On April 26, 2007, DOHA issued a notice of hearing scheduling the case to be heard on May 16, 2007. The case was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

At the hearing, the government presented six exhibits, which were marked as Government Exhibits (GE) 1 through 6, and admitted without objection. Applicant did not present any exhibits. DOHA received the transcript on May 25, 2007.

### **FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 34-year-old executive assistant, who has been employed by a defense contractor since August 1990, accumulating over 16 years of employment with the same company. She began her employment with her company shortly after she graduated from high school in June 1990. She seeks reinstatement of her clearance, which was suspended as a result of these proceedings.

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<sup>1</sup>Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified. Concerning the security guidelines, this case is brought under the revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information approved by the President on December 29, 2005. The revised guidelines were then modified by the Defense Department, effective September 1, 2006. They supersede or replace the guidelines published in Enclosure 2 to the Directive and Appendix 8 to DoD Regulation 5200.2-R. They apply to all adjudications and other determinations where an SOR has been issued on September 1, 2006 or thereafter, and they apply to this case because the SOR is dated February 22, 2007. Both the Directive and the Regulation are pending formal amendment.

Applicant is unmarried and mother of three children, a 12-year-old son, a 5-year-old daughter, and a 3-year-old son. The father of her oldest son does not currently pay child support because of their recent joint custody arrangement. The father of her daughter and youngest son pays intermittent and erratic child support. The father of her oldest child lives nearby and is involved in their daughter's life. The father of her son and youngest daughter lives in another state and is not involved in the lives their children.

The SOR alleges Applicant is in arrears on 18 debts exceeding \$20,000.00 (SOR ¶¶ 1.a. through 1.r.). Applicant recently filed for chapter 7 bankruptcy on March 15, 2007, and all of the debts alleged in the SOR are included on her Schedule F - Creditors Holding Unsecured Nonpriority Claims. Applicant's unsecured debts listed on her Schedule F total \$40,973.53. GE 6. She estimates she will be granted her discharge in July 2007. Tr. 44.

Applicant attributes her financial difficulties to lack of child support, uncovered medical expenses for her children and herself, and "bad judgment." Tr. 45-47. She also underwent credit counseling as a requirement of filing bankruptcy. Tr. 44-45. When Applicant received her discharge, she plans to prepare a budget and attempt to rebuild her credit with the assistance of her bankruptcy attorney. Tr. 47. She has also applied for low income housing to lower her housing costs. Tr. 49.

### **POLICIES**

The adjudicative guidelines in the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant adjudicative guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

### **BURDEN OF PROOF**

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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." *Id.* at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively

indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information.” Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when “it is clearly consistent with the national interest to do so.” *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” Directive ¶ E2.2.2 “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.” *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

## CONCLUSIONS

### **Guideline F – Financial Considerations**

Under Guideline F for financial considerations, a security concern arises by:

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.

The government established its case under Guideline F by Applicant’s admissions and evidence submitted establishing she had 18 delinquent debts exceeding \$20,000.00. These facts give rise to Financial Considerations Disqualifying Condition (FC DC) 18(a) *inability or unwillingness to satisfy debts*; and FC DC 18(b) *a history of not meeting financial obligations*.

Applicant accumulated substantial debt over a lengthy period of time. Her situation was no doubt exacerbated by shortfalls in child support and uncovered medical bills. However, I have also noted Applicant’s admission that her problems were also caused by exercising “bad judgment.” This

is further demonstrated by the fact her SOR identified only \$20,000.00 of her unsecured debt in contrast her Schedule F, which listed unsecured debt exceeding \$40,000.00.

Applicant's situation deteriorated to the point she sought bankruptcy as her remedy. Although, she is to be commended for attempting to achieve financial stability, she has yet to demonstrate she has attained the state of financial stability required before she could be granted a clearance. Whether she will reach that state remains to be seen. Given her current unresolved situation based on the fact her bankruptcy discharge has not been granted and she has not established a budget, I have little upon which to conclude she has changed her behavior.

I have reviewed the mitigating conditions under Guideline F and viewing the facts in the light most favorable to the Applicant am able to apply MC 20(b) *the conditions that resulted in the financial problem were largely beyond the person's control (e.g., . . . unexpected medical emergency, or. . . separation.*

While Applicant may be given consideration for uncovered medical expenses and insufficient child support, she is unable to overcome the "bad judgment" aspect of her conduct. Until such time as she is able to demonstrate a track record of financial responsibility over a reasonable period of time, I am unable to find for Applicant on this concern.

In reaching my decision I have applied the facts and circumstances presented in this case using the "whole person" concept as required by the Directive. I have specifically considered Applicant's 16 years of employment with the same company and the challenges she has encountered being a single mother. Unfortunately, Applicant's has been unable to establish she has regained control of her financial situation.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F:                   AGAINST APPLICANT

Subparagraphs 1.a.-1.r.:               Against Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Robert J. Tuidier  
Administrative Judge

