

DATE: October 15, 2007

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In Re: )  
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 ----- ) ISCR Case No. 06-21472  
 SSN: ----- )  
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 Applicant for Security Clearance )  
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**DECISION OF ADMINISTRATIVE JUDGE  
ROBERT J. TUIDER**

**APPEARANCES**

**FOR GOVERNMENT**

John B. Glendon, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of indebtedness following a period of time when she was a single mother, which was further exacerbated by loss of work following severe work-related injuries and other non-reimbursed medical problems. She has returned to work, and paid, made payment arrangements, or made a good-faith effort to pay the nine debts listed in the Statement of Reasons. Applicant presented sufficient information to explain, extenuate, or mitigate the security concern. Clearance is granted.

**STATEMENT OF THE CASE**

On December 5, 2006, Applicant submitted a Security Clearance Application (SF 86).<sup>1</sup> On March 14, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, 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.<sup>2</sup>

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 her, 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 April 2, 2007, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on June 14, 2007. On August 3, 2007, DOHA issued a notice of hearing scheduling the case to be heard on September 17, 2007. The hearing was held as scheduled. On September 26, 2007, DOHA received the transcript (Tr.). I left the record open until September 23, 2007 to afford the Applicant an opportunity to submit additional material. She timely submitted additional material, which was marked and appended to the record.

### **FINDINGS OF FACT**

In her reply to the SOR, Applicant admitted all indebtedness. Her 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 48 years old.<sup>3</sup> She graduated from high school in June 1977. Tr. 26. She has been married to her third husband since November 1997. She was married to her first husband from June 1979 to January 1982, and married to her second husband from July 1984 to April 1993. Her first two marriages ended by divorce. She has a 21-year-old daughter, who was born during her second marriage. Applicant has been employed by a defense contractor as a field manager since April 2005. Tr. 26. She has successfully held security clearances intermittently since 1981 and has held her current interim secret security clearance since 2005.

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<sup>1</sup>Government Exhibit (GE) 1(Standard Form (SF) 86, Security Clearance Application) was signed by Applicant on December 5, 2006. GE 2 is an electronic version of her SF 86 dated May 5, 2005.

<sup>2</sup>On 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.

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

Applicant has a history of financial problems. The SOR lists nine unpaid debts ranging from \$46 to \$12,496, exceeding \$23,000. Two of the largest debts are for automobile loans in which Applicant fell behind during periods of time she and/or her husband were out of work due to injuries. Of those nine debts, Applicant paid off six debts, made payment arrangements on two debts, and is making a good faith attempt to resolve the remaining one debt.

Applicant attributes her financial difficulties to being a single mother following her separation and divorce from her second husband, her husband's two severe work-related accidents, her one severe worked-related accident, and four operations which either interrupted her ability to work and/or for which there were uncovered medical expenses. In total, her husband was out of work for seven years recovering from his accidents and she was out of work for two-and-one-half years recovering from her accident. With Applicant and her husband now working full-time, they have restored their income stream and are able to remain current. They also received settlements from their accidents, which they have used to pay off debts that arose while they were unable to work.

Applicant submitted a post-hearing budget that reflects a joint net remainder of approximately \$1,300. Her hearing and post-hearing materials reflect an earnest effort to document good-faith attempts to achieve financial stability. She recognizes the importance of overcoming her indebtedness and the adverse impact non-payment of debts may have on her clearance. She consulted with a financial counselor and determined it would be more cost effective and efficient for her to deal with her creditors directly. Applicant's supervisor as well as a co-worker testified on her behalf. Applicant also submitted eight letters of reference. AE A through H. Her witnesses and reference letters strongly support the notion Applicant is a trusted and valuable employee who is making a significant contribution to the national defense.

## **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" (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,”<sup>4</sup> 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).<sup>5</sup>

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

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<sup>4</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).

<sup>5</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).

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,<sup>6</sup> 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. Her history of financial problems is a security concern because it indicates inability or unwillingness to satisfy debts<sup>7</sup> and a history of not meeting financial obligations<sup>8</sup> within the meaning of Guideline F. The record is more than sufficient to establish these two disqualifying conditions.

Applicant received credit in mitigation. The most pertinent mitigating condition is the fourth MC<sup>9</sup> of Guideline F, because Applicant has made a good-faith effort to repay or settle the nine debts listed in the SOR. Her good-faith effort is established by her actions. With the help of work-related settlements, and she and her husband returning to full-time status, Applicant has the funds to pay off her creditors. She also receives credit in mitigation under the second MC<sup>10</sup> as a result of she and her husband's loss of work through injuries, she and her husband's extensive medical problems, and her being a single mother following her separation an divorce.

And unlike many applicants in financial cases, Applicant verified her actions by providing substantial documentary proof of payment or settlement of her debts. Applicant has addressed her financial problems, has cash left over, and is otherwise living within her means. Although she can be faulted for taking too long to address her indebtedness, she has since taken action to minimize and overcome concerns about her financial situation. Her history of successfully maintaining security clearances without incident stemming back to 1981 and her positive employment record weigh heavily in her favor in assessing her security eligibility under the "whole person" analysis.

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<sup>6</sup>Revised Guidelines at 13-14 (setting forth the disqualifying and mitigating conditions).

<sup>7</sup>DC 19(a) is "inability or unwillingness to satisfy debts."

<sup>8</sup>DC 19(c) is "a history of not meeting financial obligations."

<sup>9</sup>MC 20(d) "is the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

<sup>10</sup>MC 20(b) "the conditions that resulted in the financial problem were largely beyond the persons control (e.g., loss of employment, . . . unexpected medical emergency, . . . a death, divorce or separation), and the individual acted responsibly under the circumstances."

Based on the record evidence as a whole, Applicant presented sufficient evidence to explain, extenuate, or mitigate the financial considerations security concern. Likewise, she has met her 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”<sup>11</sup> and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guideline. Applicant has not mitigated or overcome the government’s case. For the reasons stated, I conclude she is eligible for access to classified information.

**FORMAL FINDINGS**

SOR ¶ 1 - Guideline F: For Applicant

Subparagraphs a - 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.

Robert J. Tuidier  
Administrative Judge

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