

DATE: October 28, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-24668

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In 1998, Applicant filed for bankruptcy protection due to medical bills. Four years later, Applicant's husband was involved in a serious accident resulting in the loss of his job and loss of pay for six months. Applicant owes four debts totaling less than \$5,000. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from her financial difficulties. Clearance is granted.

STATEMENT OF THE CASE

On Decmeber 20, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Security concerns were alleged under Guideline F (Financial Considerations). DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On January 13, 2004, Applicant answered the SOR and requested a hearing. On February 25, 2005, I was assigned the case. On March 9, 2005, a Notice of Hearing was issued scheduling the hearing which was held on March 23, 2005. On March 31, 2005, DOHA received a copy of the transcript (Tr.).

FINDINGS OF FACT

Applicant is a 45-year-old clerk typist/program administrator who has worked for a defense contractor since December 2002, and is seeking to obtain a security clearance. Applicant is regarded by those who know her as having an upbeat personality, a "get it done" attitude, extremely trustworthy and reliable, a person of strong character, with a strong work ethic, and is an invaluable asset to the group and company. She is dependable, adaptable, and willing to learn. She meets new challenges with enthusiasm and tenacity. She is highly productive. One of her work evaluations states she exhibits more initiative and hard work ethics than has been seen in a long time. Another evaluation states she is one of the best

employees the rater had ever had the pleasure of supervising.

In 1997, Applicant's husband, a professional truck driver, had a fainting or dizzy spell. His primary care physician sent him to a cardiologist. He was treated for a blood pressure issue. He would get dizzy when he bents over (Tr. 33). Medical bills were incurred which were not paid by his insurance. He was given blood pressure medication and, following a Department of Transportation physical, he was cleared to return to driving.

In May 1998, due to the medical bills, Applicant and her husband filed for Chapter 7 bankruptcy protection. In September 1998, their liabilities were discharged.

Applicant's husband had 18 accident free years with a company as a truck driver. In November 2002, her husband was involved in a serious accident. He crossed an overpass over the interstate highway and started into a curve where two trucks were illegally parked. The tractor he was driving flipped on its side and proceeded down the highway. Serious damage was done to the trucks and Applicant's husband. Two weeks after the accident, he was terminated from his job and received no income from November 2002 through May 2003. The accident was ruled not her husband's fault (Gov Ex 2). Prior to the accident, Applicant had not been working outside the home. Following the accident, additional financial problems were incurred when her husband's court ordered child support payment was increased to \$567 per month.

In December 2002, Applicant obtained her current job. For six months, Applicant's family of four lived on approximately \$1,000 per month from her job until her husband's disability pay started. Her husband is 100% disabled. In May 2003, Applicant's husband began to receive \$1,529 monthly disability payments. In addition to Applicant's full time job with the government contractor, she has taken additional jobs to raise money. First she was cleaning homes and then doing tax preparation work for additional money. They also moved into a smaller house to save rent money.

In the accident, her husband sustained constriction of the main artery to the brain; injury to two cervical disks; a closed head injury; a broken right hand and wrist; and a hernia caused by the seat belt (App Ex A). Her husband's disability has required numerous hospitalizations, medications, and doctors' visits. He was being treated for seizures, migraines, neck pain, severe mood swings and depression, of which he had no history of prior the accident (App Ex A). Her husband, who is 44 years old, will never again return to work in any capacity (Tr 24).

In November 2004, her husband's had his most recent surgery. Five out of seven days, her husband stays in bed until she gets him up. The other two days, he is able to get up and function until she comes home for lunch to make sure he has eaten and taken his medications (Tr. 45). He currently takes 18-20 medications. He falls, he staggers, he has seizures, and suffers memory loss. Prior to the accident, her husband weighed 210 pounds. He now weights 142 pounds.

Applicant hired an attorney to seek payment from her husband's former employer for lost wages and past and future doctor and medical bills. Applicant presented documentation showing more than \$6,000 paid for medication to one pharmacy (App Ex A). Their attorney hoped for resolution of the workers compensation case within three months following the date of the hearing. Applicant has not paid certain medical bills anticipating her husband's employer or workman's compensation will be required to pay them.

Applicant was paying the credit card debt (SOR 1.c) until the company would no longer accept the minimal payments she was able to make. She had offered payments of \$50 per month, which the company found unacceptable. The debt was approximately \$3,300. The company has recently offered to settle for half of the debt. When Applicant was unable to make her car payments (SOR 1.b), she voluntarily returned the vehicle. Following the repossession, Applicant owed \$5,200. The creditor has offered to settle the debt for half of the debt. However, Applicant's current finances are not sufficient to pay the amounts requested. After the repossession, Applicant purchased an old car with a very small payment (Tr. 69).

The SOR lists seven debts totaling approximately \$9,000. The current status of those debts follows:

	Creditor	Amount	Current Status
1.b	vehicle repossession	\$5,220	Creditor has offered to settle this matter at one half the balance.

1.c	credit card debt	\$3,294	Creditor has offered to settle this matter at one half the balance.
1.d	retail merchandising debt	\$22	Paid. (App Ex A)
1.e	collection agency for a hospital bill	\$36	Paid. (App Ex A)
1.f	collection agency for a hospital bill	\$273	Unpaid.
1.g	collection agency for a hospital bill	\$33	Paid. (App Ex A)
1.h	collection agency for a hospital bill	\$60	Unpaid.
		\$8,938	Total debt listed in SOR

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines 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. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guideline to be applied here is Guideline F (Financial Considerations).

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. 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, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. 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. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. ⁽²⁾

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." A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive E.2.A.6.1.1.

The Government has satisfied its initial burden of proof under Guideline F (Financial Considerations). Applicant owed seven debts totaling approximately \$9,000. Disqualifying Conditions (DC) 1 (E2.A6.1.2.1 *A history of not meeting financial obligations*) and 3 (E2.A6.1.2.3 *Inability or unwillingness to satisfy debts*) apply to these debts.

Applicant has paid three of the debts (SOR paragraphs 1.d, 1.e, and 1.g). Mitigating Conditions (MC) 6 (E2.A6.1.3.6 *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies.

In 1997, Applicant's husband, a professional truck driver, had a fainting or dizzy spell. He incurred numerous medical bills attempting to determine the problem. In May 1998, they filed for Chapter 7 bankruptcy protection due to the medical bills. I find MC3 (E2.A6.1.3.3 *The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)*) applicable to this bankruptcy which was also caused by medical debts incurred to discover the cause of Applicant's husband's dizziness.

Following the bankruptcy, they were getting back on their feet. They purchased a car and were paying their debts. November 2002, her husband was involved in a serious accident. Following the accident, he falls, he staggers, he has seizures, and suffers memory loss. He suffers from migraines, neck pain, severe mood swings and depression, and has experienced substantial weight loss. He is currently on 18 to 20 medications. Applicant and her husband have already paid more than \$6,000 for medication. He has now been declared to be disabled and will never again be able to return to work.

Two weeks after the accident, he was terminated from his job and received no income from November 2002 through May 2003, when he began to receive monthly disability payments. Immediately following the accident, Applicant obtained her current job and began second jobs as the household's only source of income. She took steps to reduce their debts. She returned their car and bought a much less expensive car. They moved into a smaller house to save on rent.

Her two largest creditors (SOR 1.b, \$5,200 and SOR 1.c, \$3,200) have both offered to settle their accounts for half of what is owed. However, Applicant has not had sufficient funds to accept their offers. She and her husband have hired an attorney to seek payment from her husband's former employer for lost wages, past and future doctor and medical bills. Applicant has two other medical bills totaling approximately \$330, which she has not paid anticipating her husband's employer or workman's compensation will be required to pay them.

Applicant owes four debts which total less than \$5,000, if she is able to accept the settlement offers. If she is successful in having the two small medical bills paid by workman's compensation or her husband's prior employer, she has only two debts. Her inability to pay these debts were the direct result of her husband's accident. I find MC3 (E2.A6.1.3.3 *The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)*) applicable to the four debts. I find for Applicant as to financial considerations.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F

(Financial Considerations): FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: For the Applicant

Subparagraph 1.f: For the Applicant

Subparagraph 1.g: For the Applicant

Subparagraph 1.h: For the 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.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended.
2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.