

KEYWORD: Financial

DIGEST: Applicant is 37 years old and presently works for a federal contractor. After her divorce in July 2001, she experienced financial difficulties when her former husband failed to pay child support on a regular basis. Since 2004, she has established a good credit history and is resolving her debts. She mitigated the security concerns raised by financial considerations. The Government did not offer proof on those security concerns raised by personal conduct. Clearance is granted.

CASENO: 05-03090.h1

DATE: 04/18/2006

DATE: April 18, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-03090

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 37 years old and presently works for a federal contractor. After her divorce in July 2001, she experienced financial difficulties when her former husband failed to pay child support on a regular basis. Since 2004, she has established a good credit history and is resolving her debts. She mitigated the security concerns raised by financial considerations. The Government did not offer proof on those security concerns raised by personal conduct. Clearance is granted.

STATEMENT OF THE CASE

On July 29, 2005, the Defense Office of Hearings and Appeals (DOHA) under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guidelines F (Financial Considerations) and E (Personal Conduct) why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On August 18, 2005, Applicant filed her Answer and requested a hearing. She admitted the allegations under Guideline F and denied those under Guideline E. The case was assigned to me on January 3, 2006. A Notice of Hearing was mailed on January 31, 2006, setting the case for hearing on March 1, 2006. At the hearing the Government entered Exhibits (GX) 1-8 into evidence. Applicant entered Applicant Exhibits (AX) A-I into evidence. She testified and called one witness. DOHA received the Transcript (Tr.) on March 9, 2006.

PROCEDURAL MATTERS

At the commencement of the hearing, the Government stated that it would not proffer evidence on the allegations contained in the SOR under Guideline E. Hence, those allegations are concluded in Applicant's favor.

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in her Answer to the SOR and at the hearing, I make the following findings of fact:

Applicant is 37 years old. In May 1986, she enlisted in the armed services and received an Honorable Discharge when she left in August 1990.⁽¹⁾ The following September, she joined the National Guard and remained there until March 1995.⁽²⁾ While in the Guard, she earned bachelor and master's degrees. After obtaining a commission, she returned to active duty in June 1995, where she served until April 1997, when she received an Honorable Discharge.⁽³⁾ At the time she left military service, she held a secret security clearance.⁽⁴⁾

After returning to civilian life in April 1997, Applicant worked in various positions until she began a job with a mortgage broker in January 2001.⁽⁵⁾ She worked there until October 2003, when she began her present job as a product support person for a federal contractor. She completed a security clearance application (SCA) in October 2003.⁽⁶⁾

In February 1996, Applicant married her husband. They divorced in July 2001, and had one child.⁽⁷⁾ According to the divorce agreement, her husband was required to pay \$590 a month in child support. She assumed financial responsibility for her student loan, and three joint debts, two of which are listed in the SOR as ¶¶ 1.a and 1.b (\$6,859 and \$5,012 respectively).

By the end of November 2001, Applicant's former husband stopped paying his child support on time and by September 2002, he was \$2,360 in arrears. His consistent delinquency created a financial hardship for her that lasted the next several years.⁽⁸⁾

Attempting to manage her debt, in January 2002, she contacted the credit card company referenced in SOR ¶ 1.a. After a conversation, she wrote them letters explaining her financial problems.⁽⁹⁾ She was willing to make minimum monthly payments, but could not afford the amount the company required. Consequently, the company charged off the account as a bad debt.⁽¹⁰⁾ In September 2005, Applicant began making \$150 monthly payments on the outstanding amount. As of February 2006, the amount due was \$6,109.⁽¹¹⁾

In July 2002, Applicant contacted the furniture creditor listed in SOR ¶ 1.b. She requested the company arrange a repayment plan for her based on hardship, but later learned she was ineligible. Subsequently, the original debt was sold to another company and then resold, which made it more difficult to determine the appropriate holder of the debt. In August 2005, she wrote a letter to one of the companies requesting information regarding the repayment of the account.⁽¹²⁾

In her 2004 statement to the Government, Applicant indicated that she did not make payments to the creditors listed in the SOR after mid-2002 because at the time they had written off the debt and she could not afford to make the required minimum payments.⁽¹³⁾ Instead, she chose to pay current accounts in an attempt to improve her credit rating and purchase a home. However, she intended to make payments on the old debts in the future.⁽¹⁴⁾ In May 2005, she achieved her goal and purchased a home.⁽¹⁵⁾

Presently, Applicant earns approximately \$58,000 annually. Her monthly net income is \$4,284 (including child support), and her expenses are \$2,982. After paying household debts, which include the credit card debt referenced in SOR ¶ 1a, she has \$500 with which to pay other outstanding creditors.⁽¹⁶⁾ Since February 2004, her ex-husband has remained current with his child support payments.⁽¹⁷⁾

Applicant's former supervisor testified. He hired her in spring of 2001 to handle financial and administrative matters for his mortgage company. Her duties included, managing approximately \$4-5 million of receivables, reporting to governmental bodies, overseeing audits, and handling payroll. She had access to credit cards and was the sole authorized signatory on five checking accounts that contained substantial amounts of money.⁽¹⁸⁾ During her employment he also advised her how to resolve her financial difficulties.⁽¹⁹⁾ While testifying, he complimented Applicant on the manner in which she resolved her debts and obtained a VA mortgage.⁽²⁰⁾ He considered her very honest, trustworthy and credit conscious. Applicant submitted her recent work evaluation. Her present supervisor rated her as a "High Contributor."⁽²¹⁾

Based on Applicant's past performance in handling her debts and the organized effort with which she presented this case, her commitment to resolving her financial problems is credible.

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth criteria which must be evaluated when determining security clearance eligibility. Within those adjudicative guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other 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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive, Enclosure 2, ¶ E2.2.2. The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty. Executive Order 10865, § 7. Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988). The Directive presumes a rational connection between past proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of

rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the government. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive, Enclosure 3, ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his clearance." *Id.*

Based upon the allegations contained in the SOR and a consideration of the evidence as a whole, the following adjudicative guideline is pertinent to an evaluation of the facts of this case:

Guideline F - Financial Considerations: A security concern may exist when an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

The disqualifying and mitigating conditions, either raising security concerns or mitigating security concerns applicable to this case, are discussed in the Conclusions section below.

CONCLUSIONS

I considered all of the facts in evidence, legal standards, including the "whole person" concept, and Applicant's credibility. The Government established a *prima facie* case for disqualification under Guideline F.

Based on the evidence, Financial Consideration Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*) applies in this case. From late 2001 to 2004, she was unable to meet her financial obligations.

The Government having established its case, the burden shifted to Applicant to mitigate or rebut the allegations. After considering all of the mitigating conditions under this guideline, I conclude that three of them apply. (1) Financial Consideration Mitigating Condition (FC MC) 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)*). In late 2001, Applicant's former husband periodically stopped paying child support, which strained her budget and affected her income for the next couple years. These factors were outside of her control. (2) FC MC E2.A6.1.3.4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*). While working for a mortgage company, Applicant's supervisor advised her how to build a solid credit history in order to secure a mortgage, which she successfully did as exemplified

by the purchase of a home in ay 2005. Additionally, she resolved debts that were not included in the SOR, and is managing the two mentioned in the SOR, such that they are under control. (3) FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*). After divorcing in July 2001, she attempted to resolve many of her bills through phone calls and letters to her creditors. At this time she has been paying off the balance of the debt listed in SOR ¶ 1.a, and is in the process of resolving the debt listed in SOR ¶ 1.b.

I further considered the totality of the evidence in this case, including Applicant's ten years of service in the armed services and honorable discharge, her previous commitment to the establishment of a credit history sufficient to qualify her for a mortgage, her current financial stability, and her present employer's evaluation. Most importantly, I gave great weight to her prior supervisor's testimony that despite her financial difficulties, she never mishandled the significant amount of money that was entrusted to her management. His testimony favorably addressed the heart of this security concern, viz., that a person with financial problems may compromise classified information to obtain funds. I also reviewed the circumstances underlying these security concerns related to her finances, and conclude they are unlikely to recur. Therefore, I am persuaded by the totality of the evidence that she has mitigated the security concerns based on financial considerations. Accordingly, Guideline F is concluded in her favor.

For the reasons stated, I conclude Applicant is eligible for access to classified information.

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 as follows:

Paragraph 1: Guideline F (Financial Considerations) FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Paragraph 2: Guideline E (Personal Conduct) FOR APPLICANT

Subparagraph 2.a: For Applicant

DECISION

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

Shari Dam

Administrative Judge

1. Tr. 29-30.
2. AX A at 2.
3. AX A at 3.
4. AX A at 4.
5. GX 1 at 2.
6. *Id.*
7. GX 1 at 4.
8. AX B; Tr. 40.
9. AX C.
10. Tr. 35.
11. AX I at 5.
12. AX E.
13. Tr. 42-43.

14. AX 2 at 3.

15. Tr. 44.

16. AX G.

17. AX B at 3.

18. Tr. 52.

19. Tr. 63.

20. Tr. 56.

21. AX H.