

DATE: November 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-07929

DECISION OF ADMINISTRATIVE JUDGE

MARK W. HARVEY

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Forty-four-year-old Applicant had fourteen financial allegations listed in the SOR. She failed to adequately explain, controvert, or show how she planned to resolve or pay six debts, including two debts together totaling over \$13,000.00. She was unemployed from June 2003 to June 2004, which aggravated her financial problems. She has failed to mitigate concerns about financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On May 5, 2005, Applicant applied for a security clearance and submitted an Electronic Questionnaires for Investigations Processing (e-QIP).⁽¹⁾ On July 11, 2006, 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 and modified.

⁽²⁾ The SOR alleges security concerns under Guideline 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 a sworn, notarized answer, dated August 7, 2006, Applicant responded to the SOR allegations, electing to have her case decided on the written record in lieu of a hearing.⁽³⁾ A complete copy of the file of relevant material (FORM), (cover letter dated September 7, 2006), was provided to her on September 15, 2006, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.⁽⁴⁾ Any such submissions were due by October 15, 2006.⁽⁵⁾ Applicant did not provide additional materials in response to the FORM. The case was assigned to me on October 25, 2006.

PROCEDURAL RULING

On September 5, 2006, Department Counsel made a motion seeking judicial notice of the Equifax Training Brochure (Item 12). Department Counsel's motion for judicial notice is denied. Administrative or official notice, rather than judicial notice, is the appropriate type of notice used for administrative proceedings. *See* ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings is to notice facts that are either well known or from government reports. *See* Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Applicant has not objected to the admissibility of Item 12, and it is admitted to explain the codes in the Equifax Credit Reports that are part of the record evidence (Items 9-11).

FINDINGS OF FACT

As to the factual allegations, Applicant made some admissions, and denied other allegations in her response to the SOR. (6) Her admissions are incorporated herein as findings of fact. Under Guideline F, the SOR listed a total of 14 debts. Applicant admitted that she was aware of and responsible for nine debts, that were delinquent for at least a year. The delinquent SOR debts are listed in SOR ¶¶ 1.b, 1.f, 1.g, 1.h, 1.j to 1.n.

In her response to the SOR, Applicant asserted two of the fourteen SOR debts (SOR ¶¶ 1.a and 1.i) were the responsibility of Applicant's husband and resulted from his business. She denied the SOR debt in ¶ 1.e) without elaboration. Two SOR debts were paid by garnishment orders (SOR ¶¶ 1.c and 1.d). (7) I find her statements contradicting the debts in SOR ¶¶ 1.a, 1.c, 1.d, and 1.i to be credible. After a complete and thorough review of the evidence of record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 44-year-old (8) employee of a defense contractor. (9) Her current employer has employed her for seven of the preceding nine years. (10) From June 2003 to June 2004, she was unemployed, and from June 2004 to March 2005 she was employed by a temporary employment agency. (11) Applicant has no prior military service. (12) From September 1982 to April 1983, she attended college, but was not awarded a degree. (13) Applicant was married on August 8, 1992. (14) Applicant has two children, and four stepchildren. (15)

Financial Considerations

The 14 financial allegations in the SOR, and their current status, are described below:

SOR ¶	TYPE DEBT	AMOUNT	CURRENT STATUS
¶ 1.a.	Debt	\$127.00	refuted debt (16)
¶ 1.b.	Debt	\$772.00	delinquent as of Feb. 2004 (17)
¶ 1.c.	Debt	\$240.00	paid by garnishment (18)
¶ 1.d.	Medical Debt	\$135.00	paid by garnishment ¹⁹
¶ 1.e.	Debt	\$519.00	refuted debt ¹⁷
¶ 1.f.	Consumer Debt	\$6,244.00	delinquent as of Apr. 2005 ¹⁸
¶ 1.g.	Debt	\$72.00	delinquent as of Sep. 2003 ¹⁸
¶ 1.h.	Automobile Loan	\$7,679.00	delinquent as of Sep. 1998 ¹⁸
¶ 1.i.	Debt	\$9,409.00	refuted debt ¹⁷
¶ 1.j.	Debt	\$1,099.00	delinquent as of Apr. 2005 ¹⁷
¶ 1.k.	Court Debt	\$1,300.00	delinquent as of July 2004 ¹⁷

¶ 1.l.	Medical Debt	\$3,673.00	paid by garnishment May 12, 2005 ^{18, 19}
¶ 1.m.	Medical Debt	\$3,000.98	paid by garnishment Aug. 24, 2005 ^{18, 19}
¶ 1.n.	Medical Debt	\$2,320.00	paid by garnishment Nov. 23, 2005 ^{18, 19}

The record does not contain an interview by a security investigator. There is no personal financial statement in the record. In response to the SOR, Applicant made a brief statement indicating that some of her debts are her husband's business debts.¹⁷ The medical bills that went into collection were paid off through the garnishment of her pay.¹⁹

POLICIES

In an evaluation of an applicant's security suitability, an administrative judge must consider Enclosure 2 of the Directive, 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 adjudicative 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 provision in Section E2.2, Enclosure 2, of the Directive. An administrative judge's overarching 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 meaningful decision. Specifically, an administrative judge should consider the nine adjudicative process factors listed at E2.2.1 of the Directive: (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) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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.

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

Financial Considerations - Guideline F: 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. Directive ¶ E2.A6.1.1.

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

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 the issuance of the clearance is "clearly consistent with the interests of national security." 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, facts must be established by "substantial evidence."⁽¹⁹⁾ The government initially has the burden of producing evidence to establish a case which demonstrates, 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. If the government meets its initial burden, applicant then has the burden of persuasion, that is to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and ultimately to demonstrate it is clearly consistent with the national interest to grant or continue applicant's clearance.⁽²⁰⁾

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. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. 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.

CONCLUSIONS

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:

Guideline F (Financial Considerations)

The government has met its initial burden under Guideline F. Applicant's initial failure to pay her debts is of concern, especially in light of her desire to have access to the nation's secrets. Under Guideline F (Financial Considerations), "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect classified information.

Two Financial Considerations Disqualifying Conditions (FC DC) could raise a security concern and may be disqualifying in this case. FC DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. FC DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. Applicant's actions in initially failing to satisfy her outstanding financial obligations give rise to FC DC 1 and 3. Applicant admitted she was responsible for all of the debts listed in the SOR, except for ¶¶ 1.a, 1.e, and 1.i. ⁽²¹⁾ She did not indicate why her debts became delinquent.

A security concern based on financial problems can be mitigated by substantial evidence under FC MCs 1 or 2 that "the behavior was not recent" or "it was an isolated incident." Directive ¶¶ E2.A6.1.3.1, E2.A6.1.3.2. I considered FC MC 1 and 2, but concluded that neither mitigating condition fully applied because there are six debts in SOR ¶¶ 1.b, 1.f, 1.g, 1.h, 1.j, and 1.k, and they have not been paid, and are not in the process of being resolved.

Applicant disclosed some information to support consideration of FC MC 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)." Directive ¶ E2.A6.1.3.3. However, her financial difficulties remain largely unexplained. She was unemployed from June 2003 to June 2004, and she was employed by a temporary employment agency from June 2004 to March 2005. Her security clearance questionnaire indicates that she was gainfully employed for seven of the last nine years. Although unemployment or underemployment may have caused her financial problems, she has not provided enough information about changes in her financial situation, with linkage to the generation of her delinquent debts to warrant full application of FC MC 3. ⁽²²⁾

FC MC 6 can mitigate a security concern arising from financial problems when "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," (FC MC 6). Directive ¶ E2.A6.1.3.6. The Appeal Board has defined the concept of good faith, as requiring "a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004). FC

MC 6 does not fully apply because there is insufficient information to establish that Applicant showed good faith in the resolution of her debts. Applicant has not provided any information about how she attempted to resolve or repay the six debts in SOR ¶¶ 1.b, 1.f, 1.g, 1.h, 1.j, and 1.k.

"Whole Person" Analysis

In addition to the enumerated disqualifying and mitigating conditions, I have considered the general adjudicative guidelines related to the whole person concept under Directive provision E2.2.1. As noted above, Applicant's failure to make progress resolving six SOR debts, including two SOR debts in ¶¶ 1.f and 1.h, respectively for \$6,244.00 and \$7,679.00 are a serious, ongoing, long-term problem and are sufficiently serious to be a security concern. E2.2.1.1. Her actions were knowledgeable and voluntary. E2.2.1.2. She is 44 years old, sufficiently mature to be fully responsible for her conduct. E2.2.1.4. The likelihood of recurrence cannot yet be determined because insufficient evidence was presented about improvement in her financial situation, and corroborating evidence of change is sparse. E2.2.1.9. There is little evidence of her job performance. The absence of evidence of any prior security violation weighs in her favor. There is a paucity of supporting evidence about rehabilitation. After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude she has not mitigated the security concerns pertaining to financial considerations.

The evidence leaves me with grave questions and doubts as to Applicant's security eligibility and suitability. 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"⁽²³⁾ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under Enclosure 2 of the Directive. Applicant has failed to mitigate or overcome the government's case.

For the reasons stated, I conclude Applicant is not 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:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: For Applicant

Subparagraph 1.m: For Applicant

Subparagraph 1.n: For Applicant

DECISION

In light of all 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.

Mark W. Harvey

Administrative Judge

1. Item 4 (Electronic Questionnaires for Investigations Processing (e-QIP), dated May 5, 2005). There is no allegation of falsification of this document.
2. Item 1 (Statement of Reasons (SOR), dated July 11, 2006) at 1-3. This document is the source for the remainder of this paragraph.
3. Item 3 (Applicant's response to SOR, notarized August 7, 2006).
4. Defense Office of Hearings and Appeals (DOHA) transmittal letter, dated September 7, 2006.
5. *Id.* The DOHA transmittal letter informed Applicant that he had 30 days after receipt to submit information.
6. Item 3, *supra* note 3, is the source for all factual assertions in this paragraph.
7. Three garnishment orders, all from the same collection company (SOR ¶¶ 1.1, 1.m, and 1.n) are part of the record evidence: (1) \$3,363.00 (dated May 12, 2005), *see* Item 6 (Adverse Information Report provided by the contractor who employs Applicant); (2) \$3,000.98 (dated August 24, 2005), *see* Item 7 (Adverse Information Report provided by the contractor who employs Applicant); and (3) \$2,320.78 (November 23, 2005), *see* Item 8 (Adverse Information Report provided by the contractor who employs Applicant).
8. Item 4, *supra* note 1, section 1, at 6 of 34.
9. *Id.*, section 11, at 10-14 of 34. Applicant has been employed in "Tech Pub Prod & Dlvry," and Data Processing. *Id.*
10. *Id.*
11. *Id.*, sections 11.2 and 11.3, at 11-12 of 34.
12. *Id.*, section 16, at 24-25 of 34.
13. *Id.*, section 10, at 9-10 of 34.
14. *Id.*, section 13, at 15-16 of 34.
15. *Id.*, at 19-22 of 34.
16. In Item 3 Applicant credibly denies responsibility for the SOR debts in ¶¶ 1.a, 1.e, and 1.i. The SOR debts in ¶¶ 1.a and 1.i were her husband's business debts. She denied the debt in SOR ¶ 1.e without elaboration.
17. *See* Item 3 (Applicant's response to SOR). Applicant admitted SOR debts ¶¶ 1.b, 1.f, 1.g, 1.h, 1.j to 1.n. The debts in this table are documented in one or more credit reports (Items 5, 9-11).

18. In Item 3 Applicant credibly states that these debts were paid by garnishment. Three garnishment orders are part of the record evidence in this case (Items 6-8). *See* note 7, *supra*.

19. "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 (4th Cir. 1994).

20. "The Administrative Judge [] consider[s] 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).

21. *See* note 17, *supra*.

22. *See* ISCR 04-07360 at 2 (App. Bd. Sept. 26, 2006) (stating partial credit was available under FCMC 6 for debts being resolved through garnishment).

23. *See* ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).