

DATE: December 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-15861

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a 55-year-old configuration data analyst working for a defense contractor. Thrice divorced and once widowed, she found herself a single mother and financially in trouble following two of her divorces. Consequentially, she filed for bankruptcy in 1975 and in 2000. Chapter 13 bankruptcy protection was sought in 2003, when she acquired under \$10,000 in credit card debts bearing unwieldy interest rates. She timely repaid half the sum to her bankruptcy trustee in three years. Today, she lives frugally, has reduced her available credit to under \$5,000, and has no unmanageable debt. Applicant has mitigated security concerns arising under financial considerations. Clearance is granted.

STATEMENT OF THE CASE

On April 5, 2005, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). On September 29, 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*, 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. The SOR detailed reasons why, under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines issued on December 29, 2005, and implemented by the Department of Defense, effective September 1, 2006, DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether her clearance should be revoked.

In a notarized statement, dated October 12, 2006, Applicant responded to the SOR. She admitted the three allegations raised, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel prepared the government's written case on October 25, 2006. A complete copy of the file of relevant material (FORM) [\(1\)](#) was received by Applicant on October 30, 2006, and she was afforded an opportunity to file objections and submit material

in refutation, extenuation, or mitigation. Any such submissions were due by November 29, 2006. Applicant's response to the FORM, signed on November 8, 2006, was timely received on or about November 14, 2006. The case was assigned to me on December 1, 2006.

FINDINGS OF FACT

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

Applicant is a 55-year-old configuration data analyst working for a defense contractor. She is a single mother of one daughter⁽²⁾ and has held a security clearance for 25 years without incident. Applicant has earned a high school diploma and received some college-level education. She has provided some anecdotal facts as to her life and her financial situation, although they are not often raised in chronological order or provided in context.

In 1968, at age 17, Applicant married her first husband. The couple had a son. Owing to her husband's alcoholism and abuse, they divorced in 1972. Life after divorce was a financial challenge. In 1975, she was laid off from work and she only earned approximately \$3,151 for the year, despite her obligations for house and car payments, expenses, and her custody of her nearly six year old child. In order to get out from her mounting debt, she sought bankruptcy protection.⁽³⁾

Later in 1975, Applicant remarried. She was widowed, however, on December 31, 1982. She also lost her son around that time.⁽⁴⁾ She went to work for the government division of a major corporation in April 1983, then remarried in September 1984. That marriage ended in a difficult divorce on June 16, 1988. A fourth marriage took place in April 1991, but it ended in divorce in May 1997. Finances again became a problem after her last divorce, and she filed for Chapter 7 in 2000. A high estimate of her protected assets was taken at \$202,258, but this total did not take into account the fact that her unpaid home mortgage, home equity loan, and unpaid profit sharing loan were to be re-assumed after the bankruptcy.⁽⁵⁾ The actual amount of protection sought was for approximately \$35,000.⁽⁶⁾

In January 2001, Applicant left her former employer of 18 years and assumed her current position. More debt was acquired, however, due to compounding interest rates on her credit cards. She sought counsel from her attorney in 2002 or 2003 regarding her options. She filed Chapter 13 bankruptcy in March 2003 to relieve herself of approximately \$9,492.99 of unsecured debt.⁽⁷⁾ Under the bankruptcy plan, Applicant timely repaid \$4,763.93 of the debt and \$1,893.36 in attorney and trustee fees, prior to her discharge in May 2006. She has also timely repaid her second mortgage and is current on her first mortgage.⁽⁸⁾

Today, Applicant lives frugally and has not acquired any significant debt since filing for Chapter 13 protection. She drives a 12-year-old car and has been regular on her utility bills. In order to stay current on her debts and provide for herself and her daughter, she has attempted to work two jobs simultaneously at various points in time when it did not interfere with her duties at her primary place of employment. Her August 2006 credit bureau report does not note any past due or delinquent accounts.⁽⁹⁾ She has initiated the closure of several credit card accounts and currently possesses only three viable credit cards, with a combined available credit of under \$5,000. As of the date of her

August 2006 credit bureau report, her balance on those credit cards was for approximately \$2,600 and her payment history timely.

POLICIES

The revised Adjudicative Guidelines (AG) set forth set forth both disqualifying conditions and mitigating conditions applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of

the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽¹⁰⁾ The government has the burden of proving controverted facts.⁽¹¹⁾ The burden of proof is something less than a preponderance of evidence.⁽¹²⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

her.⁽¹³⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁴⁾

No one has a right to a security clearance⁽¹⁵⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁶⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹⁷⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹⁸⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a security clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. Based upon consideration of the evidence, I find Guideline F of the revised AG most pertinent to the evaluation of the facts in this case. That guideline reads in pertinent part:

Guideline F - Financial Considerations. *The Concern: Failure or an 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.*⁽¹⁹⁾

In this matter, the government provided substantial evidence that Applicant accrued a number of debts over the years and filed for bankruptcy protection three times, in 1975, 2000, and 2003. Consequently, Financial Considerations Disqualifying Condition (FC DC) 1, AG ¶ 19(a), (*inability or unwillingness to satisfy debts*) and FC DC 2, ¶ 19(c), (*a history of not meeting financial obligations*) apply.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. Here, when Applicant filed for bankruptcy in 1975, she was still becoming accustomed to being a single mother after her 1972 divorce, when she found herself unemployed and struggling to meet her obligations. Following her 1997 divorce, she again found herself in debt and unable to adequately provide for herself and her daughter, leading her to file for bankruptcy in 2000. In both situations, she sought bankruptcy protection in order to dutifully seek financial stability for both herself and her child. With regard to these two bankruptcies, therefore, FC MC 2, AG ¶ 20(b), (*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) and the individual acted responsibly under the circumstances*) applies. Applicant failed, however, to provide any facts or conditions that might raise this mitigating condition with regard to her 2003 bankruptcy application.

Applicant admitted that she has filed for bankruptcy three times. Her third bankruptcy was not discharged until May 2006, and she has not provided any explanation as to what circumstances led her to this third filing other than the fact her credit cards has high interest rates. Therefore, Financial Considerations Mitigating Condition (FC MC) 1, ¶ AG 20(a), (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*) does not

apply.

There is no evidence that Applicant has received formal financial counseling, although she did seek legal counsel regarding her economic distress. Taking that advice, she filed for minimal Chapter 13 bankruptcy protection in 2000, and satisfied her schedule of repayment for half of the protection sought in three years. While formal financial counseling is clearly warranted, FC MC 3, AG ¶ 20(c) (*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*) does apply to some extent.

In the past 31 years, Applicant sought to resolve her debts through bankruptcy three times. The first two bankruptcies resulted after she was unable to cope as a single working mother after divorces, and those actions helped her regain her financial footing. Her 2003 bankruptcy was for under \$10,000 in protection and less than \$5,000 in ultimate relief. She gives no description of why she was advised to file bankruptcy for such a modest amount of relief when other alternatives for satisfying that amount may have sufficed. However, bankruptcy is a legally accepted method for resolving financial problems, and its laws clearly define how and how often it can be utilized. In this situation, Applicant observed the applicable bankruptcy laws and timely honored her obligations to the bankruptcy trustee in only three years. Moreover, she has depicted earnest efforts to otherwise conserve her financial resources in order to honor her immediate creditors. Therefore, FC MC 4, ¶ 20(d), (*[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies.

I have considered both the record and Applicant in light of the "whole person" concept. She is a mature woman with 30 years of work experience in the defense contractor industry. She has held a security clearance for 25 years without adverse incident. Throughout that time, she has had a tragic life marked by three divorces and the loss of one husband and a son while she struggled to work and raise a daughter. Her divorces directly affected her ability to maintain her finances and contributed to her need for declaring two bankruptcies. The third bankruptcy, for Chapter 13 protection in 2000, however, may pose some concern, but more for the fact that bankruptcy was filed for a relatively modest amount when other methods may have been available through formal credit counseling.

To her defense, however, she chose to file for bankruptcy under Chapter 13 and contribute to the elimination of her debt, rather than seek a clean sweep of her obligations under Chapter 7. Moreover, bankruptcy is a legally available process, and Applicant timely repaid half of the obligation in only three years. Today, she has limited her availability of credit by closing various accounts and only maintaining three credit cards with a combined maximum available credit of under \$5,000. Given her efforts to budget, conserve her finances, and limit available credit, there is scant present risk that she will again resort to filing bankruptcy or find herself in debt to the extent that her obligations would pose a security risk. Applicant has mitigated security concerns regarding her finances. Clearance is granted.

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 (Financial Considerations): FOR APPLICANT

Subparagraph 1.a. For Applicant

Subparagraph 1.b. For Applicant

Subparagraph 1.c. For Applicant

DECISION

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

Arthur E. Marshall, Jr.

Administrative Judge

1. The FORM included six items to support the government's contentions.
2. There is no indication in the record as to Applicant's daughter's age or date of birth.
3. In her response to the SOR, Applicant states that she sought bankruptcy relief in the amount of "approx. \$1000.00." There is no indication as to whether the protection sought was under Chapter 7 or Chapter 13. Response to the SOR, dated October 12, 2006, at 2.
4. Applicant did not state exactly when her son passed away, but she mentions his death in the same sentence as she mentions the loss of her second husband.
5. Response to SOR, *supra*, note 3 at 1.
6. *Id.*
7. Item 5 (Bankruptcy Document, dated September 6, 2006) at 3. The SOR notes the bankruptcy as being in the amount of \$28,981, but failed to take into account Applicant's home mortgage payoff, home equity loan payoff, and profit sharing loan payoff, all of which she re-assumed after her discharge.
8. Applicant's Response to FORM, dated November 8, 2006, at 1.
9. Item 6 (Credit Bureau Report, dated August 20, 2006)
10. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).
11. ISCR Case No. 97-0016 at 3 (App. Bd. Dec 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
12. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
13. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
14. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
15. *Egan*, 484 U.S. 518, at 531.
16. *Id.*
17. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
18. Executive Order 10865 § 7.
19. AG ¶ 18.