

KEYWORD: Financial

DIGEST: Applicant is a 40-year-old software configuration analyst employed by a defense contractor. She had four unpaid debts totaling in excess of \$33,000. She filed bankruptcy four times since 1997. Her financial problems were a result of her former husband's financial irresponsibility and lack of steady employment. She has successfully mitigated the security concerns associated with her financial problems. Clearance is granted.

CASENO: 06-25363.h1

DATE: 09/28/2007

DATE: September 28, 2007

In re:

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SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 06-25363  
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**DECISION OF ADMINISTRATIVE JUDGE  
CHRISTOPHER GRAHAM**

**APPEARANCES**

**FOR GOVERNMENT**

Robert E. Coacher, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 40-year-old software configuration analyst employed by a defense contractor. She had four unpaid debts totaling in excess of \$33,000. She filed bankruptcy four times since 1997. Her financial problems were a result of her former husband's financial irresponsibility and lack of steady employment. She has successfully mitigated the security concerns associated with her financial problems. Clearance is granted.

## **STATEMENT OF THE CASE**

On July 28, 2005, Applicant submitted a Security Clearance Application (SF 86).<sup>1</sup> The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, DOHA issued a Statement of Reasons (SOR) on May 23, 2007, detailing the basis for its decision – security concerns raised under Guideline F (Financial Considerations) of the Directive. The President issued revised adjudicative guidelines (Guidelines) on December 30, 2005. DoD implemented them on September 1, 2006. The Guidelines are to be used in all cases when the SOR is dated on or after September 1, 2006. Because the SOR was issued after September 1, 2006, DoD policy requires that this case proceed under the revised guidelines.

Applicant answered the SOR in writing in an undated letter, and requested a decision without a hearing. Department Counsel submitted a file of relevant material (FORM) in support of the government's case, a copy of which was received by Applicant on July 19, 2007. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by August 18, 2007. She filed a response which was received by DOHA on August 21, 2007. The case was assigned to me on September 10, 2007.

## **FINDINGS OF FACT**

Applicant admitted the allegations contained in the SOR. The admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 40-year-old software configuration analyst employed by a defense contractor.<sup>2</sup> She was married on July 6, 1991, and divorced on June 29, 2006. Three children were born of the marriage, and they are in the primary physical custody of Applicant.<sup>3</sup> She has a master's degree in industrial engineering. She has no prior military service. This case arose out of a periodic renewal of her security clearance.<sup>4</sup>

Applicant had four past-due debts totaling approximately \$33,541. On June 2, 1997, she filed a Chapter 13 bankruptcy petition, which was subsequently converted to a chapter 7 bankruptcy on December 11, 1997. On March 4, 2002, she filed for bankruptcy protection under Chapter 13, and this case was dismissed on September 30, 2002. On November 1, 2002, she again filed a

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<sup>1</sup>Item 4 (Security Clearance Application (SF 86)(e-QIP version), dated July 28, 2005).

<sup>2</sup>*Id.* at 1, 13.

<sup>3</sup>Answer to SOR, Attachment D, Divorce Decree, dated June 29, 2006, at 1-40.

<sup>4</sup>Item 4, *supra*, note 1, at 26-27, 30.

Chapter 13 bankruptcy petition, which was dismissed on June 25, 2003. On June 2, 2003, she filed another chapter 13 bankruptcy petition, which was dismissed on December 10, 2004.<sup>5</sup>

After Applicant and her former husband had their first child, they struggled financially because her ex-husband could not find steady employment. They sought help for a budget counseling service for debt consolidation but were informed that there was nothing they could do. They then filed Chapter 13 bankruptcy in effort to keep their home and car and keep up with the additional expenses of an infant. The chapter 13 payment was set too high. Her husband took care of paying the bills, and at the time she was unaware of his terrible spending habits. He maintained steady employment from August 1998 to October 2001. In November 2001, after they purchased a home, she had their third child. Due to his unemployment, they exhausted their savings quickly. They filed bankruptcy in March 2002, in an effort to save their home and cars.. Additionally, two children required treatment for asthma and eczema, which necessitated expensive over-the-counter products, medicines, and frequent urgent/emergency care visits. At that time the children were ages six, two, and four months. Childcare expenses were paid so that her then husband could look for a job. He lied to her, claiming that he had jobs, but he never produced a check. She filed bankruptcy again in November 2002, because her husband was not employed, and they continued to struggle with their finances. She re-filed bankruptcy in June 2003 as a re-submission, but without a second income, she could not keep up with the payments. Her ex-husband at times stole her credit cards, money, and checkbook out of her purse. He would often request extensions on the bills, but instead of paying them he would tell her he had taken care of the bills when in fact he had not. She separated from her husband in June 2005, filed, and obtained a divorce in June 2006. Since that time, she has been able to live within her means, and was able to do so without child support from June 2005 to December 2006. She has paid her rent and car note regularly every month for over two years. And she has started paying back her student loan.<sup>6</sup>

In response to the FORM, Applicant attached a notarized statement from her ex-husband dated July 26, 2007, in which he accepted responsibility for the debts listed in the SOR (subparagraphs 1.a. through 1.d.) He further stated that other financial problems and hardships were beyond her control. It was his idea in all instances to file bankruptcy. He advised her to sign the paperwork in an effort to save their home. However, he did not maintain steady employment, and he felt that she should not be held accountable for these debts.<sup>7</sup>

## **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" (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.

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<sup>5</sup>Item 3, *supra*, note 3, at 1-4.

<sup>6</sup>*Id.*

<sup>7</sup>Applicant's response to the FORM (Letter from Stevie Edward VanPelt, dated July 26, 2007) at 1.

These guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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 considers all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. Guideline ¶ 2(c).

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, facts must be established by "substantial evidence."<sup>8</sup> 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. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to present "witnesses and other 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.<sup>9</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions under this

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<sup>8</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>9</sup>*See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005); "The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluates Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant has met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

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.<sup>10</sup>

## **CONCLUSIONS**

Guideline ¶ 18 articulates the Government's concern concerning financial problems. "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 acts to generate funds."

The government established its case under Guideline ¶ 19. Two Financial Considerations Disqualifying Conditions (FC DC) could raise a trustworthiness concern and may be disqualifying in this case: Guideline ¶ 19(a) "inability or unwillingness to satisfy debts," and Guideline ¶ 19(c) "a history of not meeting financial obligations." Applicant has a history of not meeting debts, as set forth in the SOR and government exhibits.

Three Financial Considerations Mitigating Conditions (FC MC) under Guidelines ¶ 20(a)-(e) are potentially applicable:

(b) the conditions that resulted in the financial problem 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;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Based on my evaluation of the record evidence as a whole, I conclude Guidelines ¶ 20 (b) (c), and (d) are applicable. Applicant's financial difficulties are based on her former husband's irresponsible spending habits, deceptions, and lack of steady, gainful employment. Under the circumstances, Applicant should not be penalized for her good-faith attempts to save her home and her marriage. I find she acted responsibly under the circumstances. She sought counseling, but the counseling service indicated it could not help her. She used her bankruptcy petitions at the urging of her husband, and since her divorce, she has her finances under control, and is making payments

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<sup>10</sup>Executive Order 10865, § 7.

to her creditors. I find that these are good-faith efforts to repay creditors or otherwise resolve her indebtedness. Most compelling is the statement from her ex-husband assuming responsibility for the debts and admitting lack of steady employment. He was also financially irresponsible, both circumstances beyond her control. In view of her husband's admissions that his sporadic employment and deceptive behavior were the chief causes of their financial problems, I find that applicant has mitigated the adverse inferences arising from the financial considerations guideline.

### **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 Guideline ¶ 2(a). Applicant has made progress resolving her debts. She has acted responsibly under the circumstances. I considered her age (40), her education, her employment, and the circumstances that led to financial problems. The irresponsible acts of her former spouse are not attributable to her. Only after learning of his deceitful conduct about finances did she finally act to remove herself and her children from an unfortunate situation. Applicant is not a security risk. The totality of the record raises no reasonable or persistent doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. I conclude it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

### **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant

### **DECISION**

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

Christopher Graham  
Administrative Judge