

KEYWORD: Finances, Personal Conduct

DIGEST: Applicant has mitigated security concerns over financial problems by her decision to file for Chapter 13 bankruptcy to discharge her long-standing debts even before she was formally given notice of the government's security concern. To her credit she has developed no new debts and has made consistent payments since the plan was approved in May 2007. Special circumstances of poor health and unemployment mainly caused her debts which she was unable to resolve over a long period. Significantly, she demonstrated excellent performance and good character on the job. Overall, she has reformed and demonstrated positive changes in behavior to mitigate financial concerns. She also established she had no intent to falsify her security submission by her failure to detail all of her debts as she documented them by submitting a credit report. Clearance is granted.

CASENO: 06-25451.h1

DATE: 09/14/2007

DATE: September 14, 2007

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In Re:	)	
	)	
-----	)	ISCR Case No. 06-25451
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
_____	)	

**DECISION OF ADMINISTRATIVE JUDGE  
KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

James F. Duffy, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

Applicant has mitigated security concerns over financial problems by her decision to file for Chapter 13 bankruptcy to discharge her long-standing debts even before she was formally given notice of the government's security concern. To her credit she has developed no new debts and has made consistent payments since the plan was approved in May 2007. Special circumstances of poor health and unemployment mainly caused her debts which she was unable to resolve over a long period. Significantly, she demonstrated excellent performance and good character on the job. Overall, she has reformed and demonstrated positive changes in behavior to mitigate financial concerns. She also established she had no intent to falsify her security submission by her failure to detail all of her debts as she documented them by submitting a credit report. Clearance is granted.

## **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on April 27, 2007. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.<sup>1</sup> The SOR alleged specific concerns over Financial Considerations (Guideline F) in paragraph 1 and over Personal Conduct (Guideline E) in paragraph 2 based on the revised Adjudicative Guidelines<sup>2</sup> issued on December 29, 2005, and implemented by the Department of Defense, to be effective September 1, 2006.

Applicant responded to these SOR allegations in a notarized Answer dated June 1, 2007. She requested a hearing.

Department Counsel on July 10, 2007, indicated the case was ready to proceed. The matter was assigned to me on July 11, 2007. Subsequently, after a mutually convenient date for hearing was agreed to, a Notice of Hearing, issued on July 12, 2007, set the matter for August 2, 2007, at a location near where Applicant works and lives.

At the hearing the Government offered nine exhibits (Exhibit 1-9), which were admitted into evidence. Applicant testified. I granted Applicant two weeks until August 16, 2007, to submit additional evidence and the Government had until August 20, 2007, to review. (TR 24) Applicant submitted her evidence on August 14, 2007. (Exhibit A) Department counsel responded on August 15, 2007, that he had no objection. The document was admitted into evidence and the record closed on August 15, 2007. The transcript (TR) was received on August 10, 2007.

## **FINDINGS OF FACT**

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<sup>1</sup> This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), as amended.

<sup>2</sup> Applicant did receive a copy of the DoD Directive 5220.6 sent with the Statement of Reasons (SOR).

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 44 years old, has worked for a defense contractor in State #1 from November 2001 to present as a pipefitter. She completed an Electronic Questionnaire for Investigations Processing (e-QIP) (SF 86) to obtain a security clearance in September 2005. She had an interim clearance granted in August 2006; when the SOR was issued in April 2007 it was removed. She was unemployed from October 2000 to November 2001. Previously, she worked from August 1981 to October 2000 for an employer in State #2. She is a high school graduate. (Exhibits 1, 8; TR 6-7; 23; 31-32)

Applicant married in 1981 and listed two children born in 1984 and 1988; she divorced in April 1994. Later she stated she was a single mother for seventeen years and raised three<sup>3</sup> kids. One child is in graduate school, but she is helping him financially. She has another child that just graduated from high school and is going to a community college in the fall. Her other child lives independently. Their father has helped with school expenses and child support. She married husband #2 in February 2002 and separated in June 2004. (Exhibit 1; TR 21; 29-30; 49-50)

### **Finances and Personal Conduct**

In response to questions on her financial record in Section 27 she disclosed financial issues with a 2005 car loan where she planned to set up payment arrangements and a 2001 car loan where she had co-signed and owed \$9,526 that was unsatisfied. In response to Section 28 on her financial delinquencies, she answered "yes" she had been over 180 days delinquent on debts, but provided information solely about a 1998 debt for \$300 to American Credit Education. She certified that her answers were true, complete and correct to the best of her knowledge and belief. (Exhibit 1)

When confronted with the inconsistency between her large number of debts and her failure to detail them in the form, she admitted she was rushed when she completed the security paperwork. However, Applicant declared she had provided a current 2005 credit bureau report along with the security form in order to disclose her debts. She provided a copy of that 2005 credit report she had submitted in 2005 after the hearing. (Answer; TR 21; 42, 46-48; Exhibit A)

Investigation revealed a substantial number of debts. (Exhibits 3, 4, 5, 6) In response to an Interrogatory that questioned her about over two dozens debts, Applicant replied in March 2007 that she could not make payment arrangements for so many bills, so had consulted a lawyer to file Chapter 13 bankruptcy. She listed the status of seventeen debtors and explained she had talked to sixteen creditors. Some bills had been turned over to one or two different other collectors. She indicated she had net monthly income of approximately \$2,000, expenses of approximately \$1,500 and a mortgage payment of \$344. She had a net remainder of \$236 each month. (Exhibit 2)

The SOR alleged 41 debts which total \$52,162 for medical bills, credit cards and other

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<sup>3</sup> Applicant only listed two children in her security forms. (Exhibit 1)

consumer purchases. (Some were duplicate listings.) She admitted each of the delinquent debts incurred from 1999 to present. Prior to filing bankruptcy she had not been able to pay off any of the debts. She was only make \$9 per hour in her previous job. In her current job she makes \$29,000 per year. (Answer; TR 32-33) Her intent if filing for Chapter 13 bankruptcy in April 2007 was to include all of her debts and have a plan to resolve them. (TR 54)

Applicant explained her special circumstances led to her financial problems. She had big medical bills after she had three major surgeries in eight days in 1999 and was out of work for six months; she had sick leave with the job where she had worked for twenty years. After that company went out of business in 2001, she got a layoff package for six months and unemployment for six months. She stayed home for a year. When those benefits ran out, she went back to work. (TR 25-28) She had insurance but that did not cover all of her medical costs. Her wages were garnished from February to April 2007 for some of the medical bills before she filed the bankruptcy. (TR 38) Other special circumstances, in addition to being unemployed from October 2000 to November 2001, was that she had co-signed a car loan for a paraplegic friend that she later became responsible for paying. (TR 25)

SOR ¶	TYPE OF DEBT (date)	AMOUNT	CURRENT STATUS
1.a.-1r	Medical bills incurred when she was hospitalized in 1999. (Some debts are duplicates, <i>e.g.</i> 1.t. and 1.v.)	\$3,000 approximately	Included in Chapter 13 bankruptcy filing. (Exhibits 7, 8, 9; TR 34-35)
1.a.b. and 1.a.c.	Two Credit Card debts charged off. (2001)	\$2,010 and \$2,798	Included in Chapter 13 bankruptcy filing. (Exhibits 7, 8, 9; TR 36)
1.a.h., 1.a.i.,	Collection agency for a consolidation loan.	\$9,103 and \$14,279	Included in Chapter 13 bankruptcy filing. (Exhibits 7, 8, 9; TR 37; 50-51; 53)
1.z.. and 1.a.n.	Collection for American Credit Education is one debt.	\$ 300	Included in Chapter 13 bankruptcy filing. (Exhibits 1, 7, 8, 9; TR 37)
1.a.o.	Judgment for a loan she co-signed for a car for a friend who is a paraplegic.	\$9,526	Included in Chapter 13 bankruptcy filing. (Exhibits 1, 7, 8, 9; TR 37; 53)
All other SOR allegations	Various creditors	Various Amounts	Included in Chapter 13 bankruptcy filing. (Exhibits 1, 7, 8, 9)

Applicant did not believe she could get a loan to cover all these payments, so she filed for Chapter 13 Bankruptcy on April 1, 2007 which included a certificate of credit counseling. She

disclosed \$42,00 in assets and \$72,000 in liabilities. Her assets include a trailer and a 1993 car. The Order granting Minutes and Motion to Confirm Chapter 13 Plan was issued on June 5, 2007. The plan was approved; and she is to pay \$200 per month for 36 months for a total of \$7,200. (Exhibits 7, 8, 9; TR 22; 40-41; 45) She started making payments in May 2007 and has made four \$200 monthly payments. (TR 22; Exhibit A) The bankruptcy court requires a credit counseling class which she attended. (TR 39)

In August 2007 she reported her expenses in addition to the \$200 bankruptcy payment: a payment on her mortgage and insurance of \$325; electric \$250; water & trash \$30; car insurance \$50; gasoline for work \$140; food \$200, cell phone \$50; son in college \$50; and cable \$100. (TR 43; Exhibit A)

### **References**

The shop steward for pipefitters has known Applicant for six years since 2001; he assesses her as an excellent at her work as she plays an integral part in the workplace. She is trustworthy and dependable and an asset to the company. (Exhibit A)

The production supervisor for satellite ship support shops has known Applicant since 2001. She worked under his direct supervision for three years. He assessed her as a “hardworking self starter who invariably understands what a project is all about from the outset, and how to get it done quickly and effectively.” He sees her as honest and supportive and a well-balanced person with an abundance of positive qualities. (Exhibit A)

A friend who has known Applicant for 15 years stated she is a reliable and trustworthy person. (Exhibit A)

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility which are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns. In deciding whether to grant or continue an individual's access to classified information, the administrative judge considers the evidence as a whole in evaluating this case and weighs relevant revised Adjudication Guidelines: the mere presence or absence of any adjudication condition is not decisive.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended and revised, and the Directive, as amended and revised, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

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.” The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant. 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

### **Guideline F: Financial Considerations**

¶ 18. *The Concern.* Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, clack 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The government provided substantial evidence of Applicant’s financial problems reflected by her accumulating over \$50,000 in medical, credit card, and other debts that have persisted. Consequently, Financial Considerations Disqualifying Condition (DC), AG ¶ 19(a), (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c), (*a history of not meeting financial obligations*) apply.

With the government’s case initially established, the burden shifted to Applicant to present evidence of refutation, extenuation, or mitigation<sup>4</sup> to overcome the case against her. In large part, Applicant’s debts grew out of medical expenses in 1999, unemployment from 2000 to 2001, and underemployment from 2001 to present where as a single mother she could not manage to resolve her past debts on her limited income. Afer earning only make \$9 per hour in her previous job, n her current job she makes only \$29,000 per year. She established, in large part, that many of her

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<sup>4</sup> Five Financial Considerations Mitigating Conditions under Guidelines ¶ 20(a)-(e) potentially apply:

- (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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

debts were due to conditions beyond her control.<sup>5</sup>

After she received the Interrogatories and understood the security significance of her delinquent debts, but before receiving the SOR, Applicant took action and concluded that her most responsible way to resolve the debts was to file for Chapter 13 Bankruptcy which she did on April 1, 2007. This chapter of the Bankruptcy Code provides for adjustment of debts of an individual with regular income. (Chapter 13 allows a debtor to keep property and pay debts over time, usually three to five years.) Significantly, Applicant chose to file for bankruptcy under Chapter 13 instead of Chapter 7 where her debts would have been discharged. Ultimately, the Chapter 13 plan was approved for her to pay \$200 per month for a total of \$7,200 over a three-year period; she has made four payments. While she showed unsound judgment in her delay in addressing these issues, she now has initiated a conscientious plan and has already shown a consistent approach to resolving the debts by her monthly payments to the plan which establishes her good faith<sup>6</sup>. Thus, she largely meets AG ¶ 20(d), (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) because she took these steps to use legally available means to resolve her delinquent debt. To her credit, there was no evidence of her having developed any new debts beyond those growing out of her special circumstances.

Further, Applicant provided evidence of receiving counseling<sup>7</sup> for these financial problems as she did comply with the course that the Bankruptcy court requires. She certified to the court having completed it. She has made substantial steps to turn around her financial issues. AG ¶ 20(a)<sup>8</sup> does apply as the circumstances seem unlikely to recur and two of her children are now

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<sup>5</sup> 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*).

<sup>6</sup> The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the “good faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

<sup>7</sup> AG ¶ 20(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*).

<sup>8</sup> 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.*

financially independent and she has established a responsible work record in her current job. Overall, Applicant has established a substantial case in mitigation, but her reform is so recent that it is important also to assess her as a whole person.

### **Whole Person Analysis**

Evaluating Applicant in light of the “whole person” concept, I conclude she is an earnest person who demonstrated her initiative in developing a solution to her delinquent debt by using the legally available path of filing for bankruptcy once she understood the security significance of her debts. She filed under Chapter 13 even before the SOR was issued to her. She has been consistent in making four payments to resolve these debts. Also, she has changed her financial practices and developed a budget. The potential for pressure, coercion, exploitation, or duress is slight as she has a stable and impressive employment history with the confidence of her supervisors. Notably, two key people at her work site praise her performance and character highly and have confidence in her trustworthiness. Based on these assessments of two officials who know Applicant well, I conclude favorably for her based on a whole person assessment. As she is earnestly working to resolve her financial problems, the likelihood of new debts and related problems is low.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude she has mitigated the security concerns pertaining to financial considerations. I rule for Applicant on subparagraphs 1.a. through 1.a.o. under SOR Paragraph 1.

### **Guideline E: Personal Conduct**

¶ **15. The Concern.** Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and a candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant denies she had any intent to falsify by not including all of her debts on the security form. She asserts she provided a 2005 credit report that listed her debts. I found her explanation credible that it was not her intent to falsify. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant’s intent or state of mind at the time the omission occurred.<sup>9</sup> Based on Applicant’s credible testimony and review of her as a whole person, I conclude Guideline E in favor of Applicant. While she admits she rushed in completing the form, she did reveal three of her debts, so her omissions on the form were not total. The Government failed to show she had an intent to falsify by omission. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person as discussed above, I conclude

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<sup>9</sup> See ISCR Case No. 03-09483 at 4 (App. Bd. Nov.17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).



she has refuted the security concerns pertaining to personal conduct. I rule for Applicant on subparagraphs 2.a. under SOR Paragraph 2.

### **FORMAL FINDINGS**

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraph 1.a through 1.a.o.	For Applicant
Paragraph 2. Guideline E:	FOR APPLICANT
Subparagraph 2.a	For 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 the Applicant. Clearance is granted.

Kathryn Moen Braeman  
Administrative Judge