

DATE: December 3, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-25867

**DECISION OF ADMINISTRATIVE JUDGE
PHILIP S. HOWE**

APPEARANCES

FOR GOVERNMENT

Caroline H. Jeffreys, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 43 years old, and works for a defense contractor as a materials analyst. She incurred about \$60,000 in credit card debt, which she tried to repay through a Chapter 13 bankruptcy. The bankruptcy was dismissed after 31 months because she was laid off from her job and could not pay the monthly payments to the trustee. She has repaid eight of ten delinquent debts listed in the SOR. Applicant made sufficient disclosures on her security clearance application to inform the Government of her financial difficulties. Applicant mitigated the financial considerations and personal conduct security concerns. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On March 30, 2007, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. Applicant answered the SOR in writing on April 26, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on June 21, 2007. On September 19, 2007, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The Government and the Applicant submitted exhibits that were admitted into evidence. I allowed the record to remain open until October 3, 2007, for Applicant to submit additional documents. DOHA received the hearing transcript (Tr.) on September 28, 2007.

Applicant submitted documents, and then continued to submit additional documents on a weekly basis until November 19, 2007, when I closed the record. I admitted all of her additional documents in the interest of fairness, and because these documents were relevant and probative regarding the SOR allegations. I marked them Exhibits F to PP. The Government had no objection to the admission of these documents into evidence. At the hearing the Government withdrew SOR allegation subparagraph 1.b because Applicant never filed a Chapter 7 bankruptcy in 2001, as the bankruptcy court records show and the letter from her attorney demonstrates. (Exhibit A).

FINDINGS OF FACT

Applicant's admissions to SOR allegations Subparagraph 1.a, 1.f, 1.g to 1.j are incorporated here as findings of fact. Applicant denied all other allegations. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 43 years old, unmarried, and has a college degree. She works as a flight test engineer for a defense contractor. She started that job in March 2006. A manager at the company evaluates her work as very competent and thorough. He considers her trustworthy, responsible, and a person of integrity. (Tr. 24-26, 55; Exhibits 1, B)

Applicant worked for a previous employer as a materials analyst from September 1994 until being laid off work in January 2003. During that time her income, because of overtime pay, was \$90,459 in 1998, \$102,023 in 1999, \$92,579 in 2000, and \$63,182 in 2001. It dropped further in 2002 to \$57,955, then to \$17,501 in 2003 when she was laid off work. She returned to working for that employer in January 2004, until November 2005, when she was laid off again. Her income in 2004 was \$56,083, and in 2005 was \$52,995. During her layoff periods, she collected

¹Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

unemployment and union supplemental payments, and sought work continuously. After starting her present job in March 2006, her income rose to \$71,400 annually. (Tr. 26-30, 54, 84-86)

Applicant purchased a house in 1996, and she still owns it. It is now valued at \$208,000. During her layoff periods, and continuously since she bought the house, Applicant paid her mortgage payments monthly. In September 2001, she realized she had too much credit card debt to repay promptly, about \$60,000 worth, so she consulted with an attorney and filed a Chapter 13 bankruptcy. She listed her debts, and was paying \$805 monthly. The plan was for 48 months. When she was laid off in January 2003, she was unable to continue the payments. The bankruptcy was dismissed in April 2003, as a result of her financial inability to make the regular payments. Applicant received the dismissal papers, and thought they meant she had been discharged in bankruptcy of her debts. During the bankruptcy, she paid \$24,800 over 31 months on her debts. (Tr. 29-35, 55, 64, 65, 79-83; Exhibits 1, 2, 4, 6, G, H; Answer)

Applicant has 10 delinquent debts listed in the SOR. She has only two unpaid debts remaining. Between September 2006 and November 2007, Applicant paid \$10,165.63 on her debts listed in the SOR. Her monthly payments are \$900. The status of the debts is as follows:

| ALLEGATION | AMOUNT | CREDITOR | STATUS | EVIDENCE |
|------------|----------|-------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|
| 1.c | \$16,817 | Collector | Offered \$50 per month payment plan. Collector demanded \$12,000 lump sum payment. Unresolved at present. Applicant disputed debt with credit agency, and it was deleted from that report. | Tr. 36, 52, 77; Exhibits 2-6, A, C, Q, T, V, BB, JJ. |
| 1.d | \$3,807 | Credit card | Paid settlement amount of \$1,904 on April 19, 2007. | Tr. 39; Exhibits 2-6, A, R, U, V, X, BB, JJ |
| 1.e | \$3,743 | Credit card | Applicant cannot locate the debt or creditor to pay it. | Tr. 41; Exhibits 2-6, A, V, X, BB, JJ |

| | | | | |
|-----|------------|-------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|
| 1.f | \$5,045 | Credit union loan, reduced to judgment in 2003. | Paid with loan proceeds from a bank loan on October 7, 2007. Applicant repays the bank loan at \$300 monthly starting November 2007. | Tr. 42, 43, 77; Exhibits 2-6, A, J, L-P, AA-EE, JJ |
| 1.g | \$5,512 | Credit card collector | Applicant paid settlement amount of \$2,242.13 on May 29, 2007. | Tr. 45, 46; Exhibits 2-6, A, V, X, BB, JJ |
| 1.h | \$6,013.28 | Bank credit card collector | Payment plan for \$50 monthly established November 7, 2007. Made first payment November 9, 2007. Next payment due December 14, 2007. | Tr. 46, 47; Exhibits 2-6, A, S, AA, JJ, KK, LL, MM |
| 1.i | \$2,905 | Department store credit card collector | Pays \$500 monthly on payment plan. Paid \$2,500 to date, with recent payment on November 7, 2007. Balance is \$405 | Tr. 47, 52, 77; Exhibits 2-6, A, E, T, AA, BB, GG, HH, JJ. |
| 1.j | \$2,500 | Department store credit card collector | Payment plan established October 26, 2007, for \$50 per month on the 26 th of each month. Applicant is making payments. | Tr. 49, 78; Exhibits 2-6, A, U-Z, AA, BB, FF, GG, II, JJ, NN, OO, PP. |

| | | | | |
|-----|------------|-----------------------|-----------------------------------------------------------|-----------------------------|
| 1.k | \$2,549.72 | Credit card collector | Paid settlement amount of \$2,214.61 on November 4, 2006. | Tr. 49, 50; Exhibits 2-6, A |
| 1.l | \$1,014 | Credit card collector | Paid settlement of \$549.89 on April 18, 2007. | Tr. 51; Exhibits 2-6, A |

Applicant has about \$100 in savings presently. She has four credit cards, including two gasoline credit cards she pays off monthly. Her other two credit cards are department store cards, with a balance of \$800 on one, and \$1,500 on the other. She makes regular payments on each. She cancelled all other credit cards. (Tr. 59,60, 71)

Applicant had a security clearance from 1990 to 1994 with no violations on her record. On March 21, 2006, she completed a security clearance application (SCA). She answered the financial background questions in Question 28.a (180 day payment delinquencies in the past 7 years) and 28.b. (currently over 90 days delinquent on any debt payment) with negative replies to both questions. Applicant thought the questions referred to her current debts, which were being paid, and not the debts she listed in the 2003 Chapter 13 bankruptcy. She assumed those debts had been discharged, not that the bankruptcy was dismissed because she no longer made payments because of her job layoff. Applicant did disclose in answering Question 27 (Your Financial Record) that she filed a Chapter 13 bankruptcy in the past seven years, and had judgments against her in the past seven years which had not been paid. She provided additional information about the Chapter 13 bankruptcy, though it was listed as a Chapter 7 bankruptcy. (Tr. 12, 13, 62; Exhibit 1)

POLICIES

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC)

under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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 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. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

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

Guideline F: Financial Considerations: The Concern: 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 could 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.

Guideline E: Personal Conduct: 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 candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

CONCLUSIONS

Financial Considerations Applicant incurred about \$60,000 in credit card debt in the late 1990s when she earned a lot of overtime pay. As the overtime lessened, and her income dropped, she found she was unable to repay the debts in a timely manner. Then, her job layoff in January 2003, compounded her repayment problems. Financial Considerations Disqualifying Conditions ¶19.a. (inability or unwillingness to satisfy debts), ¶ 19.b. (indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt), and ¶19.c. (a history of not meeting financial obligations) apply. Applicant overspent and failed to save money to repay these debts.

Applicant filed Chapter 13 bankruptcy in September 2001, in an attempt to repay her debts. She faithfully paid the bankruptcy trustee \$805 monthly at the rate of \$200 weekly, deducted from her paycheck. When she was laid off from work in January 2003, she was unable to continue the payments. The bankruptcy was then dismissed for failure to maintain the payments. She suffered two periods of extended layoffs, both adversely affecting her ability to repay her debts. Since 2006, Applicant has been repaying the debts herself. She has paid over \$10,000 on those debts. She repaid eight of the ten delinquent debts listed in the SOR. One remaining debt she cannot recognize. The other debt the creditor will not agree to a \$50 monthly repayment plan. Applicant is about to pay off on debt because she has been paying \$500 monthly. Some of that money would then be used to repay other debts in sequence until she could save enough money to pay the remaining two debts with larger monthly payments.

The Mitigating Conditions (MC) applicable are ¶20.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), ¶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), and ¶20.d (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts). The two lengthy layoffs, and the reduction in her income because overtime was not available, hurt Applicant's ability to repay her debts. As she continued to pay her mortgage, and tried to repay her debts through the bankruptcy, she exhibited responsible behavior under the circumstances. There is clear evidence her financial problems are under control and she has repaid over \$31,000 in debts since 2003. As all debts are paid or resolved, she demonstrated the problems are under control as a result of her good faith efforts to repay the debts.

Personal Conduct Applicant did not disclose her financial delinquencies on her SCA. The Personal Conduct Disqualifying Condition (DC) which might be applicable is ¶16.a (involving deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, or determine trustworthiness). However, Applicant disclosed her unpaid judgment which is listed in Subparagraph 1.j., and her Chapter 13 bankruptcy. Both of these disclosures informed the Government that Applicant had delinquent debt problems. Her interpretation that Question 28 requested information regarding her current debts, which she was paying regularly and were not delinquent either for 90 or 180 days, is reasonable and credible. Hence, I conclude there was no deliberate omission or falsification by Applicant, who had no intent to falsify. The totality of her disclosures shows her intention to inform the Government of her financial history. Therefore, no DC apply, and no MC need be considered or applied.

Whole Person Analysis

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance.” AG ¶ 2(a). “Each security clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy.” Directive ¶ 6.3. “Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.” AG ¶ 2(a). In evaluating Applicant’s case, I have considered the adjudicative process factors listed in the AG ¶ 2(a).

I considered Applicant’s age and work history at the time she incurred \$60,000 in credit card debt. Those were not prudent expenditures, but she expected her high income to continue and she would be able to repay the debt. When she could not pay, she took the initiative and entered Chapter 13 bankruptcy to repay her debts. Absent her subsequent layoff, she would have repaid the debts in another 17 months, according to the plan. She has not repeated her pattern of expenditures, and has engaged in a new course of action resulting in the cancellation of all older credit cards, while responsibly paying the amounts charged on her current cards. She also has repaid another \$10,000 in debt since 2006. These are behavioral changes showing she learned a valuable lesson about debt and personal finances. There is no likelihood of recurrence or continuation in her current pattern of debt repayment. Also, there is no potential for coercion, pressure, exploitation, or duress, because Applicant made full disclosures about her finances and is repaying her debts.

Therefore, I conclude the Financial Considerations security concern for Applicant. I conclude the Personal Conduct security concern for Applicant. Lastly, I conclude the Whole Person concept for Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: FOR APPLICANT

| | |
|-------------------|---------------|
| Subparagraph 1.a: | For Applicant |
| Subparagraph 1.b: | Withdrawn |
| 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 |
| Subparagraph 1.i: | For Applicant |
| Subparagraph 1.j: | For Applicant |
| Subparagraph 1.k: | For Applicant |
| Subparagraph 1.l: | For Applicant |

Paragraph 2. Guideline E: FOR APPLICANT

| | |
|-------------------|---------------|
| Subparagraph 2.a: | For Applicant |
| Subparagraph 2.b: | 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 or continue a security clearance for Applicant. Clearance is granted.

Philip S. Howe
Administrative Judge