

DATE: November 30, 2007

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| _____                            | ) |                        |
| In re:                           | ) |                        |
|                                  | ) |                        |
| -----                            | ) | ISCR Case No. 07-02891 |
| SSN: -----                       | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |
| _____                            | ) |                        |

**DECISION OF ADMINISTRATIVE JUDGE  
LEROY F. FOREMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco Mendez, Esq., Department Counsel

**FOR APPLICANT**

John F. Mardula, Esq.

**SYNOPSIS**

When Applicant was laid off in February 2004, she had credit card debt of about \$24,353, but no delinquent accounts. She was seriously disabled during a burglary in December 2004. She had no financial reserves, because she had incurred uninsured medical expenses of more than \$27,000 between September 2002 and December 2004. While unemployed, her credit card debt rose to more than \$62,000 and became delinquent. After returning to work in January 2006, she paid off \$7,700 in personal loans from friends, reduced her credit card debt to about \$47,000, and adopted a plan to resolve the remaining debts within two years. Security concerns based on financial considerations are mitigated. Clearance is granted.

**STATEMENT OF THE CASE**

On March 20, 2006, Applicant applied for a security clearance. On July 12, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing

the basis for its preliminary decision to deny her application. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive); and the revised adjudicative guidelines (AG) approved by the President on December 29, 2005, and implemented effective September 1, 2006. The SOR alleges security concerns under Guideline F (Financial Considerations).

Applicant answered the SOR in writing on August 9, 2007, admitted some of the allegations and denied others, offered explanations, and requested a hearing. The case was assigned to me on October 2, 2007, and heard as scheduled on October 30, 2007. I kept the record open until November 9, 2007, to enable her to submit additional documentary evidence. I received her additional evidence on November 8, 2007, and it has been admitted as Applicant's Exhibits (AX) G through M.<sup>1</sup> Department Counsel's response to the additional evidence is attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on November 13, 2007.

### **PROCEDURAL RULING**

Department Counsel objected to two of the additional documents submitted after the hearing. He objected to AX H, a letter from Applicant's counsel, on the ground that it exceeded the purpose for which the record was kept open and because it is argument rather than evidence. He objected to AX M, a letter from Applicant, on the ground that it is further testimony not subject to cross-examination.

I conclude that AX H does not exceed the scope of the reason for keeping the record open. The record was held open to enable Applicant to submit documentation of her contract with a law firm, a credit monitoring service, and "other documents in that time frame." (Tr. 113-14.) Both parties agreed that anything submitted by Applicant would be provided to Department Counsel for comment or objection (Tr. 114). AX H is argument, but post-hearing briefs are not prohibited by the Directive. Department Counsel had an opportunity to comment on the arguments in AX H, but he did not. Accordingly, I have admitted AX H.

AX M is correctly characterized by Department Counsel as testimonial and not subjected to cross-examination. "By design, the DOHA process encourages Judges to err on the side of initially admitting evidence into the record and then to consider a party's objections when deciding what, if any, weight to give that evidence." ISCR Case No. 04-12499 at 4 (App. Bd. May 14, 2007). AX M repeats much of Applicant's testimony at the hearing, but it also adds information about her childhood, and provides documentation of her medical expenses, and provides more specific information about debts incurred for a vacation trip and moving expenses. Recognizing that AX M has lesser weight because it was not tested by cross-examination, I have admitted it.

### **FINDINGS OF FACT**

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<sup>1</sup>The cover letter from Applicant's counsel is dated November 9, 2007, but the date imprinted on the facsimile cover sheet (AX G) is November 8, 2007, and it was actually received on November 8.

Applicant's admissions in her answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 38-year-old senior geospatial consultant for a defense contractor. She has worked for her current employer since January 2006. She received a security clearance in May 2001, while employed by the Department of Justice (Tr. 45). She worked for the Department of Justice from May 2001 until June 2002, when she went to work for a private company involved in providing geospatial services (AX K).

Applicant's current team leader, who has held a clearance for 17 years and known Applicant for about a year and a half, testified that Applicant is "an excellent worker, very meticulous, very conscientious, innovative in her thinking, [and] a good problem solver." (Tr. 23.) She considers Applicant very prudent in financial matters (Tr. 24). Applicant's current project manager, who has held a clearance since 1997 and known her since April 2007, described her work performance as "absolutely" excellent (Tr. 38). A business colleague who has held a clearance since February 2003 and known Applicant for about 18 months described her as dedicated, thorough, and hard-working (Tr. 31).

Applicant was an avid athlete as a child, and she continued to participate in strenuous sports into adulthood, when she began to experience severe back pain. She was initially diagnosed as suffering from arthritis and possible disc injury.

Before starting her job with the Department of Justice in May 2001, she took a six-week international vacation costing about \$8,000, which she paid for with a credit card. She made an interstate move to accept the Department of Justice job, costing her \$6,000 in out-of-pocket moving expenses and about \$3,600 for a security deposit on an apartment, both paid with a credit card.

Between September 2002 and December 2004, she incurred about more than \$9,000 in uninsured medical expenses to treat her back problems. Between October and December 2003, she incurred \$3,200 in uninsured expenses for sinus surgery and more than \$15,000 for five cancer-related surgeries (AX M). All these expenses have been resolved except the \$490 medical bill alleged in SOR ¶ 1.a (Tr. 54). Applicant disputes this bill, claiming that she paid her surgeon in full but the surgeon failed to pay the anesthesiologist (Tr. 58-59).

In February 2004, Applicant was laid off from her job. Because she had been paying off her medical bills, she had no financial reserves. She had four personal credit card accounts and one business account. Two of the four personal accounts had zero balances, but the other two had balances of \$21,380 and \$2,973. The account with the larger balance included her vacation and moving expenses in the spring of 2001 that were not yet paid off (Tr. 98). She was carrying balances on her credit cards, but all accounts were current until she was laid off. (Government Exhibit (GX) 2 at 12.)

When Applicant was laid off, she lost her health insurance. In December 2004, she aggravated her preexisting back condition while fleeing and hiding when two men broke into her home, and she became partially paralyzed and unable to work (AX A; Tr. 62-69). Her annual

income in 2003 was \$81,841, but it dropped to \$13,471 in 2004 and \$459 in 2005 (AX C at 2; Tr. 72-73).

Applicant started falling behind on her debts in early 2005. She was offered a position as a regional sales representative for an engineering firm, but the offer was withdrawn because she was physically unable to do the job. She remained unemployed until January 2006, when she was hired by her current employer (Tr. 72).

During her unemployment, Applicant minimized her housing expense by frequently living with friends. She borrowed a total of about \$7,700 from friends, all of whom have been repaid in full (GX 2 at 7, 9-11; AX B). She applied for, received, and used food stamps. She used her four personal credit cards for living expenses when all other funds were exhausted, accumulating delinquent credit card debt of about \$62,000 (GX 2 at 7).

After returning to work in January 2006, Applicant consulted with doctors about possible spinal surgery. She learned that, even with health insurance, she would have considerable out-of-pocket expenses. Her lawyer advised her to take care of her medical needs before addressing her delinquent debts. She resolved her medical bills and paid back the personal loans from friends, but she deferred addressing the other debts (GX 2 at 7-8).

In May 2007, Applicant submitted a personal financial statement in response to DOHA interrogatories (GX 2 at 5). She reported a net monthly income of \$4,690 and expenses of \$5,420, leaving a shortfall of \$730. Included in her monthly expenses was an estimated medical expense of \$1,500 to \$3,200 per month, her anticipated cost of back surgery. Her assets included her nine-year-old car, which is paid off. She reported debts totaling \$44,770. In her answer to the SOR, she reduced her estimated medical expense to \$100, explaining she had obtained better health insurance that would cover her anticipated back surgery. Her revised personal financial statement reflects a net monthly remainder of \$1,720. Applicant's post-hearing submission included an updated personal financial statement reflecting a net monthly income of \$5,006 and net monthly remainder of \$2,524 (AX L). This monthly remainder is higher than the \$2,000 remainder she testified to at the hearing (Tr. 88).

Applicant consulted with two attorneys about her debts, but declined to hire them because they wanted a \$5,000 retainer. She then contacted a credit counseling firm. She adopted some of the credit counseling firm's budgeting techniques, but she decided she could resolve her debt problems herself without paying a fee to an attorney or credit counselor (Tr. 66-67). Her plan was to save her net monthly remainder and pay off each debt in a lump sum. She paid the debt in SOR ¶ 1.h in August 2007, and the debt in SOR ¶ 1.b in September 2007, reducing her delinquent credit card debt to about \$47,000. Using this same methodology, she plans to pay off the debt in SOR ¶ 1.d in December 2007, the debt in SOR ¶ 1.c in February 2008, the debt in SOR ¶ 1.f in April 2008, and the debt in SOR ¶ 1.g, the largest debt, in October 2009 (AX B; Tr. 57). She recently hired a law firm to dispute several debts and assist her in negotiating with some of her creditors (Tr. 90-91).

Applicant no longer uses personal credit cards. She has one credit card for business expenses and a debit card for personal expenses (Tr. 86). She has no mortgage and no car payments (AX L).

The evidence concerning the debts alleged in the SOR is summarized in the table below.

| SOR | Debt         | Amount   | Status                             | Evidence                |
|-----|--------------|----------|------------------------------------|-------------------------|
| 1.a | Medical bill | \$490    | Disputed                           | AX B; Tr. 58-59         |
| 1.b | Credit card  | \$12,676 | Paid Sep.07                        | AX E                    |
| 1.c | Credit card  | \$4,400  | Unpaid; to be paid in full Feb.08  | AX B                    |
| 1.d | Credit card  | \$6,387  | Unpaid; to be paid in full Dec. 07 | AX B                    |
| 1.e | Credit card  | \$4,679  | Same debt as 1.d                   | Tr. 76, 95-96           |
| 1.f | Credit card  | \$6,845  | Unpaid; to be paid in full Apr. 08 | AX B; Tr. 77            |
| 1.g | Credit card  | \$29,424 | Unpaid; to be paid in full Oct. 09 | AX B; Tr. 77            |
| 1.h | Credit card  | \$2,643  | Paid Aug 07                        | GX 5 at 3; AX D; Tr. 77 |

### 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 with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the Guidelines. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, the disqualifying conditions and mitigating conditions under each specific guideline, and the factors listed in AG ¶¶ 2(a)(1)-(9).

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, 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 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 which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. “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). The Guidelines presume a nexus or rational connection between

proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition 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 it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

## CONCLUSIONS

The concern under Guideline F is as follows: "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." AG ¶18.

The disqualifying condition in AG ¶ 19(a) is raised where there is an "inability or unwillingness to satisfy debts." AG ¶ 19(b) is a two-pronged condition that is raised where there is "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." AG ¶ 19(c) is raised when there is "a history of not meeting financial obligations." AG ¶ 19(e) is raised when there is "consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis." Applicant's financial history raises AG ¶¶ 19(a) and (c). AG ¶ 19(e) also is raised because during the period after the home invasion and Applicant's physical inability to work, she consistently spent more than she earned for basic living expenses. However, AG ¶ 19(b) is not raised because there is no evidence of frivolous or irresponsible spending, and there is evidence of her willingness to pay the debts.

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a), (c) and (e), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns based on financial problems can be mitigated by showing that "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." AG ¶ 20(a). This is a compound mitigating condition, with three disjunctive prongs and one conjunctive prong. It may be established by showing the conduct was "so long ago," or "so infrequent," or "occurred under such circumstances that it is unlikely to recur." If any of the three disjunctive prongs are established, the mitigating condition is not fully established unless the conduct "does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." The first two disjunctive prongs are not established, because Applicant's has multiple

debts that are not yet fully resolved. However, the third disjunctive prong is established, because her financial situation was a result of a confluence of unexpected unemployment and a debilitating injury during a burglary. These events are unlikely to recur. Her financial past does not cast doubt on her current reliability, trustworthiness, or good judgment, because she has aggressively and responsibly acted to resolve her financial problems. She is now gainfully employed at a significantly higher salary, highly respected by her colleagues, and recovered sufficiently from her injury to continue her career. I conclude this mitigating condition is established.

Security concerns under this guideline also can be mitigated by showing that “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.” AG ¶ 20(b). Both prongs, i.e., conditions beyond the person’s control and responsible conduct, must be established. After being laid off and injured, Applicant minimized her living expenses, often living with friends, aggressively sought new employment, and borrowed money from friends. When she found new employment, she immediately set out to restore financial solvency. She drives a nine-year-old car and lives frugally. I conclude this condition is established.

Security concerns under this guideline also can be mitigated by showing that “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.” AG ¶ 20(c). Applicant contacted a consumer counseling agency, learned some useful budgeting techniques, and realized she could start resolving some of her debts without paying an agency fee. She has identified several debts appropriate for compromise or installment payments, and hired a lawyer to help her. She has made significant progress in resolving her debts, and the situation is under control. Although she still owes about \$47,000, her net monthly remainder of about \$2,000 is sufficient to execute her plan to resolve all debts by October 2009. *See* ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006) (Applicant not required, as a matter of law, to establish that every debt has been paid in its original full amount.). The \$47,000 is a significant amount, but it is the total amount of her debt, and it is manageable considering her income and expenses. She has no mortgage, no car payments, and no active credit card accounts. I conclude this condition is established.

Security concerns under this guideline also can be mitigated by showing that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” AG ¶ 20(d). 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.” ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). Applicant has resolved several debts, adopted a plan for resolving the remaining debts, and adopted a budget that will allow her to execute her plan. She has a track record of resolving her debts. Between September 2002 and December 2003, before she lost her job, she resolved more than \$27,000 in uninsured medical expenses. Since returning to work in January 2006, she has repaid personal loans totaling about \$7,700 and paid off the debts alleged in SOR ¶¶ 1.b and 1.h, totaling more than \$15,000. I conclude this condition is established.

Security concerns under this guideline also can be mitigated by showing “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.” AG ¶ 20(e). Applicant’s explanation for the disputed medical bill

alleged in SOR ¶ 1.a is plausible and credible. She provided documentary evidence that she retained a law firm to resolve the dispute. I conclude this condition is established.

In addition to considering the specific disqualifying and mitigating conditions under Guideline F, I have also considered: (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 applicant's age and maturity at the time of the conduct; (5) the 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. AG ¶¶ 2(a)(1)-(9).

Applicant is a mature, well-educated, talented professional. In spite of the confluence of disasters that befell her, she thoughtfully and steadfastly addressed her problems. She is an extremely resilient and determined person. She lives frugally and has adopted a realistic plan to pay off her remaining delinquent debts at a rate of about \$2,000 per month. Her testimony and demeanor at the hearing were plausible, sincere, and credible. Her professional reputation bolsters her credibility. She has backed up her promises with actions. She resolved her medical expenses, paid back the friends who helped her, and paid off the debts in SOR ¶¶ 1.b and 1.h. Her current income and expenses leave a sufficient remainder to make her plan credible. Except for the period of unemployment and serious injury, she has a track record of financial responsibility. She has engaged professional assistance in disputing one debt and resolving the others. Based on all the evidence, I am satisfied that she has the means and willingness to carry out her plan to resolve her remaining debts.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on financial considerations. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to grant her a security clearance.



### **FORMAL FINDINGS**

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

Paragraph 1. Guideline F : FOR APPLICANT

Subparagraphs 1.a-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 Applicant a security clearance for Applicant. Clearance is granted.

LeRoy F. Foreman  
Administrative Judge