

DATE: November 29, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 07-02997

**DECISION OF ADMINISTRATIVE JUDGE
NOREEN A. LYNCH**

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 42-year-old employee of a defense contractor. A series of unfortunate events led to Applicant's financial problems, and ultimately to her filing Chapter 13 bankruptcy (2004). She diligently paid her creditors under that plan until 2007. Due to accumulated medical debts from unforeseen illness and medical emergencies, she converted to a Chapter 7 in September 2007. Applicant has mitigated the financial considerations concern. 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 August 13, 2007, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR on September 20, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on October 25, 2007. I scheduled a hearing for November 15, 2007.

The hearing was convened as scheduled on November 15, 2007 to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Government exhibits (GE 1-7) were admitted. Testimony was taken from Applicant. The transcript (Tr.) was received on November, 26, 2007.

FINDINGS OF FACT

Applicant admitted the truth of the factual allegations set forth in the SOR pertaining to financial considerations under Guideline F (subparagraphs 1.a through 1.m.) Those admissions are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional finding of fact:

Applicant is a 42-year-old employee of a defense contractor. She received her GED in approximately 1990. Shortly after leaving school, she married and traveled with her husband for work. Her first child was born in 1988. At that time, Applicant was working in the home and financially dependent on her husband. They divorced in 1993.² When she divorced, she gave her husband the property and family home. He was responsible for paying the debts. However that did not occur. She remarried a year later but divorced in 2001. She is now a single mother of three children. Applicant has been with her current employer for 15 years and has had a security clearance since 1993.³

In 1999, Applicant decided to be tested because she was having difficulty with her college math course. She was concerned because she felt she needed to get more education to procure a better paying job, and did not want to fail the math course. At that time, she was diagnosed with Attention Deficit Disorder/Hyperactivity Disorder (ADDHD) and a mathematics disability

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 (Directive).

²GE 1 (Security Clearance Application, dated June 3, 2005).

³*Id.*

(Dyscalcula). Applicant also experienced some problems with fatigue, body pain and low grade fever. In 2001, at the time of her second divorce, she was diagnosed with Fibromyalgia.⁴

In 2002, Applicant purchased a home for herself and her three children. She used loan money to purchase furnishings and plant shrubs and trees. She was making payments on all the items that she purchased. Later in 2002, Applicant injured her back at work. Due to the nature of the injury, she was on work restrictions that did not allow her to get additional salary for hazardous work nor overtime. Thus, her salary was greatly reduced. At one point, she was earning an hourly wage of \$7.00.⁵ At the same time, she also had medical bills to pay and missed some months from work. She was required to take medications that were costly. Her middle son has had several accidents requiring surgery.⁶

During Applicant's second marriage, her husband took care of all the financial matters. After her second divorce, she started having great financial difficulties. Her son also has an attention deficit disorder and had several accidents. Thus, she incurred more medical bills.⁷

She petitioned for Chapter 13 Bankruptcy in January 2004 as a last resort. Under that plan she made payments successfully and the case was to be discharged in February 2009.⁸ Applicant wanted to pay all her creditors. She successfully did so until very recently.⁹ However, she began having difficulty making the \$700 bi-weekly amounts. She had no money left for telephone bills and utilities. She and her children were living on about \$229 every two weeks after the \$700 was automatically deducted from her paycheck. The \$229 was the amount of child support that she was receiving from her ex-husbands. In fact, she gave up her phone for a period of time. The constant medical bills and her adjustable rate mortgage increased her mortgage payments. This did not leave enough money to buy food for her three children.

Applicant pulled a hamstring and was out of work in the summer of 2007 for four weeks. She had exhausted her sick leave and thus, she did not receive any pay for the four pay periods. She realized that she could not continue to keep up with the bankruptcy payments and live at the same time.¹⁰

Applicant believed that perhaps she should sell her house since she could not keep up with the increased mortgage payments.¹¹ In September 2007, she consulted the bankruptcy attorney who advised her to convert her Chapter 13 bankruptcy to a Chapter 7 bankruptcy. If she did that, she

⁴GE 6 (Response to Financial Interrogatories, dated July 13, 2007).

⁵*Id.*

⁶Tr. 38.

⁷GE 5 (Credit Bureau Report).

⁸Tr.58-59.

⁹GE (Bankruptcy Petition, filed January 28, 2004 with conversion attachment, September 21, 2007).

¹⁰Tr. 61.

¹¹Tr.49.

would be able to keep her home and discharge her debts including the medical debts listed in the SOR. She would also have the additional money (\$700) that she was paying for the Chapter 13 payments.¹²

Applicant has \$7,700 in delinquent debt.¹³ All the debt is for unpaid medical bills except one. (Allegations 1.b-m, with the exception of 1.f). The alleged debts in the SOR were listed as “medical provider.” None of the bills has an account number.¹⁴

The alleged debt in allegation 1.f is \$3,924. Applicant used the services of a tax preparer. She explained to them that she was involved in a Chapter 13 bankruptcy payment. They advised that she could receive a “quick refund”. She learned that this was not correct. The IRS informed her that the money was owed to them. The IRS did not give Applicant the tax refund, but applied it to her debt. She did not have enough money to pay the tax preparer. Thus, she took out a personal loan.¹⁵

Applicant’s current net monthly income is \$1,295.00, which includes child support. After expenses, she has a net monthly remainder. She is current on her mortgage and car payments. She does not use credit cards and has incurred no new debts, with the exception of some small medical bills. These bills (all alleged in the SOR) will be covered when she finalizes the conversion to the Chapter 7 bankruptcy.¹⁶

In addition to the advice that she has received from the bankruptcy attorney and financial information that she received going through the conversion from Chapter 13 to Chapter 7 bankruptcy, Applicant spoke to a representative at the Employee Assistance Program (EAP) at work. The counselor is in the National Guard and Applicant is waiting for her to return from deployment so that she can talk with her.¹⁷

Applicant has been employed with her current employer for almost 15 years. She has received various awards. She has maintained her security clearance since 1993 with no problems.

POLICIES

“[N]o one has a ‘right’ to a security clearance.”¹⁸ As Commander in Chief, the President has “the authority to . . . control access to information bearing on national security and to determine

¹²Tr. 43.

¹³GE 5 (Credit Bureau Report); Tr 31.

¹⁴*Id.*

¹⁵Tr. 57.

¹⁶Tr. 61.

¹⁷Tr. 67.

¹⁸*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.”¹⁹ The President 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.”²⁰ An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.²¹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²² The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty 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 clearance.²³

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each 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 adjudicative process factors listed in the Directive and AG ¶ 2(a).

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions section below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline F: Financial Considerations

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.

¹⁹*Id.* at 527.

²⁰Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

²¹ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²²*Id.*; Directive, ¶ E2.2.2.

²³Exec. Or. 10865 § 7.

Applicant's history of delinquent debts resulting in bankruptcy in 2004 is not disputed. Thus, Financial Considerations Disqualifying Condition (FC DC) 19(a) (*inability or unwillingness to satisfy debts*) and FC DC 19(c) (*a history of not meeting financial obligations*) apply. Her admissions and credit reports confirm the delinquent debts, and the Chapter 13 bankruptcy and conversion to Chapter 7 in 2007.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC 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*), FC MC 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*), FC MC 20(c) (*the person 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 FC MC 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Although FC MC 20 (a) does not provide a temporal or specific definition of what constitutes "recent" conduct, Applicant's overall conduct with creditors does not cast doubt on her current reliability, trustworthiness and good judgment. She has shown sufficient unusual circumstances to establish that her financial problems are "unlikely to recur." Applicant suffered a period of unemployment, divorce, injuries/illness for herself and her children. These were all beyond her control and she acted in a responsible manner. I find that FC MC 20(a) is partially applicable. FC MC 20(b) is applicable for the reasons stated above.

FC MC 20(c) partially applies due to the counseling she received from her attorney, the Employee Assistance Program and the help she sought from her ex-husband.²⁴ She merits some credit for using bankruptcy, which is a legal means for resolving her debts.²⁵ Initially, in 2004, she chose Chapter 13 so that she could repay her creditors. She made payment of \$700 from 2004 until September 2007. She did want to resolve her debts and not ignore her creditors. Bankruptcy substantially reduced her debts, and accordingly reduced her potential vulnerability to improper

²⁴The 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 Financial Considerations Mitigating Condition 6, 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 Financial Considerations Mitigating Condition 6.

(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)).

²⁵See ISCR 04-07360 at 2 (App. Bd. Sept. 26, 2006) (stating partial credit was available under FC MC 6 for debts being resolved through garnishment).

financial inducements. The conversion to Chapter 7 will eliminate the debt, which consists of many medical bills that Applicant could not pay despite her health insurance.

FC MC 20(d) is applicable because she chose to petition for a Chapter 13 bankruptcy in 2004 and had an automatic deduction of \$700 bi-weekly so that she could pay her creditors. This was not an easy thing for the single mother of three to do. This was a legal and good faith effort on her part to show good faith in resolving debts.

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 an acceptable security risk. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive and AG ¶ 2(a). I have also considered all the evidence, and every finding of fact and conclusion discussed above.

A series of unfortunate events led to Applicant's financial problems, and ultimately to her filing bankruptcy in 2004. Applicant used a legally available option to address her debts. Applicant worked hard, despite some medical problems, to pay her creditors under the Chapter 13 bankruptcy plan. She had \$700 automatically deducted from her pay bi-weekly beginning in 2004. As stated above, bankruptcy eliminated Applicant's debts, and accordingly reduced her potential vulnerability to improper financial inducements. In 2004, Applicant suffered more loss but continued to work hard and support her family. She did the best she could to raise her family and pay her bills. The stress of these conditions resulted in illness and stress for Applicant. She has worked for her employer for almost 15 years and has maintained a security clearance since 1993. Her initial payment plan under Chapter 13 attests to her commitment to pay her debts. She has stable employment and with counseling from the EAP program will be able to handle her financial affairs.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on her financial issues. She is eligible for a security clearance.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a:-1.m: 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.

Noreen A. Lynch
Administrative Judge