

DATE: December 28, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 07-07400

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

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 59-year-old employee of a defense contractor. Due to her husband's loss of unemployment and low paying jobs, Applicant accumulated delinquent debt. Her financial difficulties were exacerbated by separation and divorce. Applicant supports her adult two sons who are not working. Applicant paid her four delinquent debts using inheritance money 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 September 19, 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 October 12, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on November 13, 2007. I scheduled a hearing for December 11, 2007.

The hearing was convened as scheduled on December 11, 2007 to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Government exhibits (GE 1-4) were admitted. Testimony was taken from Applicant. Applicant's exhibits (AE A-M) were admitted. The transcript (Tr.) was received on December 19, 2007.

FINDINGS OF FACT

Applicant admitted she once owed the creditors listed in the SOR, but denied the truth of the factual allegations set forth in the SOR pertaining to financial considerations under Guideline F (subparagraphs 1.a through 1.d.) because the debts are paid. 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 59-year-old employee of a defense contractor. She graduated from high school in 1967. Applicant has been with her current employer since 1996 and has maintained a security clearance with no problems.² She completed a security clearance application on February 6, 2007.

Applicant married in September 1978. As a result of that marriage she has two sons. Her husband lost his job as a systems analyst in the mid 1990's. According to Applicant, he was out of work for more than two and a half years.³ He was finally able to find a very low paying job. Applicant stayed at home with her sons until they started elementary school. She volunteered in a school and then did some substitute teaching. Although she was employed occasionally, she did not earn sufficient income to support the family and they began to accumulate debt.⁴

In 1996, Applicant started a temporary, full time position with her current company. In 1999, Applicant was diagnosed with Muscular Dystrophy (MS). She states that it is a mild case, although

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 February 5, 2007).

³Tr. 68.

⁴Tr. 40.

she wears an ankle brace to aid her walking. Her physician ordered a shot of Avonex as treatment. She stopped taking the shots because she could not afford them. She also decided that she did not really need them.

In 2000, Applicant and her husband separated. At that time, she and her adult sons went to live with her aunt who had a large home and property. Her sons did not graduate from high school and continue to have difficulty finding employment with limited skills. They live with Applicant and she supports them. In 2001, when Applicant divorced, she was reduced to one small income.⁵

Applicant acknowledges that she used credit cards to help pay for items. When her television stopped working, she replaced it but only paid on it for a while before she realized that she did not have enough money to cover basic expenses. She admits using credit cards and taking out two loans to help pay the bills. She regrets using credit cards and vows never to accumulate debt again.⁶

Applicant's aunt died in November 2000. Another aunt died in 2003. At that time, Applicant was to inherit half of the property and estate. The family could not decide whether they wanted to keep the property or sell it. This unresolved situation lingered for a few years. Applicant anticipated the estate would be settled by 2005, but in the interim she was getting into debt with loans she obtained to help pay her bills. Her collection accounts began in late 2004-2005.⁷

The status of Applicant's alleged debts as listed in the SOR is as follows:

SOR ¶	Type of Account/Amount	Status	Evidence
1.a	Collection account \$1,051	Paid	AE L
1.b	Collection account \$7,691	Paid	AE G
1.c	Collection account \$ 358	Paid	AE K
1.d	Collection account \$9,993	Settled	AE M; AE F

Applicant's current net monthly income is \$700 to 800.⁸ After expenses, she has a small net monthly remainder. She also helps an older neighbor and receives \$50 every month for her service as a care giver. In her current job there are wage increases each year. She is starting to save some money. She is current on her rent and has no car payments. She does not use credit cards and has incurred no new debts. She has pre-paid her car insurance for six months.⁹

⁵Tr. 43.

⁶Tr. 47.

⁷GE 2(Credit report, dated February 6, 2007).

⁸AE B; C; and D (Printout of Pay and Personal Financial Statement).

⁹Tr. 45.

In August 2007, the inherited property was finally auctioned. Applicant received her half of the distribution from the property.¹⁰ She received approximately \$71,000. She began to pay her debts immediately from that money. By September 25, 2007, all SOR debts were paid.¹¹ She has approximately \$28,000 left from the inheritance in her savings account.

Applicant sought financial advice from two friends. Although they are not trained financial counselors, they were helping Applicant with managing her money. The one friend is also her landlord who was also advising her about investing her money. However, Applicant did not want to invest any money before she paid all her debts.¹²

Applicant has been employed with her current employer for almost 15 years. During that time she has been involved with documents and security control. She has received various awards. She has maintained her security clearance since 1993 with no problems. Applicant became a facility security office last August. She needs a security clearance for that position. Her supervisor describes Applicant as a person of character. He would not hesitate to employ her. Several co-workers describe Applicant as loyal, well-rounded, and very likeable. One colleague describes Applicant as one of the most honest, reliable people he knows. Several supervisors and co-workers praise her loyalty, professionalism, composure, and financial management.¹³

POLICIES

“[N]o one has a ‘right’ to a security clearance.”¹⁴ 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.”¹⁵ 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.”¹⁶ 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.¹⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such

¹⁰AE E (Real Estate Sales Agreement, dated June 2, 2007).

¹¹AE F-M (Receipts)

¹²Tr. 62.

¹³AE A (Letters of Reference).

¹⁴*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁵*Id.* at 527.

¹⁶Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

¹⁷ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

sensitive information.¹⁸ 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.¹⁹

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.*²⁰

Applicant's delinquent debts totaling approximately \$19,500 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 document her debt history.

Applicant used credit to purchase items that she could not afford and to help provide for her adult sons after her divorce. She admits that she probably should not have replaced her television when it ceased to work. She could have purchased a less expensive television as a replacement. FC DC 19(e) (*consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant cash flow, high debt-to-income ratio, and/or other financial analysis*) partially applies.

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*

¹⁸*Id.*; Directive, ¶ E2.2.2.

¹⁹Exec. Or. 10865 § 7.

²⁰AG ¶18.

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’s separation and divorce after years of her husband’s unemployment exacerbated her financial difficulties. She was determined to support her adult sons who live with her because they are not working. Her delinquent debts occurred in period of time from late 2004-2005. She has continued to work and be responsible. As soon as she received her inheritance she paid all her debts. I find that FC MC 20(a) is partially applicable. FC MC 20(b) is applicable for the reasons stated above.²¹

Applicant has not received formal financial counseling. She has sought the advice of her landlord and friends. She has paid all the debts that were delinquent and is in a stable job. FC MC 20 (c) applies due to the resolution of the debts. There are clear indications that the problem is under control.

FC MC 20(d) is applicable because Applicant immediately paid her delinquent creditors when she received the inheritance. She is current on all her other accounts and expenses.

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.

Applicant has a long history of solid employment with her company. She is described as an honest, trustworthy, reliable and capable person. She has held a security clearance since 1996. She divorced in 2001 and supported her two sons with her income. After her husband’s unemployment and loss of pay, Applicant began to accumulate debt. She did the best she could. She acknowledges that the use of credit cards to finance her lifestyle was a mistake. She is now aware of the consequences of using credit. She immediately paid her debts as soon as she received the inheritance. She believed the estate would be settled shortly after 2003, but due to family conflicts about the sale of the property that did not occur. She was candid and forthright at her hearing. She presented documentation in an organized fashion. Her references all attest to her loyalty and reliability. She

²¹See ISCR 04-07360 at 2 (App. Bd. Sept. 26, 2006) (stating partial credit was available under FC MC 6 for debts resolved through garnishment).

was credible in her resolve to handle her future financial situation. Her awareness and of financial issues and solid job performance in her company persuade me that she is not vulnerable or a security risk.

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.d: 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