

DATE: October 31, 2007

In re:)
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)
 -----) ISCR Case No. 07-10018
 SSN: -----)
)
 Applicant for Security Clearance)
)

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

APPEARANCES

FOR GOVERNMENT

Fahryn Hoffman, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred approximately \$16,572 in delinquent debt, including many charged off collection accounts. He provided documentation concerning his payments in his repayment plan to his creditors, and thus mitigated the security concerns raised under the financial considerations guideline. Applicant's eligibility for a security clearance is granted.

STATEMENT OF THE CASE

On November 21, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating that it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.¹ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued.

On November 29, 2006, Applicant submitted a notarized response to the SOR, and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the Government's written case on August 3, 2007.² Applicant received a complete file of relevant material (FORM) on August 7, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's case.³ Applicant submitted additional information on September 28, 2007. The case was assigned to me on October 5, 2007.

FINDINGS OF FACT

Applicant admitted allegations in subparagraphs 1.a through 1.f in his SOR response under Guideline F. The admissions are incorporated as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 31-year-old employee of a defense contractor. After he graduated from the USAF Preparatory School, he attended the USAF Academy. He is married with one son. He has worked for his current employer since December 2006.⁴ On February 15, 2006, he completed his security clearance (SF 86) application.⁵

Applicant held a secret level security clearance since 1995 with no incidents. He served in the U.S. Air Force from 1994 until 2003, and received an honorable discharge. Applicant encountered a brief period of unemployment after leaving the military.⁶

Applicant's debts in the SOR total approximately \$16,572. There are numerous delinquent consumer accounts from the period 1994 until 2001. Applicant maintains that he was paying all his

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

²In January 2007, Applicant's case was terminated (ISCR -06-19209). In July 2007, the case was reactivated.

³The government submitted seven items in support of its contentions.

⁴Item 4 (Application for Security Clearance (SF 86), dated March 10, 2006).

⁵*Id.*

⁶Applicant's answer to SOR, dated December 25, 2006.

creditors in a timely manner, but fees and high interest rates forced him to fall behind (30 days) on some of them. In 2001, Applicant entered a credit counseling program, and entered a debt management program. His required monthly payments were \$548 a month. Applicant participated in this program for 19 months. He timely made each payment. He stopped the program in 2003. He left the military at that point, and worked in the private sector. He had a short period of unemployment. Applicant moved to an area of higher living costs and received a lower salary. He incurred additional moving expenses and also did not receive his first paycheck for a few weeks after the start of his employment. He contacted the consumer credit agency and tried to find another repayment plan that would require less than \$500 a month. He could not find one. He made smaller payments to some of his individual creditors when he could.⁷

Applicant closed the accounts that were included in the debt repayment program. He made no further charges on any of those accounts.

In 2002, Applicant married and a son was born to them in 2004. His son has congenital heart disease and requires continuous medical care. Applicant has paid the medical bills and extra expenses for his son.⁸

In 2004, Applicant purchased a car. He explained he made a conscious decision to do this because he needed a car that would accommodate the baby car seat and other items necessary when traveling with the baby. His previous vehicle had 100,000 miles on it and was starting to require major repairs. He was paying \$307 a month on the car note. He decided to trade his wife's car to his sister-in-law. His sister-in-law paid Applicant \$307 a month for the car. Based on a trade in and discounts, his monthly payment for the new car is \$321. Thus, he maintained a similar level of monthly payments and decreased maintenance costs.⁹

Applicant opened four new credit lines in 2004. He does not carry a balance on any of them. He uses them for business travel. He has multiple credit cards because the credit limit on each was approximately \$500. He also wanted to establish a good credit history.

From 2003 until 2006, Applicant did not have sufficient income to make payments to his creditors. He kept his finances under control by prioritizing his bills. As soon as Applicant had his current job offer in late 2006, he contacted a new consumer credit company.¹⁰

In 2006, Applicant entered another repayment plan. He received more financial guidance, has a new budget and started making monthly payments. He is saving money and due to his higher salary, he has paid off two accounts that were not listed in the SOR. He has reduced his debt from

⁷Response to FORM, dated September 28, 2007.

⁸*Id.*

⁹*Id.* at 3.

¹⁰Item 3 (Answer to FORM, dated December 25, 2006).

\$21,302 to \$11,936. His detailed payment plan provides that all accounts will be paid in less than 20 months.¹¹

He earns approximately \$5,000 net per month working a regular schedule. He earns more with overtime (approximately \$7,800).¹² Applicant also receives a Veterans benefit (\$115 per month).

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

SOR ¶	Type of Account/Amount	Status	Evidence
1.a	Credit card \$3,817 ¹³	Repayment \$196 mo	Attachment C
1.b	Credit card \$2,803 ¹⁴	Repayment \$86 mo	Attachment C
1.c	Collection account \$1,849 ¹⁵	Repayment \$54 mo	Attachment D
1.d	Collection account \$1,126	Settled and paid	Attachment E
1.e	Collection account \$4,228	Repayment \$141 mo	Attachment F

Applicant earned various medals and commendations while in the military. Among them is the Air Force Training Ribbon, Outstanding Unit Award. Although he has been with his current employer a short while, he received an appraisal reflecting remarkable growth and development. He has proven to be an invaluable asset. He does not require frequent direction and can be trusted to pursue the issues most important to leadership.¹⁶

POLICIES

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.”¹⁷ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

¹¹Attachments to Response to FORM, dated September 28, 2007.

¹²Attachment A (Pay Stub, dated September 2007).

¹³This balance decreased from \$5,487.

¹⁴This balance decreased from \$3,405.

¹⁵This balance decreased from \$2,335.

¹⁶Item 5 (Response to Interrogatories, dated October 24, 2006).

¹⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security 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 ¶ 6.3 of the Directive, and AG ¶ 2(a).

“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.”¹⁸ An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.¹⁹ An administrative judge should consider the following factors: (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 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.²⁰

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.²¹ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.²² An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”²³ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.²⁴ The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F of the revised Adjudicative Guidelines (AG) most pertinent to the evaluation of the facts in this case.

¹⁸ Directive, ¶ E2.2.1.

¹⁹ Directive, Revised Adjudicative Guidelines (AG) ¶2 (a)(1)-(9).

²⁰ *Id.*

²¹ Directive, ¶ E3.1.14.

²² Directive, ¶ E3.1.15.

²³ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²⁴ Directive, ¶ E2.2.2.

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 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.*²⁵

In this matter, the government provided substantial evidence that Applicant accrued delinquent debts with an approximate total balance of \$16,000. He admits they are still outstanding debts except for one that was settled. His 2007 credit report confirms his alleged debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and FC DC AG ¶ 19(c) (*a history of not meeting financial obligations*) apply.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. I considered the Financial Considerations Mitigating Condition (FC MC) 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*). It does apply because Applicant's four debts are in a repayment plan.

Applicant's debt occurred before his short period of unemployment and his son's medical problems. His debt has been with him since the mid 1990's. He has no evidence to support the FC MC 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*).

I have considered the remaining mitigating conditions. FC MC 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 under control*) applies in this case. FC MC AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) also applies. FC MC AG ¶ 20(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*) applies as well.

Applicant has received financial counseling and developed a structured plan to resolve these debts. Although he stopped his first repayment plan after 19 months due to a period of unemployment after his discharge from the Air Force, he prioritized his bills. Due to the lower pay, he was not able to pay the initial \$548 a month in his payment plan. Thus, his original plan was derailed. He could not find another plan that would accept an amount lower than \$500. So, he made smaller payments to creditors whenever he could. There are clear indications that the financial problem is being resolved or is under control.

After his son was born with a medical problem, Applicant was faced with numerous medical bills. This contributed to his inability to pay on his older debt. He paid his medical bills and provided for his family. Applicant received a job in late 2006 that allowed him to again begin a repayment plan.

²⁵AG ¶ 18.

He documented his payment plan and has reduced his debts. He now has a stable, good income. He has a solid plan and the determination to resolve his debts.

Whole Person

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person’s life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the “whole person” concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence and the “whole person” in evaluating Applicant’s security clearance determination. Applicant has a very good work history and performance review. He was honorably discharged from the Air Force. He provides for his family and his son who has major medical problems. His inability to initially stay on his repayment plan did not cause him to give up. He has made good faith efforts to resolve his delinquent debts. His steady income and his financial counseling will allow him to continue to remain solvent. The issue is not whether Applicant is still legally liable for any or all of her outstanding debts, but whether he has presented sufficient evidence of extenuation, mitigation or changed circumstances to warrant a favorable security determination. Applicant has mitigated the government’s concerns under Guideline F. It is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant’s request for a security clearance. Clearance is granted.

Noreen A. Lynch
Administrative Judge