



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
XXXXXXXXXX, XXXXX)	ISCR Case No. 07-13692
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro Se*

September 25, 2008

Decision

TUIDER, Robert J., Administrative Judge:

Applicant mitigated security concerns regarding Guideline F (Financial Considerations). Clearance is granted.

Statement of the Case

On April 20, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On May 9, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised.¹ The SOR alleges security concerns under Guideline F (Financial

¹On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guidelines to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R,

Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On June 9, 2008, Applicant responded to the SOR allegations, and elected to have her case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated July 2, 2008, was provided to her, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.² Submissions were due by August 21, 2008. Applicant timely submitted additional material, which arrived at DOHA on August 21, 2008. On August 22, 2008, Department Counsel interposed no objection to Applicant's submissions. The case was assigned to me on September 2, 2008.

Findings of Fact

Applicant admitted SOR ¶¶ 1.c. through 1.l., and denied SOR ¶¶ 1.a. and 1.b. A number of her admissions were done "with reservations" and each response was accompanied by an explanation. Her admissions are incorporated herein as findings of fact. I make the following additional findings of fact:

Applicant is a 54-year-old systems engineer, who has worked for her defense contractor employer since December 1996. She seeks to renew her security clearance, which she has successfully held since approximately January 1997.

Her April 2007 e-QIP indicates she was awarded a masters of science degree in December 1997.³ Applicant was married from March 1978 to December 1990. That marriage ended by divorce. She has a 27-year-old son. She has not remarried.⁴

Personnel Security Program (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant's case.

² Defense Office of Hearings and Appeals (DOHA) transmittal letter, is dated May 9, 2008; and Applicant acknowledged receipt on May 21, 2008, which DOHA received on July 25, 2008. The DOHA transmittal letter informed Applicant that she had 30 days after Applicant's receipt to submit information.

³ Item 4.

⁴ *Id.*

Applicant's background investigation addressed her financial history and included the review of her April 2007 e-QIP,⁵ her March 2008 DOHA Financial Interrogatory,⁶ a March 2008 Applicant letter with attachments,⁷ and her November 2007 credit bureau report.⁸

Applicant's SOR identified 12 separate line items consisting of various debts, totaling approximately \$38,543. SOR ¶¶ 1.a. – 1.l. Included among the line items were her failure to file her 2005 federal income tax return, her failure to pay all federal income tax owed for tax year 2006 resulting in a \$4,161 tax deficiency, and her failure to pay all her state income tax owed for tax years 2005 and 2006 resulting in a \$914 and \$2,346 deficiencies, respectively. (SOR ¶¶ 1.i., 1.j., 1.k. and 1.l.)

Since Applicant's May 2008 SOR, she has paid, settled, made a good faith-effort to pay/settle, or otherwise resolve all debts listed in that SOR. In particular, she has filed her 2005 federal income tax return, is making payments to the Internal Revenue Service for her 2006 tax deficiency, and has paid her 2005 and 2006 state income tax deficiencies through garnishment. The other debts consist of credit card/personal debts, which have been addressed. The remaining debt of consequence is a charged off credit card debt of \$12,611, which is in litigation with settlement and payment arrangements pending. Response to SOR, Response to FORM.

Applicant encountered financial problems as a result of her inability to sell her second home/loss of rental income, and medical/ financial costs incurred as a result of assisting her adult son with his drug abuse/treatment problems.

She explained in her Response to FORM:

[M]y problems basically began when I was trying to sell a house that I owned in [different state]. My outstanding credit was high at that time as I had spent a considerable amount on my son's drug rehabilitation, medical and living expenses, but I was keeping up with all my payments and responsibilities. However, without the rental income, and due to the extra mortgage and utility payments, I began falling behind.

⁵ *Id.*

⁶ Item 5.

⁷ Item 6.

⁸ Item 7.

I called my creditors and tried to make arrangements that I could meet. However, since I was not behind, for the most part they were not willing to work with me. When the house sold, I did not receive a lot of cash, but with what I did receive, I paid down several credit cards, only to have them lower my limits (costing me additional over-limit fees) and raise my interest to exorbitant fees.

Additionally, the sale of the house also made a big change in my tax status, and I ended up with both state and federal taxes due. Before I dealt with that properly, the [state of residence] garnished my wages for overdue taxes.

It is not my poor self control or unwillingness to abide by rules and regulations that brought me into this state. A lack of judgment perhaps, because I spent too much to rehabilitate and support my son, and because in trying to find ways to settle my debts, I have better hindsight in knowing how to best handle these things than I did at the time.

In 2007, Applicant sought financial counseling through her company's Employee Assistance Program and participated in counseling and budget sessions. To reduce her housing costs, she has moved to a one bedroom apartment and her son no longer lives with her. Applicant continues to pay her son's health insurance and provides him with limited support. In December 2007, Applicant took a second job as grocery clerk, but recently quit because her full-time employer required her to travel and work overtime. Response to FORM.

Applicant provided six reference letters offering character assessments from a professional and personal perspective. The authors were uniform in their praise of Applicant, and spoke of her integrity, loyalty, and recommended her for a clearance. Response to FORM.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's overarching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number

of variables known as the “whole person concept.” The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.”⁹ In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence,”⁹ demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).¹⁰

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

⁹ See Directive ¶ E3.1.14. “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “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).

¹⁰ “The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Guideline F, Financial Considerations

Under AG ¶ 18, the Government’s concern is that an Applicant’s:

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.

The Government established its case through Applicant’s admissions and evidence presented. At the time the SOR was issued, the Applicant had a history of unresolved indebtedness that had been ongoing for several years.

Under AG ¶ 19, conditions that could raise a security concern and may be disqualifying include:

- (a) inability or unwillingness to satisfy debts;
- (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.
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) 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;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

(h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and

(i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Of the nine Financial Considerations Disqualifying Conditions listed *supra*, two are applicable, AG ¶¶ 19(a) and 19(c).

Under AG ¶ 20, conditions that could mitigate security concerns include:

(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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and

(f) the affluence resulted from a legal source of income.

Considering the record evidence as a whole,¹¹ I am able to apply ¶¶ (b), (c), and (d). Applicant did experience a financial setback as a result of being unable to sell her second home. She also incurred substantial expenses in assisting her son with his substance abuse problem. Applicant did participate in financial counseling, and has made a good-faith effort to pay, settle, and/or resolve her debts.

Nothing in the record supports the notion that Applicant incurred debt to live extravagantly or lived a questionable lifestyle. Admittedly, her choices were not always the most prudent, which she concedes. I do note and give her credit for making a good-faith effort to put her financial house in order. She moved to a one bedroom apartment and took a part-time job as a grocery clerk until that conflicted with her full-time job. She has successfully held a security clearance for the past 11 years, and enjoys the full support of her colleagues and friends. Maintaining her employment allows her to continue paying down her debts.

To conclude, Applicant presented sufficient evidence to explain, extenuate, or mitigate the financial considerations security concerns. Applicant did meet her ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole person concept was given due consideration and that analysis does support a favorable decision.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my “careful consideration of the whole person factors”¹² and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the government’s case. For the reasons stated, I conclude she is eligible for access to classified information.

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. – 1.l.:	For Applicant

¹¹ See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for FC MC 1, all debts are considered as a whole.

¹² See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for accessed to classified information is granted.

ROBERT J. TUIDER
Administrative Judge