

KEYWORD: Financial

DIGEST: Applicant admits owing more than \$13,000 on seven delinquent accounts. He has shown payment of \$327. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from Applicant's unpaid debts. Clearance is denied.

CASENO: 06-25847.h1

DATE: 07/23/2007

DATE: July 23, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-25847
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
CLAUDE R. HEINY**

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant admits owing more than \$13,000 on seven delinquent accounts. He has shown payment of \$327. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from Applicant's unpaid debts. Clearance is denied.

STATEMENT OF THE CASE

On March 30, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding¹ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, due to Financial Considerations security concerns. On May 4, 2007, Applicant answered the SOR and requested a decision without a hearing. On July 16, 2007, I was assigned the case.

FINDINGS OF FACT

The SOR alleges security concern for Financial Considerations. Applicant admits owing the IRS \$4,542 and alleges he has entered into a repayment plan whereby he pays \$250 per month. He admits owing six other debts and alleges he has entered into a repayment arrangement. He asserts he is making payments on department store account. Applicant asserts the debt of \$4,511 listed in SOR 1.d and the \$4,511 debt listed in SOR 1.f. are the same debt. The admissions are incorporated herein as findings of fact. After a thorough review of the record, I make the following findings of fact.

Applicant is a 61-year-old designer who has worked for a defense contractor since January 2004, and is seeking to obtain a security clearance. Applicant is regarded by his supervisor, co-workers, and those who know him as responsible, works well with others, has a warm and bright personality, and is a very valued employee. He sets examples for others to follow. He was congratulated on the team effort to complete a phase of work. (Applicant's response to FORM)

Applicant owed the IRS \$4,552 for delinquent federal taxes for tax years 2000 and 2002. (SOR 1.a) As of February 2007, Applicant owed \$4,542. From the IRS statement (Item 5) it is unclear if the \$2,811 reported as penalties and interest is in addition to or included in the current balance listed at \$4,542.

In January 2007, Applicant completed interrogatories about his debts. (Item 5) Applicant owed \$1,386 on a charged off credit card account (SOR 1.b), \$671 on a charged off department store account (SOR 1.c), \$4,511 on a charged off store account (SOR 1.d), \$824 on a charged off store account (SOR 1.e), \$4,511 to a collection agency (SOR 1.f), \$663 on a charged off department store account (SOR 1.g), and \$1,421 on a charged off credit card account (SOR 1.h). As of mid-May 2007, the \$663 department store charged off account had been reduced to \$336, after he made a \$100 payment on the account in early May 2007.

In February 2007, Applicant completed a monthly financial statement which showed his net remainder was a negative \$229 per month. (Item 5) As of February 2007, Applicant's gross pay, with over time, was \$3,199 per two weeks and his net pay was \$1,919. (Item 5)

In January 2007, Applicant contacted a law firm to resolve his financial problems. (Item 3) The agreement required Applicant to pay the law firm \$515 each month. The law firm sent letters

¹Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

to ten collection agencies stating the Applicant was disputing the debt and requested verification of the debt. (Item 5) Applicant's March 2007-credit report (Item 6) lists two account numbers for SOR debts listed as SOR 1.b and SOR 1.d, which have similar account numbers to the accounts on two of the letters sent by the law firm.

There is no evidence showing which debts are included in the repayment agreement. There is no evidence Applicant has made any payments to the law firm. There is no evidence the law firm has ever made payment to a creditor. The lack of payment documentation was set forth in the FORM. Applicant failed to show any documented payment in his response to the FORM.

From May 1983 until February 2002, Applicant was a senior analyst for a power and light company. (Item 4) Applicant asserts his financial troubles began when he was placed in early retirement at age 55 and attempted a small business venture, a convenience store. The store operated from August 2002 until July 2003. (Item 4) A highway bypass caused a reduction in patrons and Applicant sold the store for "what I had invested and broke about even at that point." (Applicant's response to FORM) Applicant was unemployed from July 2003 to January 2004. He obtained his current job in January 2004.

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guideline to be applied here is Guideline F, Financial Considerations.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present

evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance.” A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access to classified information in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, financial considerations. A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

Financial considerations become a security concern when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

The Applicant admits owing seven delinquent debts totaling \$13,691. Disqualifying Conditions (DC) 19 a, “inability or unwillingness to satisfy debts” and 19 c, “a history of not meeting financial obligations” apply.

In January 2007, Applicant was asked about his past due debts. Since that time, he has documented payment showing he reduced one department store debt (SOR 1.g) from \$663 to \$336. There is no evidence of any additional payments. Applicant asserts the \$4,511 debt listed in SOR 1.d is the same \$4,511 debt listed in SOR 1.f, and I find these to be the same debt.

Applicant entered into an agreement with a law firm whereby he was to pay \$515 each month. There is no evidence he has made any payments in compliance with the agreement. The FORM pointed out a lack of documented payment in compliance with the agreement. Applicant’s answer to the FORM failed to provide any payment documentation. Entering into an initial agreement establishes nothing. Applicants often make one, two, or three payments before they stop sending money in compliance with the repayment agreement. Frequently, no payments are ever

² ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15

made after an applicant initially talks with the financial consulting firm. There is no evidence of payment.

The law firm sent letters to ten creditors stating the Applicant disputed the debts and asking for verification of the debts. This is immaterial since Applicant admitted he owes all of the debts. Mitigating Condition (MC) 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" does not apply. There is no showing which debts were included in the repayment agreement. Debts are often transferred from one collection agency to another. In viewing Applicant's March 2007-credit report (Item 6) and the account numbers listed in the law firm's letters to the creditors only two account numbers (SOR 1.b and SOR 1.d) are similar.

The burden is on Applicant to show which debts are in the repayment agreement. This he has failed to do. For Mitigating Condition (MC) 20 d, "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts" to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good-faith effort to repay. A systematic, concrete method of handling his debts is needed, which is not present here. Applicant's February 2007 monthly financial statement (item 5) shows a negative net monthly remainder of \$229. He does not have the ability to repay. There is no showing of any payment to a creditor in compliance with a repayment schedule. Applicant asserts he is paying the IRS \$250 per month, but has failed to document payment. MC 20 d does not apply.

None of the other mitigating conditions apply. Since the debts are yet owed, the behavior is recent, there are seven debts so the behavior is not infrequent, and did not occur under circumstances that it is unlikely to recur. 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" does not apply.

Applicant was the owner of a convenience store which he operated for about a year. He sold it and broke even. He was unemployed for six months from July 2003 until January 2004. These are factors beyond his control. But he has been employed for three and a half years and the only documented payment is the \$327 made on a department store account. I find 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" does not excuse Applicant's lack of payment.

There is no evidence Applicant has received financial counseling or that the problem is being resolved or is under control. Seeking the assistance of a law firm to resolve his debts is not the same as receiving counseling. MC 20 c, "the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control" does not apply. Affluence was not at issue, therefore MC 20 f, "the affluence resulted from a legal source of income" does not apply.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the

frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

Applicant asserts he is addressing his past due debts. He has shown payment of only \$327 on his delinquent debts. A clearance at this time is not warranted. This decision should not be construed as a determination that Applicant can not or will not attain the state of reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a life time occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Should the Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid his debts or established compliance with a repayment plan, he may well demonstrate persuasive evidence of his security worthiness. However, because the disqualifying conditions apply and no mitigating conditions apply, I find against Applicant as to Financial Considerations security concerns.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Financial Considerations: AGAINST APPLICANT

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Same debt as 1.d.
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Claude R. Heiny
Administrative Judge