

KEYWORD: Financial

DIGEST: Applicant is 42 years old and has worked as a technical librarian/editor for a defense contractor since 1989. Her debts were discharged in bankruptcy in January 2006, but she later incurred five delinquent debts totaling \$13,220. Applicant arranged repayment plans for most of these obligations. She challenges the basis for two smaller bills. Applicant has mitigated the financial considerations security concerns. Clearance is granted.

CASENO: 07-00120.h1

DATE: 09/28/2007

DATE: September 28, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 07-00120
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
JACQUELINE T. WILLIAMS**

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 42 years old and has worked as a technical librarian/editor for a defense contractor since 1989. Her debts were discharged in bankruptcy in January 2006, but she later

incurred five delinquent debts totaling \$13,220. Applicant arranged repayment plans for most of these obligations. She challenges the basis for two smaller bills. Applicant has mitigated the financial considerations security concerns. Clearance is granted.

STATEMENT OF THE CASE

On February 6, 2006, Applicant executed a Security Clearance Application (SF 86), which was originally signed on May 19, 2005.¹ On February 6, 2006, Applicant also signed an Amendment to the SF 86.² The Defense Office of Hearings and Appeals (DOHA) declined to grant a security clearance, and issued a Statement of Reasons (SOR)³ on April 12, 2007, 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.

On January 4, 2007, Applicant’s senior team leader submitted a “Letter of Compelling Need for Security Clearance,” requesting that Applicant be granted an interim secret security clearance, an expedited background investigation, and interviewed so she could be granted a secret security clearance because she does critical and sensitive work. That letter does not qualify as a letter of “compelling need” signed by a senior official of the intelligence community (SOIC) or his or her designee that the services of the individual are deemed essential to operation or mission accomplishment.⁴

On June 6, 2007, Applicant responded to the SOR allegations and requested a hearing. The Government was ready to proceed on July 23, 2007. The case was assigned to me on July 25, 2007. A Notice of Hearing was issued on July 27, 2007, scheduling the hearing for August 15, 2007. The hearing was conducted as scheduled. At the hearing, the Government submitted 17 exhibits (Exs. 1-17) and Applicant submitted 11 exhibits (Exs. A-K), all of which were admitted into the record without objection. The record was left open until August 29, 2007, to give Applicant time to submit additional documents. By memorandum dated August 31, 2007, the Government forwarded additional documents submitted by Applicant, without objection. These documents were identified as Ex. L and admitted. The transcript (Tr.) was received on August 27, 2007.

MOTION TO AMEND THE STATEMENT OF REASONS

On July 23, 2007, the Government submitted a Motion to Amend the SOR by adding a new allegation under subparagraph 1 as follows:

¹Ex. 2 (Security Clearance Application, dated February 6, 2006 and May 19, 2005).

²Ex. 3 (Amendment to Security Clearance Application, dated February 6, 2006).

³Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive).

⁴Sec 1.b, Director of Central Intelligence Directive 6/4. *Personnel Security Standards and Procedures Governing Eligibility for Access to Sensitive Compartmented Information* (SCI), July 2, 1998, as amended; sec. DL1.1.22, Department of Defense Regulation 5200.2-R, *Personnel Security Program* (Jan. 1987), as amended (Regulation).

1.1 The Internal Revenue Service (IRS) in April 2007 levied upon your earnings from your employer [employer's name] for past due federal income tax for the year 2001. In May 2007 the IRS commenced collecting past due income taxes by garnishment from your [employer's name] earnings.

In the absence of an objection, the Government's request to amend the SOR was granted. Accordingly, the SOR is amended as stated above.

FINDINGS OF FACT

Applicant admitted the factual allegations under subparagraphs 1.a, 1.b, and 1.e through 1.l. Those admissions are incorporated herein as findings of fact. She denied the allegations in subparagraphs 1.c and 1.d. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is 42 years old and works as a technical librarian/editor for a defense contractor. She has worked at the same job, minus 15 months, since 1989. She has an associate's degree in science and chemistry, a bachelor's degree in English, and is completing a master's degree in professional writing. Her employer is funding her graduate education.⁵ She was in the Air National Guard part-time from 1989 until her resignation in 2004. Applicant admits that her secret clearance was revoked on September 9, 2004, due to financial issues.⁶

Applicant has three children, aged 18, 14, and 6. The two older children are from her first marriage in 1988, which ended in divorce in 1994. Since 1995, a child support order for the two older children in the amount of \$496 per month has been in effect. In 2007, her ex-husband was in a serious car accident related to work. On May 30, 2007, he ceased paying child support because he did not believe he would recover and because he was unemployed.⁷ She is trying to modify the child support order for a reduced payment while he recuperates.⁸

After her divorce, Applicant purchased a home in 1994 for \$89,000, with a Veteran's Administration loan. She owned the house four years before she remarried. The property was foreclosed in June 2003. Prior to the foreclosure, she worked with a foreclosure consulting service to resolve her mortgage issues.⁹ After the foreclosure, she worked with a federal credit union and they assisted her in streamlining her personal debts and car loan.

⁵Tr. 40.

⁶*Id.* 54.

⁷*Id.* at 60.

⁸*Id.* at 58, 60-62.

⁹Ex. J (Agreement for Consulting Services, Certified Foreclosure Consultant, dated January 8, 2003).

In 1998, Applicant remarried, and her youngest child is a result of this marriage. When they married, he was the bread winner, earning more than her.¹⁰ With two incomes and a stable financial situation, in 1999, Applicant borrowed \$30,000 from her profit-sharing plan to invest in a music studio in the basement of the house for her husband.¹¹ He wanted to start his own business, so she thought it would be a good investment. Their family was forbidden to enter his music studio. After the birth of their child in December 2000, they agreed that Applicant would stay home and they would financially be provided for with the use of her profit-sharing, his full-time job, and her military monthly drill checks. In January 2002, he was laid off from his full-time job. The Air National Guard was able to put her on active duty with intermittent orders.¹² Eventually, they were both re-employed, and their lives stabilized. In 2004, Applicant learned that her husband was using alcohol and drugs. Their pastor counseled them but her husband refused to go through any treatment program.

In August 2000, March 2002, and October 2002, Applicant filed for bankruptcy protection under Chapter 13. The bankruptcies were dismissed for failure to make payments. In June 2004, she filed for bankruptcy protection under Chapter 7. The bankruptcy was dismissed for failure to complete the required filing. Applicant stated that she filed these bankruptcies based on the advice she received from her attorney.¹³ All bankruptcies reflected the same debts.¹⁴

On October 14, 2005, Applicant filed for bankruptcy protection under Chapter 7. Her debts were discharged on January 25, 2006. Her liabilities totaled \$46,796. Her assets totaled \$3,350.

On April 4, 2007, Applicant and her husband separated after he sold off most of the equipment in the studio.¹⁵ Her divorce will be final in 2008. She was obligated to pay back the loan she received from her profit sharing through payroll deductions shortly after it was approved. She filed for child support for their youngest child.¹⁶ Applicant provided a copy of consent order for child support filed against her estranged husband.¹⁷ Effective September 1, 2007, he was ordered to pay \$336 per month for his now six-year-old daughter.

The SOR lists five outstanding delinquent debts totaling \$13,220. The debts are as follows:

¹⁰Tr. 30.

¹¹*Id.* at 43-44.

¹²Ex. 3, note 2, *supra*.

¹³Tr. 29.

¹⁴*Id.* at 30.

¹⁵Ex. L (Letter, dated April 14, 2007).

¹⁶Tr. 58.

¹⁷Ex. L (Consent Order, Case No.: 07-1714 CIV).

- Tax lien for \$1,115 was filed against her for unpaid state income taxes. Tax lien for \$8,546 was filed against her for the tax years 1999 and 2000. Both of these debts are being paid through a payroll deduction of \$224 per month.¹⁸
- Two medical debts for \$272. Applicant is contesting these charges with the three credit bureaus.¹⁹
- Telephone debt for \$1,304 in collections. This debt was covered in the 2005 Chapter 7 bankruptcy.²⁰
- Student loan for \$1,983 in collections. She has a payment plan for this loan, which is \$50 a week, starting September 2007.²¹
- IRS levied a garnishment on Applicant's earnings in April 2007 for past due federal income tax for the year 2001. A payment of \$100 a month is deducted directly from her pay for this debt.

Applicant stated this about her financial situation: "I've been honest with all of my immediate supervisors and coworkers, and my ministerial staff at my church about my financial challenges and have remained loyal and honest to my employer. And my integrity has never had need to be questioned."²²

Applicant submitted five character reference letters from colleagues at work.²³ They enthusiastically endorsed her security clearance application. They commented that Applicant "has shown a high degree of integrity, responsibility, resourcefulness, and leadership."²⁴ Another stated "Although she has had to struggle to make ends meet – she maintains an upbeat and positive attitude. She is a faithful member of her church, attending regularly with her children. She helps with many outreach programs sponsored by her church."²⁵

¹⁸Tr. 50.

¹⁹*Id.* at 52.

²⁰*Id.* at 53; Ex. 13 (Bankruptcy Petition, Schedule F).

²¹*Id.* at. 54; Ex. L (Repayment Agreement on Defaulted Account, dated August 22, 2007).

²²*Id.* at 20-21.

²³Exs. A-E (Character letters).

²⁴Ex. A (Character letter, dated August 14, 2007).

²⁵Ex. D (Character letter, dated August 9, 2007).

Applicant has been a member of her church since 1998. The pastor of the church attested to her character.²⁶ He stated:

I counseled [Applicant] through all of these months and continue to meet with her twice a week to discuss her finances, her mental state and her plans, and she remains positive and working on a plan to become credit worthy again. She has separated from her husband as a result of his drug and alcohol use and has purposed [sic] to file for divorce next year and move on with her life.

Applicant earns \$60,000 a year. She also does freelance writing, which amounts to about \$300 to \$500 per month.²⁷ She also accepted a part-time administrative position beginning August 30, 2007, working 10-15 hours per week. She will be paid \$100 weekly, not to exceed \$400 a month.²⁸

POLICIES

“[N]o one has a ‘right’ to a security clearance.”²⁹ 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.”³⁰ 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.”³¹ 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.³² Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³³ 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

²⁶Ex. F (Character letter, dated August 8, 2007).

²⁷Tr. 38.

²⁸Ex. L (Letter, dated August 28, 2007).

²⁹*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

³⁰*Id.* at 527.

³¹Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

³²ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

³³*Id.*; Directive, ¶ E2.2.2.

met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.³⁴

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 listed in the Directive and AG ¶ 2(a).

CONCLUSIONS

I have carefully considered all facts in evidence and the legal standards, and I reach the following conclusions.

Guideline ¶ 18 articulates the Government’s concern regarding financial problems. “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 has proved a *prima facie* case for financial considerations. Applicant has a long history of financial problems going back to 1998. In January 2006, her debts were discharged in bankruptcy. Subsequently, she accumulated five delinquent debts, totaling \$13,220. Accordingly, Financial Considerations Disqualifying Conditions ¶ 19(a) (*inability or unwillingness to satisfy debts*) and ¶ 19(c) (*a history of not meeting financial obligations*) apply.

Various factors can mitigate financial considerations security concerns. Applicant lost her house to foreclosure. Her two marriages assisted in unraveling her finances. She divorced one husband and plans on divorcing her second husband in 2008. Her second marriage included her unemployment caused by birth of a baby and her spouse was laid off from work. She bounced back from a bankruptcy discharge in 2006. She has paid the outstanding tax debts and student loan that were not dischargeable in bankruptcy. She challenged two debts are on her credit report with three credit bureaus. Moreover, Applicant has demonstrated that her financial problems are unlikely to recur. She continues to do freelance writing and earns an additional \$300 to \$500 each month. Moreover, she had found a part-time job and will continue to enhance her financial coffers. Hence, Financial Considerations Mitigating Conditions ¶ 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*), ¶ 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 is under control*), ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), and ¶ 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*

³⁴Exec. Or. 10865 § 7.

basis of the dispute or provides evidence of actions to resolve the issue) apply.

I now turn to the general factors of the whole person concept. Applicant is 42 years old and has obviously had some financial setbacks in her life starting around 1998. She is keenly aware of her delinquent debts and sought both financial and pastoral counseling. She credibly testified that she works in an environment where she excels. This is evidenced by her job paying for her master's education. Applicant has matured during her financial downturn. She did not always get the best advice when seeking it from professionals, when dealing with the foreclosure of her house or filing numerous bankruptcies that were dismissed for failure to make payments. Yet, she persevered. She enhances her finances by doing freelance writing and she recently found a part-time job. She is well on her way to becoming financially solvent. For the reasons stated, I conclude Applicant is suitable 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 (Financial Considerations):	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
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant

DECISION

In light of all of the circumstances in the case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Jacqueline T. Williams
Administrative Judge