

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant owed approximately \$22,000 on 11 delinquent accounts. She paid one debt and brought current the student loans. The remaining nine debts have not been paid. Additionally, Applicant failed to disclose she was more than 180 days past due on her debts when she completed her Questionnaire for National Security Positions. The record evidence is insufficient to mitigate or extenuate the negative security implications based on financial considerations and personal conduct. Clearance is denied.

CASENO: 06-23637.h1

DATE: 09/28/2007

DATE: September 28, 2007

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In re: )	
)	
----- )	ISCR Case No. 06-23637
SSN: ----- )	
)	
Applicant for Security Clearance )	
_____ )	

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

**APPEARANCES**

**FOR GOVERNMENT**

Richard A. Stevens, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant owed approximately \$22,000 on 11 delinquent accounts. She paid one debt and brought current the student loans. The remaining nine debts have not been paid. Additionally, Applicant failed to disclose she was more than 180 days past due on her debts when she completed her Questionnaire for National Security Positions. The record evidence is insufficient to mitigate or extenuate the negative security implications based on financial considerations and personal conduct. Clearance is denied.

## STATEMENT OF THE CASE

On March 15, 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 finding<sup>1</sup> it is clearly consistent with the national interest to grant or continue a security clearance for her. The SOR set forth reasons why a security clearance could not be granted or continued due to financial considerations and personal conduct security concerns.

On April 18, 2007, Applicant answered the SOR and elected to have the matter decided without a hearing. Department Counsel submitted the government's case in a File of Relevant Material (FORM), dated July 18, 2007. Applicant was sent a copy of the FORM, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. Applicant's response to the FORM was due 30 days after receipt of a copy of the FORM. As of August 29, 2007, no response had been received. On September 26, 2007, I was assigned the case.

## FINDINGS OF FACT

The SOR alleges security concerns for financial considerations and personal conduct. Applicant admits being indebted with eight accounts placed for collection. She states the tax lien and two other debts have been paid. She admits falsifying question 36 on her Questionnaire for National Security Positions, Standard Form (SF) 86, concerning her tax lien, but states she forgot about the lien. She admits giving a false answer to question 38 concerning being more than 180 days delinquent on any 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 47-year-old research analyst who has worked for a defense contractor since March 1999, and is seeking to obtain a security clearance. She is a single mother who is not receiving financial support from her ex-husband and father of her three children. She was unaware of the contents of her credit report until after she applied for her clearance. In November 2006, Applicant's daughter was involved in a car accident, resulting in unexpected medical bills. (Gov Ex 6) As of January 2007, Applicant's monthly income was \$3,600, her monthly expenses \$2,700, and debt repayment of \$300, resulting in a monthly net remainder of \$152. (Gov Ex 6)

The record contains four credit reports dated October 2005 (Gov Ex 7), November 2006 (Gov Ex 8), February 2007 (Gov Ex 9), and July 2007 (Gov Ex 7). In November 1998, a \$360 state tax lien (SOR 1.a) was filed against Applicant. Applicant asserts this debt was paid in 1998 or 1999. The lien appears on all four credit reports. She owes two telephone bills for \$250 (SOR 1.b) and \$93 (SOR 1.c). In October 2006, She had correspondence from the collection agency in which the agency stated it was willing to accept payments on the debts. (Gov Ex 6) There is no evidence Applicant accepted the offer or made payments on the debts.

Applicant had a \$47 dishonored check (SOR 1.d), which has been paid. (Gov ex 7) She is indebted to a collection agency for \$948. She admits the debt, but is unsure about the debt or the

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

initial creditor of the debt. The debt was originally \$513, but is now \$971 (SOR 1.e). (Gov Ex 7, 8, and 9)

Applicant has a delinquent \$9,410 credit card debt (SOR 1.f). In December 2006, she received correspondence about the debt (Gov Ex 6), but no evidence of payment has been made. It appears on her credit reports at an initial amount of \$8,316. (Gov Ex 7, 8 and 9).

Applicant owes \$8,510 on a collection account (SOR 1.g), which has not been paid. (Gov Ex 9) She owes \$2,678 for student loans (SOR 1.h). In July 2006, she entered into an agreement to pay \$50 per month on the loans. Payments for July 2006 through December 2006 are in the record. (Gov Ex 6) The loans appear on her July 2007 credit report and are not listed as delinquent. (Gov Ex 10)

Applicant owes \$1,669 on a charged off credit card (SOR 1.i). (Gov Ex 7, 8) She is \$241 delinquent on a store credit card (SOR 1.j) and a \$295 cell phone account (SOR 1.k). Both accounts were placed for collection and remain unpaid. (App Ex 7).

In June 2005, Applicant completed her SF 86, Questionnaire for National Security Positions. Question 36 asked if any liens had been placed against her for failing to pay her taxes. She answered “no” to the question even though a state tax lien was filed against her in November 1998. She says she forgot about the lien and would not have considered it as placed against her property. She also answered “no” to question 38, which asked if she had been more than 180 days delinquent on any debts. She gives no reason for her answer.

### **POLICIES**

The Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, dated August 2006, sets forth Disqualifying Conditions (DC) and Mitigating Conditions (MC) 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 guidelines to be applied here are Guideline F, financial considerations, and Guideline E, personal conduct. \_\_\_\_\_

### **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.<sup>2</sup>

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 her 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 her finances so as to meet her 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.

Applicant owes approximately \$22,000 on nine delinquent debts. Disqualifying Conditions (DC) 19(a) “inability or unwillingness to satisfy debts” and 19(c) “a history of not meeting financial obligations” apply.

Applicant has paid a \$77 debt for a dishonored check (SOR 1.d) and made \$50 per month payments on the student loan obligation (SOR 1.h) for six months. Additionally, Applicant’s July 2007 credit report does not list her student loans as currently being past due or delinquent. I find for Applicant as to these two debts.

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

Mitigating Condition (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,” has very limited applicability. Applicant asserts she is a single mother and not receiving financial support from the children’s father. Additionally, her daughter was in a car accident resulting in medical debts. The impact of these events on her finances is not further described. None of the debts in question are related to medical bills. Applicant has failed to explain how the events caused the financial problems. Without additional information, it is impossible to find that the events caused the debts or that Applicant has acted responsibly under the circumstances.

There is no evidence Applicant has sought financial counseling or demonstrated a positive change in her financial management. The majority of the debts remain unpaid. There is no indication the problem is being resolved or under control. After monthly expenses, Applicant has only \$152 for all unexpected or unlisted expenses which would include repayment on the nine debts. MC 2(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.

MC 20(d) “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” apply except to the dishonored check and student loan obligations. For MC 20(d) 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 her debts is needed, which is not present here. Applicant has paid \$377 on her debts since being questioned about her debts in January 2007. (Gov Ex 6) The majority of her debts remain unpaid. There is no plan for paying her delinquent obligations.

Regarding personal conduct, the concern is “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.” DC 16(a) “deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities,” applies.

In June 2005, when completing her SF 86, she failed to list a tax lien. She says she forgot about it and had she remembered she would not have considered it as being placed against her property. Before a state tax lien is filed, Applicant receives a number of letters from the state, which would have put her on notice of the lien. Applicant states she believes the debt was paid in 1998 or 1999. Frequently a state tax lien is paid by garnishment or interception of a subsequent tax year’s refund. This may have been paid, but appears on all the credit reports in the record. The lien was filed six and a half years before she completed her SF 86. The filing of a tax lien is a significant event, but the amount was only \$360. She could easily have forgotten about it. I find for her as to SOR 2.a.

However, Applicant also answered “no” when asked if she had ever been more than 180 days delinquent during the previous seven years. Due to the significant nature of her debts she should have disclosed her delinquent debts on her SF 86. Applicant failed to present a good explanation

why she did not answer the question correctly. None of the mitigating conditions apply to her false answer.

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. I find against Applicant as to financial considerations and personal conduct.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true 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. Under the Applicant's current circumstances a clearance is not recommended, but should the Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise addressed the obligations, she may well demonstrate persuasive evidence of her security worthiness. However, a clearance at this time is not warranted.

### **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 FOR APPLICANT**

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant

Paragraph 2 Personal Conduct:                            **AGAINST APPLICANT**

Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	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**