

KEYWORD: Financial

DIGEST: Applicant is a 36-year-old office administrator working for a defense contractor. She had thirteen alleged debts listed in the statement of reasons (SOR) totaling approximately \$10,682. She has paid all but three of the debts since 2006. Her debt problems resulted from separation, divorce, and a period of unemployment. For the last two years she has shown her financial responsibility by not generating any new delinquent debt. Applicant has mitigated security concerns arising under financial considerations. Clearance is granted.

CASENO: 06-23659.h1

DATE: 06/21/2007

DATE: June 21, 2007

In re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 06-23659
)	
Applicant for Security Clearance)	
)	

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

APPEARANCES

FOR GOVERNMENT

John B. Glendon, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a 36-year-old office administrator working for a defense contractor. She had thirteen alleged debts listed in the statement of reasons (SOR) totaling approximately \$10,682. She has paid all but three of the debts since 2006. Her debt problems resulted from separation, divorce, and a period of unemployment. For the last two years she has shown her financial responsibility by not generating any new delinquent debt. Applicant has mitigated security concerns arising under financial considerations. Clearance is granted.

STATEMENT OF THE CASE

On January 18, 2006, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). On December 11, 2006, 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*, 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 and modified. The SOR detailed reasons why, under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines issued on December 29, 2005, and implemented by the Department of Defense, effective September 1, 2006, DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to continue a security clearance for Applicant. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the

SOR on January 5, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on February 1, 2007. I scheduled a hearing for May 10, 2007.¹

The hearing was convened as scheduled on May 10, 2007 to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Four Government exhibits (GE 1-4) were admitted without objection. Applicant's thirteen exhibits (AE A-M) were admitted into the record without objection. Testimony was taken from Applicant and three witnesses: a senior supervisor at the company where Applicant works; her facility security officer, and her mother, as reflected in the hearing transcript (Tr.) received on May 22, 2007.

FINDINGS OF FACT

Applicant admitted allegations 1.a, 1.c, 1.e, and 1.l in the SOR under ¶ 1. These admissions are incorporated herein. She denied allegations 1.b, 1.d, 1.f, 1.g, 1.h, 1.j, 1.k and 1.m because she paid seven of these debts.² In addition, after a thorough and careful review of the evidence and exhibits, I make the following findings of fact:

Applicant is a 36-year-old office administrator working for a defense contractor. Her first marriage, from 1995 until 2005, ended in divorce. She is remarried, and has two children from her first marriage.³ Applicant earned a high school diploma in 1992. She has completed several college courses with the expectation of completing an undergraduate degree.⁴ She has been employed with her current employer since January 2006.

Early in her first marriage, Applicant experienced difficulties with her husband controlling the finances. She and her husband had a large house, a boat, and two cars. They did not live within their means. Her husband controlled the money and encouraged their lifestyle. At times, he was verbally and mentally abusive to Applicant.⁵

Applicant's husband lost his job along with his high income in April 2002. He did not want to continue in his occupational field, but rather he wished to pursue acting. Applicant worked during the marriage; however, her income was much lower than his. They had two children to support. Consequently, when her husband became unemployed due to a company closure, the family income was reduced greatly. The family of four now had to live on a smaller income. As a result, in 2002 finances became a problem. They moved into a smaller home, but they were still in an untenable

¹Applicant received a Notice of Hearing on April 23, 2007. At the hearing, she waived her official notice of fifteen days.

²Applicant's response to the SOR, dated January 6, 2007.

³ GE 1 (Security Clearance Application, dated January 18, 2006) at 1-44.

⁴*Id.* at 62.

⁵Tr. 53.

financial situation. Applicant and her husband, continued to experience marital difficulties and they separated.⁶

At first, they tried to deal with their creditors. In 2002, however, finances became an overwhelming problem. They filed for Chapter 7 Bankruptcy in August 2002.⁷ A credit card debt was not discharged in bankruptcy. This account was in Applicant's name and she was left with the debt.⁸ Applicant moved out of the family home into a rental unit with her two sons. Her husband

⁶Tr. 54-55.

⁷ GE 4 (Bankruptcy Court Records, Voluntary Petition filed August 1, 2002) at 1-37.

⁸ *Id.*

refused to give her any child support or help with their expenses. He threatened Applicant if she pursued any court action to obtain child support.⁹ They were divorced in 2005.¹⁰

In November 2004, Applicant could not make payments on her bills. She attempted to reconcile with her husband, but that did not work. Applicant quit her job at that point and moved so that she and her children could live in her mother's home. She felt that she and her boys needed to live a distance away from her husband for safety.¹¹ She was successful in finding employment after two months. However, she then became unemployed for about nine months. She received unemployment during that time. Simultaneously, she contacted her creditors to initiate payments on the debts.¹² Some creditors would not settle and instead placed judgments against her.

In 2006, when Applicant received her full time employment, she obtained her credit report. With the help of her second husband she put together a plan and a realistic budget so she could pursue debt repayment. Applicant had medical bills from a dentist and other physician visits. Her husband's insurance sent payment directly to her husband and not to the service provider. The medical bills were overwhelming from numerous hospitalizations, doctor visits, prescriptions, and copays.¹³

Applicant paid seven debts alleged in the SOR.¹⁴ She has improved her credit score. She currently has only three outstanding debts. A group of small medical bills (24) totals \$2,648; a credit card account (\$2,300) that was not included in the 2002 bankruptcy, and a loan in the amount of \$1,286.

Applicant has contacted the credit card company several times by telephone. Since the account was closed and charged off, she had to find the collection agent for the account. She spoke to the credit card company's legal department and ultimately obtained the proper contact. When she contacted them, she affirmed her desire to pay the account or settle it. She is in the process of setting up a payment plan. Each month Applicant pays \$75 on the medical accounts. She is trying to settle the loan amount with the new collection company. Initially, they did not accept the amount Applicant could pay on the account. She is waiting for more information.¹⁵

Applicant is highly recommended by her employer for a security clearance. She is rated as an outstanding administrator who is diligent, reputable and very reliable. She has the full support of her direct supervisor, who describes her skills as exceeding his initial expectations for the job

⁹Tr. 65.

¹⁰Tr. 63.

¹¹Tr. 55.

¹²*Id.*

¹³Tr.15-19.

¹⁴AE A-G (Checks and Receipts for bills).

¹⁵Tr. 100.

position in every manner.¹⁶ Due to her exceptional work performance she was promoted within the first six months of her employment. This promotion provided a percentage salary increase. Her two years of employment are unblemished.¹⁷ She received another performance bonus for 2006. She is a trusted agent in an environment where security is a concern.¹⁸ She has excellent potential and opportunity for advancement in the defense industry.¹⁹

Applicant earns approximately \$1,760 net a month.²⁰ Her current husband earns \$1,900 net a month. Today, Applicant lives within her means, and has not acquired any significant debt other than her home mortgage.²¹ She is current on her mortgage and her car loan. She is financially stable. She accepts responsibility for paying her debts, despite the fact that she inherited some of them due to events beyond her control. Her bills are paid on time.

POLICIES

The revised Adjudicative Guidelines (AG) set forth set forth both disqualifying conditions and mitigating conditions applicable to each specific 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 factors listed in the Directive. Specifically these are: (1) the nature, extent and seriousness of the conduct and surrounding circumstances; (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 extent to which participation is voluntary, (6) the presence or absence of rehabilitation and other permanent 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. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

¹⁶Testimony of Witness at Tr. 19-20.

¹⁷*Id.*

¹⁸Testimony of Witness at Tr. 20-22.

¹⁹Testimony of Witness at Tr. 32.

²⁰Tr. 103.

²¹*Id.*

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.²² The government has the burden of proving controverted facts.²³ The burden of proof is something less than a preponderance of evidence.²⁴ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.²⁵ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁶

No one has a right to a security clearance²⁷ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁸ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁹ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.³⁰ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a security clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. Based upon consideration of the evidence, I find Guideline F of the revised AG most pertinent to the evaluation of the facts in this case. That guideline reads in pertinent part:

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.*³¹

²² ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).

²³ ISCR Case No. 97-0016 at 3 (App. Bd. Dec 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

²⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

²⁵ ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

²⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

²⁷ *Egan*, 484 U.S. 518, at 531.

²⁸ *Id.*

²⁹ *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

³⁰ Executive Order 10865 § 7.

³¹ AG ¶ 18.

In this matter, the government provided substantial evidence that Applicant accrued thirteen delinquent debts. She currently has three debts that are still outstanding. She and her husband filed for Bankruptcy in 2002. Consequently, Financial Considerations Disqualifying Condition (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. Several incidents occurred in Applicant's life over which she had no control. Her first husband's control over money in their marriage, her separation and divorce, and loss of her income and her periods of unemployment are not in dispute. Such incidents contributed to Applicant's acquisition of delinquent debt. She never questioned the legitimacy of the debts. She paid what debts she could and researched all the options. Therefore, 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*) applies.

Applicant's thirteen debts became delinquent in a short period of time. After the bankruptcy, Applicant separated and eventually divorced her husband. She had no help from her husband with child support. She had to move from the family home and became unemployed shortly thereafter. Her goal to support her sons and provide for their needs is firm. She has managed to not incur other delinquencies despite some medical problems. Her credit rating is steadily improving. She has a position with a good income and chance for advancement. She was open and honest during her security application process. Therefore, Financial Considerations Mitigating Condition (FC MC), AG ¶ (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*) applies.

Although Applicant has not received counseling, she never ignored her creditors. She paid seven debts and is paying on the remaining three debts. Of that remaining three, the amount of debt is not sufficient to generate a security risk. 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 is under control*) does apply to some extent.

In the past years, Applicant's resolve was to pay all her current bills and concentrate scarce resources toward necessities and honor her immediate creditors. She moved from her family home and sought employment. Her unemployment period hampered her efforts to pay all her bills. She did not have sufficient income to make lump payment sum payments. Some settlement offers she received were not within her reach. Therefore, FC MC, AG ¶ 20(d), (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies to a degree.

The issue before me is not whether Applicant is still legally liable for any or all of her outstanding debts, but whether she has presented sufficient evidence of extenuation, mitigation or changed circumstances to warrant a favorable security clearance decision. Her remaining unpaid debt does not constitute a security risk. In 2006, she began repayment of her delinquent debt. She has a professional position with a good income and stands ready to proceed with her remaining payment plan.

Whole Person Analysis

I have considered both the record and Applicant in light of the “whole person” concept. She is an earnest, mature woman currently in a professional position in the defense contractor industry. She did her best to seek financial solutions that would work for her in the long term. Her testimony at the hearing was candid and straightforward. At the hearing she acknowledged the life style that she and her husband had. However, the 2002 bankruptcy was a legitimate method of dealing with the financial delinquencies. She is open, honest and has not hidden the situation. Her separation and divorce exacerbated financial issues. She firmly believes she is handling her debt properly. Her method of paying the remaining debt is a reasonable way to resolve the debts. She has not incurred any other delinquent debt in two years. Her financial circumstances have improved. The potential for pressure, coercion, exploitation, or duress is low. She is current on his financial obligations, and has a very positive employment history since 2005. A greater awareness of financial responsibilities will result in a continuously improving trend of financial circumstances.

In sum, the likelihood of new debt problems is low. Applicant's financial case shows her willingness to utilize her repayment plan to resolve her delinquent debts. However, three SOR debts remain. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude she has mitigated the security concerns pertaining to financial considerations. 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 (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
Subparagraph 1.m.	For Applicant

DECISION

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

Noreen A. Lynch.
Administrative Judge