

KEYWORD: Financial

DIGEST: Applicant is a 51-year-old community planner working for a defense contractor. She had four alleged debts listed in the statement of reasons (SOR) totaling approximately \$38,000. She paid almost \$18,000 in the recent past. She has a repayment plan for the remaining two debts. Her debt problems resulted from separation and divorce. 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: 06-23933.h1

DATE: 06/13/2007

DATE: June 13, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-23933
)	
Applicant for Security Clearance)	
)	

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

APPEARANCES

FOR GOVERNMENT

John B. Glendon, Esq., Department Counsel

FOR APPLICANT

Wesley D. Hassler, Esq.

SYNOPSIS

Applicant is a 51-year-old community planner working for a defense contractor. She had four alleged debts listed in the statement of reasons (SOR) totaling approximately \$38,000. She paid almost \$18,000 in the recent past. She has a repayment plan for the remaining two debts. Her debt problems resulted from separation and divorce. 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 30, 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 10, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on February 16, 2007. Originally, the case was scheduled for March 8, 2007, but Applicant requested a postponement to arrange for legal representation. After agreement with both counsel, I scheduled a hearing for May 9, 2007.

The hearing was convened as scheduled on May 9, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Three Government exhibits (GE 1-3) were admitted without objection. Applicant's nine exhibits (AE A-I) were admitted into the record without objection. Applicant testified in her own behalf, as reflected in the hearing transcript (Tr.) received on May 18, 2007.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, ¶ 1.a through 1.d are incorporated herein.¹ In addition, after a thorough and careful review of the evidence and exhibits, I make the following findings of fact:

Applicant is a 51-year-old community planner and cultural resources manager working for a defense contractor. She served in the U.S. military from 1974 to 1977. She is twice divorced, and has two grown children.² She held a security clearance from 1976 to 2000 without incident. Applicant graduated from college in 2000.³ She is currently working on her master's degree.⁴ Applicant has been employed with her current employer since 2002.

Early in her second marriage, she and her husband incurred debt, which continued over a period of 13 years. During the marriage, Applicant and her husband both worked. However, her husband would insist that various purchases be made and should be charged to his wife's credit card.

¹Applicant's response to the SOR, dated January 10, 2007.

² Government Ex. 1 (Security Clearance Application, dated January 30, 2006) at 1-13;

³*Id.* at 2.

⁴Tr. 14.

Applicant and her husband argued over the way finances were handled. She was upset when he was not responsive to her requests to address the debts that were mounting. He refused to pay anything toward the marital debt.⁵ She explained that they could not continue in this manner. The relationship was strained and very emotional. They separated in June 2003 ,and the divorce was final in October 2003.

The separation agreement held Applicant liable for the marital debts.⁶ She agreed to accept all the debt in order to get divorced. Applicant's husband remained in the marital home, and Applicant had to find a new residence. As a result, Applicant could not meet all her financial obligations. She prioritized things and paid the expenses associated with the divorce and relocation. She bought a modest town home for \$117,000. Also, her son needed help financially at the same time. She paid for necessities, but made a choice to defer four credit accounts.⁷ She did contact the credit agencies to resolve the issues but never received a phone call in return.⁸ She acknowledged that it was a difficult time to make decisions. However, she was determined to repay the debts.⁹

In 2003, finances became a problem. A credit card debt worth approximately \$12,190, became delinquent and was charged off as a bad debt. Another credit card account for \$6,316.33, was also charged off. Her Visa, worth approximately \$15,989, was charged off.¹⁰ A credit card debt to another account in the amount of \$13,828, was charged off as a bad debt.¹¹ Applicant made no payments on these accounts after 2003.¹²

In November 2005, Applicant's brother died unexpectedly. A little more than one month later, her second brother died.¹³ When her two brothers, who lived out of state, died suddenly, she had to hire an attorney to close their estates. She is the executor of the will for one brother and the other brother had no will. Thus, she also incurred more debt as a result of the up front expenses concerning funerals and settlement of the estates. She is still in the process of administering the estates.¹⁴

⁵Tr. 52.

⁶AE B (Separation Agreement, dated 2003); Tr. 16.

⁷Tr. 22.

⁸Tr. 47.

⁹*Id.*; Initially Applicant disputed the accounts under the Fair Credit Reporting Act, but at the hearing she decided to retract the action.

¹⁰ Response to SOR, *supra*, note 3 at 1.

¹¹ *Id.*

¹²Tr. 60.

¹³AE C and D (Death Certificates).

¹⁴Tr. 23.

Moreover, Applicant's taxes increased due to assets that were included from her brothers' estates. She used her entire savings to pay a tax bill.¹⁵ She does have an IRA account.

In April 2007, Applicant paid two large accounts for a total of \$18,000. Applicant has decided to handle the other two accounts one at a time. She wants to pay or settle the entire amount in one payment. She was insistent that she did not want to promise more than she could actually pay off to her creditors. Her goal is to pay them by the end of the year.¹⁶ She owes approximately \$19,000 to the remaining two creditors. The amount could be less if a settlement offer is accepted.¹⁷

Applicant is a professional with many years of unblemished employment. She held a security clearance for many years without incident.

Applicant earns approximately \$3,600 net a month.¹⁸ Today, Applicant lives within her means and has not acquired any significant debt other than her home mortgage.¹⁹ She is current on her mortgage and she does not have a car loan. She is financially stable. She has a net monthly remainder. She has improved her credit rating. She will have more resources when her brothers' estates are finally settled. She accepts responsibility for paying her debts.

POLICIES

The revised Adjudicative Guidelines (AG) 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.

¹⁵Tr. 23-24.

¹⁶Tr. 58.

¹⁷Tr. 72.

¹⁸Government Ex. 2 (Credit Bureau Report, dated March 2, 2006) at 1-9.

¹⁹Government Ex. 3 (Credit Bureau Report, dated November 29, 2006) at 1-3.

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.²⁰ The government has the burden of proving controverted facts.²¹ The burden of proof is something less than a preponderance of evidence.²² 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.²³ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁴

No one has a right to a security clearance²⁵ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁷ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²⁸ 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.*²⁹

²⁰ ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).

²¹ ISCR Case No. 97-0016 at 3 (App. Bd. Dec 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

²² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

²³ ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

²⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

²⁵ *Egan*, 484 U.S. 518, at 531.

²⁶ *Id.*

²⁷ *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

²⁸ Executive Order 10865 § 7.

²⁹ AG ¶ 18.

In this matter, the government provided substantial evidence that Applicant accrued four delinquent debts over the years. Her credit report confirms the debts, and Applicant admits there are still two outstanding debts. 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 her. Several incidents occurred in Applicant's life over which she had little or no control. Her separation and divorce, combined with her husband's irresponsibility with credit card debt contributed to Applicant's acquisition of delinquent debt. She agreed to accept all the debt in order to get divorced. She paid on the credit accounts until 2003 but then decided to prioritize. The deaths of her two brothers in 2005 compounded her situation. 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 was open and honest during her security application process. The delinquent debt occurred during her second marriage. She has not accumulated any other frivolous debt. She has increased her credit score. She has maintained a security clearance for many years without incident. Therefore, Financial Considerations Mitigating Condition (FC MC), ¶ AG 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*) applies.

Applicant did not receive financial counseling. However, she has paid more than half the delinquent debt, albeit recently. 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 did not have sufficient income to pay the entire four delinquent credit accounts. Granted, she was employed but she still decided it was financially sound to make lump payment sums. In 2007, she began paying her debts. This good-faith effort will continue. 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 2007, she began repayment of her delinquent debt and will have sufficient resources to pay her last two debts this year. She has a professional position with a good income and stands ready to proceed.

Whole Person Analysis

I have considered both the record and Applicant in light of the "whole person" concept. She is an earnest, mature woman who served her country. She maintained a security clearance for many

years without adverse incident. She is currently in a professional position in the defense contractor industry. Her testimony at the hearing was candid and straightforward. At the hearing she acknowledged the financial delinquencies would be considered a negative. She is open, honest and has not hidden the situation. She believes this 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 her financial obligations, and has a very positive employment history. 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 resources. 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

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