

KEYWORD: Financial

DIGEST: Applicant's accrual of approximately \$25,000 of delinquent debt over the past eight years generates a security concern, which she failed to mitigate. Clearance is denied.

CASENO: 04-10703.h1

DATE: 01/29/2007

DATE: January 29, 2007

In re:	)	
	)	
	)	
-----	)	ISCR Case No. 04-10703
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
MARC E. CURRY**

**APPEARANCES**

**FOR GOVERNMENT**

Fahryn E. Hoffman, Esq., Department Counsel  
Francisco Mendez, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

\_\_\_\_\_ Applicant's accrual of approximately \$25,000 of delinquent debt over the past eight years generates a security concern, which she failed to mitigate. Clearance is denied.

## STATEMENT OF THE CASE

On June 20, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it was clearly consistent with the national interest to grant or continue a security clearance.<sup>1</sup> The SOR alleged facts which raise a security concern under Guideline F (financial considerations). Applicant answered the SOR on July 11, 2005, and requested an administrative decision in lieu of a hearing. Department Counsel then submitted a File of Relevant Material on October 20, 2005. In response, Applicant, on August 5, 2005, requested a hearing.

The case was assigned to me on September 6, 2006. DOHA issued a notice of hearing on September 27, 2006, scheduling it for October 30, 2006.

The hearing was held as scheduled. During the hearing, I received nine government exhibits, one Applicant exhibit, and the testimony of Applicant. DOHA received the transcript on November 16, 2006.

## RULING ON PROCEDURE

On August 30, 2006, department counsel filed a motion to amend the SOR by revising subparagraphs 1.a through 1.d, 1.f, 1.g, 1.j, 1.l, 1.m, 1.n, 1.q, and 1.r through 1.t, and adding subparagraphs 1.aa through 1.bb. She provided a copy of the motion to Applicant who received it in advance of the hearing.<sup>2</sup> At the hearing, Applicant did not object to the motion, and I granted it. During the hearing, Applicant admitted all of the amended allegations except subparagraph 1.f.<sup>3</sup>

At the close of the hearing, I left the record open through November 13, 2006, and ordered department counsel to redraft the SOR to incorporate both the aforementioned amended subparagraphs, and the ones that were not amended (1.e, 1.h, 1.i, 1.k, 1.m, 1.o, 1.p, and 1.u through 1.z). Department counsel submitted a consolidated SOR on November 3, 2006.<sup>4</sup>

## FINDINGS OF FACT

\_\_\_\_\_ I have incorporated Applicant's admissions into the findings of fact. In addition, I make the following findings of fact.

Applicant is a 46-year-old, single woman with one child, age 13. She works as a data entry technician, and has a high school diploma in addition to some vocational training.

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<sup>1</sup>This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

<sup>2</sup>Tr. 6.

<sup>3</sup>Applicant originally also denied 1.a, 1.d, 1.o, 1.p, 1.q, and 1.bb. During her testimony, she admitted them.

<sup>4</sup>Tr. 110-112.

In December 1999, Applicant lost her job, and remained unemployed through July 2000.<sup>5</sup> During this time, a friend approached her with an investment proposal in which she was promised \$25,000 if she deposited \$5,000 in a foreign, offshore bank.<sup>6</sup> Applicant accepted the proposal. At her friend's instruction, she wrote a check for \$5,000 to an individual whom she was told would deposit the money on her behalf.<sup>7</sup> She had never met this individual prior to writing the check, and the amount of the check represented all of her severance pay.<sup>8</sup>

Applicant received neither the \$20,000 of anticipated profit, nor a return of her original investment capital. She never sought legal recourse against the person to whom she paid the money.<sup>9</sup>

During this same period of unemployment, Applicant opened a credit card account with a high-end department store.<sup>10</sup> It grew delinquent shortly thereafter.<sup>11</sup>

Applicant experienced successive periods of unemployment in October 2000, and from July 2001 through March 2002.<sup>12</sup> During these periods, she opened six additional credit card accounts.<sup>13</sup> One was for another high-end department store.<sup>14</sup> All grew delinquent.

By October 2005, Applicant was delinquent on 20 additional accounts.<sup>15</sup> Currently, her total delinquent indebtedness equals approximately \$25,000. One of them, owed to a property management company in the amount of \$1,155, resulted in a judgment entered against her in 2004.<sup>16</sup>

In the summer of 2005, Applicant retained a credit repair agency to help her with her finances.<sup>17</sup> According to their agreement, it was supposed to help her reduce her indebtedness by negotiating with her creditors. No record evidence exists with respect to whether the credit repair

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<sup>5</sup>Tr.46.

<sup>6</sup>Tr. 101.

<sup>7</sup>*Id.*

<sup>8</sup>*Id.*

<sup>9</sup>Tr. 103.

<sup>10</sup>Tr. 104.

<sup>11</sup>Amended SOR ¶1.l; Tr. 29.

<sup>12</sup>Tr. 104-106.

<sup>13</sup>Tr. 106-107.

<sup>14</sup>Amended SOR ¶1.k; Tr. 106.

<sup>15</sup>Exhibit 8, Credit Bureau Report dated October 12, 2005.

<sup>16</sup>Amended SOR ¶1.x; Tr. 35.

<sup>17</sup>Tr. 57.

agency was to provide financial counseling to Applicant. Nevertheless, any services it provided were inconsequential because it went out of business shortly after she retained it.<sup>18</sup>

Currently, Applicant plans to pay the debts listed in subparagraphs 1.a, 1.s, and 1.p after she researches them to ascertain the exact amount owed.<sup>19</sup> Also, she asserts that she paid the debts listed in subparagraphs 1.b, 1.I, and 1.v, but provided no evidence at the hearing. Similarly, she provided no evidence detailing the outcome of her dispute with the creditor listed in subparagraph 1.f.<sup>20</sup> She promised to begin paying the remainder of the delinquencies in the week following the hearing, after she receives an anticipated \$3,000 loan from her cousin.<sup>21</sup>

In approximately May 2006, Applicant developed a payment plan in which she was to begin satisfying her debt as soon as she received a loan from a friend. She abandoned the plan after the loan did not materialize.<sup>22</sup>

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (mitigating conditions).

An administrative judge need not view the adjudicative guidelines as inflexible rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

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<sup>18</sup>*Id.*

<sup>19</sup>Tr. 20, 25, and 71, respectively.

<sup>20</sup>Tr. 61.

<sup>21</sup>Tr. 86.

<sup>22</sup>Tr. 66.

The following adjudicative guideline is raised:

Guideline F - Financial Considerations: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the conclusions below.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is “clearly consistent with the national interest.”<sup>23</sup> In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

The Government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the Government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Applicant’s loyalty is not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

## CONCLUSIONS

### **Financial Considerations**

Over the years, Applicant accrued significant delinquent debts that she has yet to start resolving. Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*), and FC DC E2.A5.1.2.3. (*Inability or unwillingness to satisfy debts*) apply.

I have considered all of the mitigating conditions, and conclude none apply. She has been experiencing financial problems since 1999. Therefore, they are neither remote nor isolated. Moreover, her contention that they were caused by successive periods of unemployment has little

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<sup>23</sup>See generally, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

probative value in light of her decision to invest all of her severance pay in a questionable investment scheme, and open two high-end credit card accounts while unemployed.

Her promise to begin paying creditors after the hearing when she received a loan was similarly not dispositive, because a similar payment plan failed six months ago when an anticipated loan did not materialize. Moreover, “[a] promise to take action in the future, however sincere, is not a substitute for evidence that Applicant is taking timely, concrete steps to address delinquent debts.”<sup>24</sup> Applicant has not mitigated the financial considerations security concern.

### **Whole Person Concept**

Applicant’s 1999 decision, while unemployed, to give her severance pay to an individual whom she had never met, with the expectation that the individual would invest it on her behalf, was ludicrous. Even if the squandering of her severance pay is not considered, she clearly has problems managing her finances, and has not attempted to remedy them by completing financial counseling. Consequently, she has not rehabilitated herself, and the likelihood of continuation of her financial problems remains unacceptably high.

### **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:	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:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.I:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant

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<sup>24</sup>ISCR Case No. 01-03055 at 2 (App. Bd. March 21, 2002).

Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	Against Applicant
Subparagraph 1.x:	Against Applicant
Subparagraph 1.y:	Against Applicant
Subparagraph 1.z:	Against Applicant
Subparagraph 1.aa:	Against Applicant
Subparagraph 1.bb:	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.

Marc E. Curry  
Administrative Judge