

KEYWORD: Financial

DIGEST: Applicant has eleven delinquent debts totaling approximately \$14,000. Two have been settled. The remaining nine have not been paid nor a repayment plan established. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from her unpaid debts. Clearance is denied.

CASENO: 05-16198.h1

DATE: 06/07/2007

DATE: June 7, 2007

_____)	
In re:)	
)	
-----)	ISCR Case No. 05-16198
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 has eleven delinquent debts totaling approximately \$14,000. Two have been settled. The remaining nine have not been paid nor a repayment plan established. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from her unpaid debts. Clearance is denied.

STATEMENT OF THE CASE

On June 22, 2006, 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 finding¹ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR set forth reasons why a security clearance could not be granted or continued due to Financial Considerations security concerns.

On September 13, 2006, Applicant answered the SOR and requested a hearing. On September 27, 2006, Applicant requested not to have a hearing and chose to have the decision made based upon the paperwork previously submitted. (Item 4) On March 16, 2007, Applicant received the File of Relevant Material (FORM) dated March 5, 2007. Applicant was informed she had 30 days to respond to the FORM and supply additional information. A response was due on April 15, 2007. No response was received. On May 2, 2007, I was assigned the case.

FINDINGS OF FACT

The SOR alleges security concerns for Financial Considerations. Applicant admitted being indebted on 11 debts totaling approximately \$14,000. This admission is incorporated herein as findings of fact. After a thorough review of the record, I make the following findings of fact.

Applicant is 45 years old, has worked for a defense contractor since 2002, and is seeking to obtain a security clearance. From March 1980 until March 2000, Applicant was in the United States Air Force, achieving the grade of Technical Sergeant (E-6).

In 2004, Applicant completed a Security Clearance Application, Standard Form (SF) 86. (Item 5) In response to question 38, concerning her financial delinquencies greater than 180 days, she listed six debts, which totaled approximately \$16,000. In March 2006, in response to interrogatories (Item 6), Applicant indicated she had paid a department store bill (SOR paragraph 1.f). She indicated she had \$2,831 in net monthly income, \$1,925 in monthly expenses, and \$275 in monthly debts, which left a monthly net remainder of \$630.

Applicant's August 2006 credit report (Item 3) indicates the SOR paragraph 1.f debt was legally paid in full for less than full balance. Her February 2007 credit report (Item 9) indicates settlement was accepted on this account. The February 2007 credit report also states settlement was accepted on the SOR paragraph 1.e debt. There is no evidence that the remaining nine debts have been paid.

Applicant's outstanding obligations are reflected in her credit reports dated: December 2004 (Item 7), May 2006 (item 8), September 2006 (Item 3), and February 2007 (Item 9). Some of the debts are reflected in her June 2004 SF 86 (Item 5).

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

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth 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 guideline to be applied here is Guideline F, Financial Considerations.

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.²

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

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

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.

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.

The Applicant admitted owing 11 past due debts totaling approximately \$14,000. Disqualifying Conditions (DC) 1 (E2.A6.1.2.1 *A history of not meeting financial obligations*) and 3 (E2.A6.1.2.3 *Inability or unwillingness to satisfy debts*) apply.

Applicant's credit reports indicate settlement has been reached with her creditors as to the debts listed in SOR paragraph 1.e and 1.f. Mitigating Condition (MC) 6 (E2.A6.1.2.6 *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies to these two debts. I find for Applicant as to these two debts.

None of the mitigating conditions apply to the remaining nine debts. MC 1 (E2.A6.1.2.1 *The behavior was not recent*) does not apply. Even though the initial debts were incurred some time ago, the debts remain unpaid, and therefore the conduct is considered recent. MC 2 (E2.A6.1.2.2 *It was an isolated incident*) does not apply because there are nine debts that remain unpaid. There was no showing the debts were caused by factors beyond Applicant's control. Therefore, MC3 (E2.A6.1.3.3 *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)*) does not apply. MC4 (E2.A6.1.3.4 *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 because there has been no showing Applicant has received financial counseling nor is there any indication her financial difficulties are under control.

For MC 6 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 except for the two previously listed debts. Because the debts remain unpaid and none of the mitigating conditions apply, I conclude Applicant has not mitigated the security concern based on financial considerations.

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.

The awarding of a security clearance is not a once in a life time occurrence, but is based on current disqualifying and mitigating conditions. Although the evidence of mitigating and

rehabilitation is insufficient at this time the decision not to award a security clearance 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 DoD security clearance. Should Applicant be afforded an opportunity to reapply for a security clearance in the future and she were to arrange satisfactory repayment plans with her creditors to repay her delinquent accounts, or pay her debts, she may well demonstrate persuasive evidence of security worthiness. But that time has not yet arrived. Because the Applicant meets the disqualifying conditions and none of the mitigating conditions as to the remaining nine debts, the Financial Considerations security concern is resolved against the Applicant. 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 APPLICANT

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For 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

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