

KEYWORD: Financial

DIGEST: Applicant has delinquent debts in excess of \$23,000. Applicant was questioned about his finances in December 2004. Although he has been employed in his current job for three and a half year, there has been no payment on any of the debts listed in the Statement of Reasons. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from Applicant's delinquent accounts. Clearance is denied.

CASENO: 06-00384.h1

DATE: 08/22/2007

DATE: August 22, 2007

In re:	)	
	)	
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SSN: -----	)	ISCR Case No. 06-00384
	)	
Applicant for Security Clearance	)	
	)	

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

**APPEARANCES**

**FOR GOVERNMENT**

James F. Duffy, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has delinquent debts in excess of \$23,000. Applicant was questioned about his finances in December 2004. Although he has been employed in his current job for three and a half year, there has been no payment on any of the debts listed in the Statement of Reasons. The record

evidence is insufficient to mitigate or extenuate the negative security implications stemming from Applicant's delinquent accounts. Clearance is denied.

### **STATEMENT OF THE CASE**

On October 25, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it 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 Applicant. The SOR set forth reasons why a security clearance could not be granted or continued due to financial considerations security concerns.

On November 29, 2006, Applicant answered the SOR and did not request a hearing. On May 30, 2007, a File of Relevant Material (FORM) was prepared and sent to Applicant. On July 2, 2007, Applicant responded to the FORM. Department Counsel did not object to the material. Applicant's response was admitted into the record. On July 26, 2007, I was assigned the case.

### **FINDINGS OF FACT**

The SOR alleges security concerns for financial considerations. Applicant denies four of the debts and admits the remaining six debts. 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 41-year-old force protection officer who has been employed since January 2004 and is seeking to obtain a security clearance. Applicant served 10 years on active duty with the U.S. Navy and served 10 years with the U.S. Naval Reserves and U.S. Air Force Reserves. He was honorably discharged from each. At age 60, Applicant will be entitled to retirement pay. Applicant is married with six children.

Applicant's credit problems arose in mid-2002 to 2003. Applicant had a job at a bank earning \$45,000 annually. He had been employed for seven years before his job was down sized. The family income was reduced from \$70,000 to \$29,000, when the household had to rely solely on his wife's income. At that time, he surrendered the SUV and payments to his creditors became irregular. In November 2006, Applicant in his answer (Item 4) to the SOR states his financial problems were contributed to by his wife's pregnancy and illness. However, Applicant's December 2004 (Item 6) sworn statement failed to mention his wife's difficult pregnancy or illness.

In December 2004, Applicant was asked about his finances and he provided a sworn statement in which he acknowledged a telephone bill (\$149, SOR 1.a), two credit card debts (\$1,666 and \$4,939, SOR 1.d and 1.e) and a mail order debt (\$471, SOR 1.f). Applicant stated he did not intend to pay the finance company related to his truck loan (\$12,927, SOR 1.b) because they failed to work with him to allow him to keep the truck. In November 2004, Applicant completed a personal financial statement (Item 7) in which he listed the two credit card debts, a Master Card debt, a student loan, and the mail order creditor. The monthly payments would have totaled \$325, which

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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.

if made, would have left him with a net remainder of a negative \$268.86. There is no documentation that payments were ever made on these accounts.

In March 2005, Applicant completed another personal financial statement (Item 9) which did not reflect debt repayment except for his student loan (\$25) and vehicle loan. His monthly net remainder was \$37.14.

In 2005, Applicant turned over the management of his financial affairs to his wife. Applicant asserts his spouse is negotiating with certain creditors about some of the delinquent debt. Applicant failed to document any of the negotiations. Applicant asserts that since he turned over the running of their financial affairs to his wife, their bills have been current.

As of July 2007, Applicant and his spouse have net monthly income of \$5,800, net monthly expenses of \$2,500, and \$2,200 in monthly debt repayment, resulting in a net monthly remainder of \$1,000. Applicant's home is valued at \$247,000 on which he has mortgages of \$243,000, resulting in equity of \$4,000. Applicant has \$51,000 in other assets including savings, stocks, and bonds and \$21,000 in other debt, which results in equity of \$21,000.

In 2006, Applicant opened four new credit card accounts. (Item 12) Applicant's credit reports dated July 2004 (Item 10), March 2006 (Item 11), and March 2007 (Item 12) list ten past due or delinquent accounts totaling approximately \$25,600. Half of the delinquent debt (approximately \$13,000) is the result of a repossessed SUV/truck. A summary of the debts follows:

SOR 1	Creditor	Amount	Current Status
a	Telephone bill.	\$149	Applicant admits and alleges his spouse is negotiating with creditor. No documentation was provided.
b	Repossessed SUV/truck.	\$12,927	Applicant admits the truck was repossessed, but refuses to pay because creditor failed to work with him so he could keep the truck. (Item 6, 11)
c	Department store debt.	\$2,164	Applicant denies the debt. No documentation was provided. (Item 11)
d	Credit card debt. Same debt as k.	\$1,666	Applicant admits and states creditor has lost the records. No documentation was provided.
e	Credit card debt.	\$4,939	Applicant admits and states creditor has lost the records. No documentation was provided.
f	Mail order seller debt.	\$471	Applicant admits and alleges his spouse is negotiating with creditor. No documentation was provided.

g	Collection for bank debt.	\$737	Applicant admits and alleges his spouse is negotiating with creditor. No documentation was provided.
h	Debt.	\$437	Applicant admits, but disputes the amount owed. (Item 11)
i	Collection agency.	\$2,026	A duplication of SOR 1.d. (Item 11)
j	Utility bill.	\$439	Applicant admits and alleges his spouse is negotiating with creditor. No documentation was provided. Applicant alleges the debt record was lost. (Item 12)
	Total debt listed in SDI	\$25,689	

### **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.<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 his 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 his finances so as to meet his 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 denies four of the ten debts. Debts SOR 1.d (\$1,666) and SOR 1.i (\$2,026) are the same debt. Applicant admits owing SOR 1.d and denies SOR 1.I, the same debt. Applicant denies the vehicle repossession debt (SOR 1.b, \$12,927). He admits the vehicle was repossessed, but refuses to pay the balance due because the creditor failed to work with him to allow him to keep the vehicle. Applicant admits owing six debts totaling approximately \$8,400. Disqualifying Conditions (DC) 19 (a) inability or unwillingness to satisfy debts and 19 (c) a history of not meeting financial obligations apply.

None of the Mitigating Conditions (MC) apply in the Applicant’s favor. MC 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, does not apply because there are numerous debts and, even though the obligations were not recently incurred, the delinquent debts remain. There is insufficient evidence to establish the conduct is unlikely to recur.

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

In July 2002, Applicant lost his \$45,000 job due to downsizing. He was asked about his debts in December 2004 (Item 6). Applicant has been employed in his current job for three and a half years and has yet to show payment on a single bill. He asserts his wife is now handling the family's finances and all the debts are current. However, he provides no documentation supporting this assertion. He also asserts his financial problems were contributed to by his wife's difficult pregnancy and illness. Her pregnancy and illness may have had some impact on Applicant's finances, but he failed to document the extent of the impact.

Sufficient time has passed since Applicant has obtained his current job to have made payment on at least one of the debts listed in the SOR. I find 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, does not apply. Applicant has not acted responsibly under the circumstances.

There is no evidence Applicant has sought financial counseling nor has he demonstrated a change in his financial management. There no clear indication the problem is being resolved or under control, even though Applicant asserts all his bills are now current and his wife now handles the family finances. MC 20 (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) applies when the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts to apply 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 his debts is needed, which is not present here.

Applicant disputes the amount owed in SOR 1.g (\$737). He says he will not repay the debt arising from the repossession of his truck because the creditor did not work with him to allow him to keep the vehicle. However, Applicant's assertions, that the amount owed on one debt is incorrect and he did not like the creditor's conduct, are insufficient to apply MC 20 (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Affluence has not been alleged, therefore MC 20 (f) the affluence resulted from a legal source of income, does not apply. Because he has failed to document payment of his debts, I find against Applicant 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. After weighing the disqualifying and mitigating conditions and evaluating the evidence in the context of the "whole person," I conclude Applicant has not mitigated the security concern based on financial considerations.

## **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:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For 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**