

KEYWORD: Financial

DIGEST: Applicant has a history of financial delinquencies, and she admitted four of the seven debts alleged in the SOR. While she provided credible evidence she had paid in full three of her delinquent accounts, she failed to mitigate security concerns under Guideline F, Financial Considerations. Clearance is denied.

CASENO: 06-10147.h1

DATE: 07/12/2007

DATE: July 12, 2007

In Re:)	
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-----)	ISCR Case No. 06-10147
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
JOAN CATON ANTHONY**

APPEARANCES

FOR GOVERNMENT

James F. Duffy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

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Applicant has a history of financial delinquencies, and she admitted four of the seven debts

alleged in the SOR. While she provided credible evidence she had paid in full three of her delinquent accounts, she failed to mitigate security concerns under Guideline F, Financial Considerations. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On November 16, 2006, under the applicable Executive Order¹ and Department of Defense (DoD) Directive (Directive),² DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision – security concerns raised under Adjudicative Guideline F (Financial Considerations), promulgated December 29, 2005, and applicable in DoD adjudications of SORs issued as of September 1, 2006, and thereafter. With the SOR, DOHA provided Applicant with a copy of the Directive and the applicable Guidelines. Applicant answered the SOR in writing on December 19, 2006, and requested that her case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on May 9, 2007. The FORM contained documents identified as Items 1 through 11. By letter dated May 16, 2007, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on May 21, 2007. She filed additional information within the required time period. Department Counsel did not object to Applicant's submission. On June 28, 2007, the case was assigned to me for a decision. After a careful review of Applicant's submission of additional information, I admitted her eight-page submission to the record as Applicant's Exhibit (Ex.) A.

FINDINGS OF FACT

_____ The SOR contains eight allegations of disqualifying conduct under revised adjudicative Guideline F, Financial Considerations. (SOR ¶¶ 1.a. through 1.h.) (Item 1.) Applicant admitted four allegations and denied four. Applicant's admissions are admitted herein as findings of fact.

Applicant is 35 years old and has been employed since September 2005 by a defense contractor as an administrative assistant. From 2001 to 2005, she was employed as a clerk by a school board. She was married for the first time in 1989 and divorced in 1992. Two children were born of that marriage. Applicant married again in 1997 and divorced in 2003. One child was born of that marriage. She has a fourth child, born in 1993. Applicant receives \$469 each month in child support. She married for the third time in 2006, and she reported her husband was helping her with her financial situation. (Item 5, Item 6 at 1, 3-4.)

Applicant has a history of financial delinquencies.³ The SOR alleges Applicant's monthly expenses and debt payments exceed her income, resulting in a negative cash flow of \$159 (¶1.a.). The

¹Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.

²Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.

³Two medical delinquencies alleged in the SOR were assigned for collection in 2000. (Item 9 at 6, 7.)

SOR also alleges she is responsible for financial delinquencies totaling approximately \$10, 244 (¶ 1.b. through 1.h.) (Item 1.)

One of Applicant's financial obligations arises from the repossession of a vehicle, which resulted in a debt, alleged at SOR ¶ 1.b. of approximately \$7,623. Applicant and her second husband purchased the vehicle in 1999, but she asserts she should not be held responsible for the debt, since her second husband was the primary debtor on the loan and she was the secondary debtor. She provided no credible evidence that she was not responsible for the debt. She stated, however, that she would pay the debt if failure to do so would result in the denial of her security clearance. (Items 4, 7, 9, 10, 11.)

In an August 2006 financial statement, Applicant reported her net monthly salary as approximately \$1,862. She reported her husband's net monthly income as \$1,800, and she reported receiving \$469 each month in child support. She listed \$1,970 in total monthly expenses, \$2,320 in debt payments, and a negative net remainder of \$159. (Item 6 at 4.)

In mitigation, Applicant attributed her financial delinquencies to her second husband's abandonment of her and her four children. (Item 4 at 1.) In a submission of November 2006, Applicant provided credible evidence that she owed the debt of \$377 alleged at ¶ 1.c. and had satisfied that debt. (Item 4; Item 7 at 7.) She also provided credible evidence to show that the SOR allegations at ¶¶ 1.g. and 1.h. were redundant and the single debt alleged therein was satisfied. (Items 7, 11.) While Applicant asserted the debt alleged at SOR ¶ 1.f. was also redundant, there was insufficient credible evidence in the record to establish this, and the debt was listed as a separate account and unpaid on her May 2007 credit report. (Item 11.)

In her response to the FORM, Applicant annotated Item 11 to show she had satisfied some of the debts alleged at 1.d. and was continuing to pay on others. She provided a receipt dated April 2007 showing final payment on the debt alleged at SOR 1.e. She stated her financial statement of August 2006 would not have reflected a negative balance if she had correctly listed car expenses of \$250 and \$300 instead of listing a redundant car payment of \$595. (Ex. A.)

Applicant states she has had "informal credit counseling," but cannot document receiving formal credit counseling. (Ex. A.)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is

predicated upon the applicant meeting the security guidelines contained in the Directive.

By Memorandum dated August 30, 2006, the Under Secretary of Defense directed implementation of revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), promulgated December 29, 2005, and effective September 1, 2006, as modified. The revised AG replaced the guidelines published in Enclosure 2 to DoD Directive 5220.6 and Appendix 8 to DoD 5200.2-R and apply to all adjudications and other determinations in which a SOR had not been issued by September 1, 2006. Accordingly, since the SOR in this case was issued November 16, 2006, the revised AG apply.

The revised AG set forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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 clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline F—Financial Considerations

An applicant's failure to live within his or her 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. *See* Guideline F, ¶ 18.

In the SOR, DOHA alleged Applicant was responsible for seven unsatisfied delinquent debts totaling approximately \$10,244. The allegations raised security concerns under two Guideline F

disqualifying conditions, ¶¶ 19(a) and 19(c).⁴ Applicant admitted responsibility for debts totaling approximately \$ 2,354 and stated she did not feel responsible for the debt of \$7,623. Applicant provided credible evidence to show payment of the debt alleged at ¶¶ 1.c. She provided credible evidence that the debts alleged at ¶¶ 1.g. and 1.h. were redundant and that the single debt alleged had been paid. She also provided credible evidence that she had paid the debt alleged at ¶ 1.e. and that her calculation of a negative cash flow for August 30, 2006, as alleged at ¶ 1.a., was the result of a reporting error.

Through Applicant's admissions and the record evidence, the Government established that Applicant had a history of not meeting her financial obligations and was unable or unwilling to satisfy her debts as specified in Guideline F, ¶¶ 19(a) and 19(c).

Several conditions could mitigate the security concerns raised by Applicant's remaining financial delinquencies. Unresolved financial delinquency might be resolved if it 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. (Guideline F, ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if the conditions that resulted in the financial problem were largely beyond the person's control, such as loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances. (Guideline F, ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence 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 (Guideline F, ¶ 20(c)) or the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (Guideline F, ¶ 20(d)).

Applicant's acknowledged financial delinquencies are numerous, long-standing, and continue to the present day. Several of her financial delinquencies remain unresolved, suggesting an unwillingness or inability to satisfy debts that is likely to recur. Accordingly, ¶ 20(a) does not apply as a mitigating condition. Applicant attributes her financial delinquencies to her second divorce, which occurred in 2003. While Applicant received monthly child support of \$469, her status as a single parent, responsible for four children, caused financial hardship. However, her security clearance application reflects she has been steadily employed since 2001. Thus, the facts do not of themselves establish that Applicant's unresolved financial delinquencies were largely beyond her control or that she acted reasonably under the circumstances. Nothing in the record suggests Applicant contacted her creditors or otherwise gave them notice of her reduced financial circumstances resulting from her second divorce. Nothing in the record suggests Applicant offered her creditors a plan to meet her obligations responsibly while in reduced circumstances. Accordingly, I conclude ¶ 20(b) applies only in part under the facts of this case.

Applicant asserted she received "informal financial counseling," but did not further specify what she meant. She denied receiving financial counseling that she could document and define. Applicant worked on her own, especially after receiving the SOR, to satisfy her creditors and should be commended for her efforts to resolve her debts. However, she has not established a track record of timely payment of her financial obligations, and it is unclear whether her underlying financial

⁴ Guideline F, ¶ 19(a) reads: "Inability or unwillingness to satisfy debts." Guideline F, ¶ 19(c) reads: "A history of not meeting financial obligations."

problems are resolved or under control. Accordingly, I conclude that ¶ 20(c) is inapplicable.

Several of Applicant's delinquencies were assigned for collection in 2000, 2001, and 2002. She did not address many of her delinquencies until after receiving the SOR, and this leads to a concern that she initiated her efforts to pay her creditors because of her concerns about her security clearance and not because of her awareness of her obligation to pay her honest debts. Applicant has a history of financial problems. Her recent actions to resolve some of her debts and not to address her largest debt, which resulted from the vehicle repossession, unless it would affect her security clearance, leads me to conclude Applicant's conduct does not warrant the application of ¶ 20(d). *See* ISCR Case No. 01-21030 at 3-4 (App. Bd. May 7, 2004).

Whole Person Analysis

The revised AG and the Directive require that the adjudicative process in a security clearance case not only assess conduct under the adjudicative guidelines, but it must also reflect a careful weighing of a number of variables known as the whole person concept. The factors to be considered in a whole person analysis include the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the extent to which participation is voluntary; the presence or absence of rehabilitation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and, the likelihood for continuation or recurrence.

Applicant is a mature adult who has a history of financial over-extension. Her history of not meeting her financial obligations and her inability to pay her debts over a period of several years raises a security concern because it suggests a lack of good faith. Since she has not sought consumer credit counseling or assistance in learning how to manage her finances, Applicant has failed to demonstrate her delinquencies will not continue to pose security concerns in the future.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6., as amended. I conclude that Applicant failed to mitigate security concerns under Guideline F (Financial Considerations).

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1.: Guideline F:	AGAINST APPLICANT
Subparagraph 1.a. :	For Applicant
Subparagraph 1.b. :	Against Applicant
Subparagraph 1.c. :	For Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	For Applicant
Subparagraph 1.h.:	For Applicant

DECISION

In light of all of 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.

Joan Caton Anthony
Administrative Judge