

KEYWORD: Financial

DIGEST: Applicant incurred approximately \$39,000 in delinquent debt, including unpaid federal taxes from 1999 and 2001. Despite her recent payments, she has failed to mitigate the security concerns raised under the financial considerations guideline. Applicant's eligibility for a security clearance is denied.

CASENO: 06-10320.h1

DATE: 05/31/2007

DATE: May 31, 2007

In re:	)	
	)	
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SSN: -----	)	ISCR Case No. 06-10320
	)	
Applicant for Security Clearance	)	
	)	

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

**APPEARANCES**

**FOR GOVERNMENT**

Rita C. O'Brien, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant incurred approximately \$39,000 in delinquent debt, including unpaid federal taxes from 1999 and 2001. Despite her recent payments, she has failed to mitigate the security concerns

raised under the financial considerations guideline. Applicant's eligibility for a security clearance is denied.

## STATEMENT OF THE CASE

On December 20, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating that it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.<sup>1</sup> The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued.

On February 12, 2007, Applicant submitted a notarized response to the SOR, and elected to have her case decided on the record in lieu of a hearing. Department Counsel submitted the Government's written case on March 1, 2007. Applicant received a complete file of relevant material (FORM) on April 22, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's case.<sup>2</sup> Applicant did not submit additional information. The case was assigned to me on May 24, 2007.

## FINDINGS OF FACT

Applicant admitted the allegations in her SOR response under Guideline F except 1.c and 1.f.<sup>3</sup> The admissions are incorporated as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 52-year-old employee of a defense contractor. After graduation from high school, she attended college. She has worked for her current employer since 2004. She is divorced with one adult child.<sup>4</sup> On October 5, 2004, she completed her security clearance (SF 86) application.<sup>5</sup>

Applicant was steadily employed after college (1986), except for a brief period of two months in 2000 and nine months in 2002-2003. She held a managerial position for 12 years and received numerous promotions. After working several years, she returned to complete a graduate degree in 2003. She worked as a graduate assistant until graduation in 2004. Since 2004, she has been employed by the defense contractor earning a good salary. She had a net monthly remainder of \$529 in October 2005.

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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>The government submitted eight items in support of its contentions.

<sup>3</sup>Item 3 (Applicant's Answer to SOR, dated February 12, 2007) at 1-3.

<sup>4</sup>Item 4 (Application for Security Clearance (SF 86), dated October 5, 2004) at 1-14.

<sup>5</sup>*Id.*

Applicant's debts in the SOR total approximately \$39,000. Two debts in the SOR are in dispute.<sup>6</sup> She affirmed that her delinquent debt started in 2002 when she was unemployed and then decided to stop working and attend graduate school. She acquired student loan debt at that time.<sup>7</sup> Multiple accounts were charged off or placed for collection. Several of the debts have been in collection since 2003.<sup>8</sup>

Applicant does not deny that she is indebted to the Internal Revenue Service (IRS) for tax years 1999 and 2001. However, she claims she has been paying \$100 per month since March 2005 and that her federal tax refunds are applied to the debt. She asserts the amount owed is approximately \$5,000. Applicant submitted a monthly statement dated August 28, 2006 from the IRS indicating that her last monthly payment of \$100 was received.

Applicant denies that she is indebted to a collection account for a vehicle that was repossessed in 2003. In her 2005 affidavit she stated she has no intention of paying this \$16,049 debt because the credit company never contacted her after she told them she could not pay for the car. The debt was verified by the company and is still on her recent credit report.

Applicant disputed a debt charged off in the amount of \$338 because she stated it has been paid in full since January 2006. This account still appears on her recent credit report.

After her security clearance investigation, Applicant began to make monthly payments on the debts alleged in the SOR (1.a, 1.b, and 1.d). She provided some documentation to substantiate this. However, some of the accounts are still listed on her 2006 credit report.

Applicant's monthly net income is \$2,512.58. After expenses, her monthly net remainder is \$638.58 as of August 2006.<sup>9</sup>

## POLICIES

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."<sup>10</sup> In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

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<sup>6</sup>Item 3, *supra* note 3, at 1-2.

<sup>7</sup>The student loans are not at issue and are in deferment status.

<sup>8</sup>Item 6 (Credit Bureau Report, dated March 6, 2007) at 1-3.

<sup>9</sup>Item 5 (Applicant's response to Interrogatories and attachments) dated January 2, 2007.

<sup>10</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security 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 adjudicative process factors listed in ¶ 6.3 of the Directive, and AG ¶ 2(a).

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance.”<sup>11</sup> An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.<sup>12</sup> An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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.<sup>13</sup>

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.<sup>14</sup> Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.<sup>15</sup> An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>16</sup> Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.<sup>17</sup> The same rules apply to trustworthiness determinations for access to sensitive positions.

## CONCLUSIONS

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<sup>11</sup> Directive, ¶ E2.2.1.

<sup>12</sup> Directive, Revised Adjudicative Guidelines (AG) 2 (a)(1)-(9).

<sup>13</sup> *Id.*

<sup>14</sup> Directive, ¶ E3.1.14.

<sup>15</sup> Directive, ¶ E3.1.15.

<sup>16</sup> ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).

<sup>17</sup> Directive, ¶ E2.2.2.

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F of the revised Adjudicative Guidelines (AG) most pertinent to the evaluation of the facts in this case.

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

In this matter, the government provided substantial evidence that Applicant accrued delinquent debts with an approximate total balance of \$39,000. She admits they are still outstanding debts. Her 2006 credit report confirms debt that she had on her 2004 credit report. Consequently, Financial Considerations Disqualifying Conditions (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. I considered the 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*). It does not apply because Applicant still carries a significant amount of delinquent debt. One collection account is from 2001. Despite steady employment, she has not made payments on these debts until recently.

Applicant was unemployed for two months in 2000 and nine months from May 2002 until 2003. Other than those 2 periods, she has been steadily employed since 1986, receiving numerous promotions. She has been in her current position since 2004 with a monthly net remainder. In light of the relatively short period of unemployment during Applicant's working career, and several years of earning a substantial salary, she has not provided evidence or explanation to support the 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*).

Applicant incurred some debts in 2003-2004 when she was in graduate school. However, she was not unemployed for that entire time. She worked as a Graduate Assistant for more than 1.5 years. She was earning a salary and could have made some effort to deal with her mounting debts. Applicant's decision to return to school and take on significant additional debt in the form of student loans, does not absolve her from acting responsibly in paying her debts.

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 under control*) does not apply. She has not received financial counseling or developed a structured plan to resolve these debts. Applicant's financial problems remain. It is unlikely they will be resolved in the near future.

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<sup>18</sup>AG ¶ 18.

FC MC AG ¶20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is not applicable. Applicant has not shown that she established a record of steady payments or financial stability. She ignored her federal tax liability for the years 1999 and 2001 until recently. Prior to her security investigation, she had not paid her debts on a regular basis. Thus, I conclude that she did not make a good-faith effort to resolve her debts.

FC MC AG ¶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*) does not apply because Applicant disputed but then ignored the vehicle repossession debt. This is a confirmed debt on her 2006 credit report.

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 determination. Her remaining unpaid debt constitutes a security concern. She has been employed with her current employer since 2004. She has a net monthly remainder that could be used to pay toward the delinquent debt. However, she has chosen not to do that until recently. This raises doubt about her ability to resolve her outstanding debt. Applicant has not mitigated the government's concerns under Guideline F.

### **Whole Person**

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence and the "whole person" in evaluating Applicant's security clearance determination. Even an applicant with a good or even exemplary work history may engage in conduct that has negative implications or presents doubt about her judgment. Despite steady employment, Applicant has accrued multiple delinquent accounts. It is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

### **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

**DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant's request for a security clearance. Clearance is denied.

Noreen A. Lynch  
Administrative Judge