

DATE: December 11, 2007

In re:)
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 -----) ISCR Case No. 06-11903
 SSN: -----)
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 Applicant for Security Clearance)
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)

**DECISION OF ADMINISTRATIVE JUDGE
ELIZABETH M. MATCHINSKI**

APPEARANCES

FOR GOVERNMENT

Fahryn Hoffman, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is legally responsible for about \$15,643 in delinquent consumer credit debt largely incurred in or before 2003 when she and her spouse were still together. She applied in November 2007 for consumer credit counseling assistance and has taken steps to reduce her health care costs through applying for new health insurance and for veteran's benefits. Yet financial considerations are not fully mitigated where she has had to rely on an overdraft account to meet her expenses, and is counting on help from others for the funds to make promised payments to creditors. 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. As required by ¶ E3.1.2 of Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended, DOHA issued a statement of reasons (SOR) on July 10, 2007, detailing the basis for its decision—security concerns raised 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 guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR on August 16, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on October 2, 2007.

I convened a hearing on November 7, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Four government exhibits (Ex. 1-4) were admitted into evidence and Applicant testified, as reflected in a transcript received on November 16, 2007.

The record was open until November 16, 2007, for Applicant to submit documents pertinent to her financial situation. Applicant timely submitted seven exhibits to which the government had no objections. The documents were marked and admitted as Exhibits A-G.

FINDINGS OF FACT

DOHA alleged under Guideline F that Applicant owes delinquent debt totaling \$21,638 to seven creditors (SOR ¶¶ 1.a–1.g). Applicant admitted the debts when she answered the SOR. She averred they were in the process of being resolved with her future ex-husband's cooperation to assume half of the debt since it was incurred just before and during their marriage. As for her share of the debt, she indicated she had dropped her health insurance to obtain a little extra money to pay them and she was working with credit counselors. Yet she testified at her hearing that she dropped her insurance for only one month as she could not afford to do so due to ongoing medication costs and she was not seeking assistance in resolving her debt.

After a thorough consideration of the pleadings, exhibits, and hearing transcript, I make the following factual findings.

Applicant is a 34-year-old administrative assistant who is a contract employee at a federally funded research and development laboratory. She has been separated from her spouse since May 2003, and supports herself on her salary. Applicant has no dependents.

Applicant was in the United States Air Force from September 1992 to May 2000. She was granted an honorable discharge.¹ Applicant held a secret-level security clearance with no security incidents while she was in the service.

Applicant married her spouse in June 1999. He had recently been discharged from the military and was unemployed. She bought their wedding rings for \$2,300 on her credit card (SOR ¶ 1.f). He told her that he would take care of the repayment. Some payments were made but a \$1,933

¹On her November 2005 e-QIP, Applicant listed her military rank as E-3, senior airman. (Ex. 1) The E-3 rate is usually that of an airman first class. The senior airman rate is E-4.

delinquent balance was eventually charged off in March 2003 with \$287 past due. In June 1999, they purchased furniture (SOR ¶ 1.d) and a washer and dryer (SOR ¶ 1.c) for their new home on credit accounts opened only in Applicant's name. A debt balance of \$3,992 for the furniture was charged off and placed for collection in May 2003. A debt balance of \$448 for the washer and dryer was referred for collection in July 2002.

Following her discharge from the service in May 2000, Applicant worked as an office manager for an investment management firm until July 2002. She resigned when she became tired of the lengthy commute, and was unemployed until October 2002. She then worked as a sales clerk for less than six months. From March 2003 to November 2004, she was employed as an administrative assistant at a corporation that does defense work. She was laid off due to lack of a top secret clearance. Applicant separated from her spouse in mid-May 2003, and moved to her own apartment.

Applicant was unemployed from November 2004 to April 2005. She collected unemployment compensation of \$700 every two weeks. In April 2005, she started with her present employer, a subcontractor for a federally-funded research and development laboratory located on the military installation where she had been stationed previously. On November 10, 2005, Applicant executed an electronic questionnaire for investigations processing (e-QIP). She responded "Yes" to question 28 a. ["In the last 7 years, have you been over 180 days delinquent on any debt(s)?"] and disclosed an \$800 furniture debt (SOR ¶ 1.d) owed since July 1999, a \$500 credit card obligation due since June 1999 (SOR ¶ 1.c) for a washer and dryer, a \$1,500 credit card debt unpaid since April 1999 (SOR ¶ 1.f), a retail charge debt of \$1,000 incurred in June 2004 (not alleged, settled in June 2004 after sent for collection), and a \$1,000 personal loan debt due since February 1999 (SOR ¶ 1.a). Applicant explained that she had just paid off her car loan and would be working on her debt that she attributed to unemployment and marital separation. Applicant responded "No" to question 28.b ["Are you currently over 90 days delinquent on any debt(s)?"]. Applicant was granted an interim secret-level clearance for her duties.

A check of Applicant's credit in July 2006 revealed previously undisclosed debts: telephone charges of \$77 in collection since September 2004; retail credit card charges of \$77 due since December 2004; a charged off credit card debt of \$431 (SOR ¶ 1.b); and a \$1,610 past due credit card balance in collection (SOR ¶ 1.e). The furniture debt that she had listed in the amount of \$800 was reportedly delinquent in the amount of \$6,132 (SOR ¶ 1.g). No progress was reported toward resolving those debts she had listed on her security clearance application with the exception of settling the \$1,000 retail charge debt after it had been referred for collection. Applicant also owed overdraft charges of about \$500 largely due to costs incurred to repair her vehicle (\$300 to \$500 in small expenses and \$545 when the car got broken into) from May 2003 to September 2006, moving expenses, and groceries.

In April 2007, Applicant was asked by DOHA to provide documentation showing that she had satisfied or was making payments on her delinquent debt. Applicant furnished documentation showing she had settled on March 17, 2006, her account with the retailer that had reported a \$77 past due balance on her July 2006 credit report. Applicant provided a personal financial statement showing that with monthly payments of \$50 on a \$500 overdraft debt and \$30 on a \$600 MasterCard debt, she was operating at a monthly deficit of \$66. Applicant had monthly prescription costs of \$65 plus an additional \$40 per quarter, medical and dental insurance costs totaling \$454, and yearly

office visit co-pays totaling \$150. She added that she owes back taxes of \$2,000 for 2005 and \$755 for 2006. Applicant submitted a recent credit report of March 9, 2007, confirming she was not making payments on her delinquent debt, which she acknowledged except for the \$77 retail debt:

See credit report for outstanding debts. Have not been making regular payments on most of the older ones because it was debt credited for the wedding and once I was married. I am not paying all of that debt alone, nor can I afford it. A settlement has to be arranged within the divorce as to who will pay what. The items that were debt under my name and my name only that had nothing to do with my spouse or marriage have been paid. (Ex. 2)

A subsequent check of her credit in May 2007 showed no payments on those debts in collection status. The financial history of her delinquent accounts is set forth in the following table.

Debt as alleged in SOR	Delinquency history	Payment status
¶ 1.a \$3,970 credit card debt written off	Installment loan \$7,500 opened Apr 99; paid on time until Feb 01; \$3,970 written off Nov 02.	Unpaid, disputing with her spouse that she is solely responsible.
¶ 1.b \$431 credit card debt charged off	Revolving charge opened May 96; high balance \$2,125; \$448 written off with \$202 past due Dec 03, balance \$431. Reported as past due May 07.	Unpaid.
¶ 1.c \$524 retail store installment account in collection	\$448 for collection Jul 02; \$661 balance Dec 06.	Spouse took the washer and dryer, was supposed to pay her and has not. Unpaid.
¶ 1.d \$5,588 furniture debt in collection	Installment account opened Jun 1999; \$3,992 credit limit charged off May 03, for collection, \$6,132 balance reported May 06, but listed at \$5,496 Feb 07 and \$5,588 May 07	Unpaid.
¶ 1.e \$1,743 credit card debt in collection	\$1,230 for collection Aug 02; \$1,743 balance May 07.	Unpaid.

Debt as alleged in SOR	Delinquency history	Payment status
¶ 1.f \$3,250 credit card debt in collection	Revolving charge opened May 99 for their wedding rings; original balance \$2,300; \$1,933 charged off Mar 03 with \$287 past due; \$3,250 balance in collection Dec 06.	Spouse promised to repay her but has not. Still outstanding.
¶ 1.g \$6,132 in collection	See ¶ 1.d same debt ²	Unpaid.

After she received the SOR, Applicant contacted her spouse by email on August 6, 2007, and demanded that they discuss their marital debt. Applicant's spouse responded that he would pay \$3,753 (half of the debts in SOR ¶¶ 1.a, 1.b, 1.c, 1.e, and 1.f minus \$500 for tires on her car and \$700 for her cell phone) plus half of the actual furniture debt. He believed the furniture debt was about \$3,000 total rather than the \$5,588 reported as delinquent. Applicant's spouse denied any obligation for the debt in SOR ¶ 1.g as he believed it was a consolidation of Applicant's debts incurred before they met. Applicant responded to him that she did not recall having to consolidate before their marriage, but she would have to take his word for it. He indicated that she should attempt to settle with her creditors for lesser amounts, and resolve the smaller debts first. She replied she did not have any extra money and asked for his assistance in keeping her accountable ("I'm not accountable to anyone but myself and that makes it difficult for me to get anything done.").

On August 9, 2007, Applicant contacted a for-fee debt counseling company via the Internet concerning the process of resolving her debt. On August 10, 2007, Applicant informed her spouse that she wanted to discuss resolution of the debt via a debt counselor. He told her that he was working on getting her the money to pay his share of the debt and that she should focus on determining the extent of the debt. Applicant submitted an online application for credit counseling through a debt counseling organization. Applicant did not pursue any debt counseling or repayment through a debt management plan at that time due to her spouse's lack of cooperation.

For about a month from mid-August 2007, Applicant dropped her health insurance to give her extra funds, and she stopped taking medications for her depression after ten years. She resumed health insurance coverage as she realized she needed her medications.

²The debt in SOR ¶ 1.g is very likely the furniture debt. On the March 2007 credit report, the assignee was reportedly collecting for a bank as original creditor. The account number listed for that debt appears on the May 2007 credit report under the name of the same assignee, but with the original creditor listed as the furniture company. It is likely that the furniture company had its financing through a bank, and the date the account with the creditor bank was opened is consistent with when Applicant would have been buying furniture for her new residence. She was married in June 1999 and the account was opened that same month.

As of her November 7, 2007, hearing, Applicant and her spouse had not come to any agreement on resolving the debts incurred during their marriage.³ Applicant and her spouse plan to divorce but have not done so as they cannot afford the costs of filing. Applicant has been unable to contact her spouse by cell phone. She does not have the funds to pay her old debts and lives from paycheck to paycheck.⁴ Applicant is afraid to contact her creditors directly (“I feel very overwhelmed right now and there is really not much I can say to them. I feel like right now I’m doing what I can, living paycheck to paycheck, and I feel very strapped right now.” Tr. 41-42). She estimates that her monthly expenses, which include health and dental insurance costs of \$509.89 and cell phone costs of \$100, exceed her monthly income by about \$300. Applicant is scheduled to begin repaying her income tax debt at \$100 per month starting in late November 2007. The 2005 tax debt was because she had no taxes withheld from her unemployment compensation. She had no prior experience with unemployment compensation and did not realize that taxes had to be paid on that income. The 2006 tax debt is attributed to her employer’s failure to timely honor her request to reduce her exemption to zero and to then withhold an additional \$20 per pay period. Available earnings statements show that she was claiming zero exemptions and having the additional \$20 withheld for taxes as of September 10, 2007, if not before.

As of November 2007, Applicant had taken steps to reduce her medical insurance costs by about \$250 a month through applying for new health insurance. On November 15, 2007, Applicant enrolled online in a nonprofit debt management program. On November 16, 2007, Applicant applied for health benefits from the Department of Veterans Affairs.

Applicant does not have any active credit card accounts. As of April 2007, she owed \$735 on a credit card account with a \$750 limit that she had opened in December 2006. She made \$30 monthly payments on the card until June when she closed the account and arranged to pay \$50 per month toward the balance, which was about \$900 as of her hearing. Applicant estimated her checking account balance at \$14. Applicant was making her rent and car payments on time. She was planning to accept the offers of others for financial assistance in order to be able to make the monthly \$100 income tax and \$50 credit card payments she agreed to. Collection agencies were not aggressively pursuing collection of the old debts as of November 2007.

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for

³Applicant testified that the debt in SOR ¶ 1.a was a credit card that she used before her marriage when her spouse was in the process of obtaining his discharge from active duty military service (Tr. 29, 37). The March 2007 credit report indicates the debt in ¶ 1.a was an installment account with 60 months terms. The debt in SOR ¶ 1.b was a revolving charge account.

⁴Recent earnings statements reflect net pay at \$833.07 biweekly after deducting \$42 for dental insurance and \$467.89 for medical insurance. Her net pay without deductions for medical costs was \$1,277.18, so her monthly net is about \$2,110.25. (Ex. D)

access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). 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 (App. Bd. Dec. 19, 2002).

The revised Adjudicative Guidelines set forth potentially 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 ¶ 6.3 of 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline F—Financial Considerations

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. (AG ¶ 18) Applicant and her spouse overspent at the beginning of their marriage. With her spouse just out of the service and without a job, Applicant charged the \$2,300 cost of their wedding rings to her revolving charge account in May 1999. The following month, they bought over \$3,000 worth of furniture on her credit. They handled the credit extended to her irresponsibly, and several accounts became delinquent while they were still together (SOR ¶¶ 1.a, 1.c, 1.d, 1.e, 1.f). A credit card account (SOR ¶ 1.b) was written off after Applicant and her spouse had separated. Applicant is legally responsible for the debt, even if her spouse also enjoyed the goods and services extended to them in her name only. As of her hearing in November 2007, the debts were unresolved. Disqualifying conditions ¶ 19(a) (inability or unwillingness to satisfy debts), and ¶ 19(c) (a history of not meeting financial obligations) apply.

Applicant’s ability to repay the delinquent debt was compromised by her marital separation in May 2003 and her unemployment from November 2004 to April 2005. Her unemployment compensation of about \$1,400 a month was not sufficient to pay her living expenses, and Applicant relied on overdraft protections to pay for necessities such as groceries and gasoline, as well as repairs to her vehicle. Her employer’s failure to adjust her exemptions and tax withholding amounts was a factor outside of her control that left her more heavily in debt. She also had significant out-of-pocket medical costs related to treatment for depression, including the cost of insurance. These are the type of factors contemplated within mitigating condition ¶ 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), but her history of spending beyond her means is not mitigated by ¶ 20(b).

Applicant remains under significant financial pressure. She reports a negative cash flow after payment of monthly expenses, and has only about \$14 in her checking account. Although the Directive does not require that an applicant be debt free, Applicant presents a mixed record with regard to her recent handling of her financial situation. She opened a new credit card account in December 2006 with a credit limit of \$750. As of November 2007, she owed about \$900 on the account. While she showed good judgment in cancelling the card, and arranging to repay the debt at \$50 monthly, the fact that the debt balance exceeds her credit limit bears troubling implications for her ability to live within her means. She is paying about \$100 per month for a cellular phone which seems excessive given her limited resources. Applicant has admitted that she feels overwhelmed by her financial situation. Her recent applications for consumer credit counseling assistance and for more affordable health insurance warrant consideration of MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts), but it is too soon to safely conclude that her financial problems are likely to be resolved in the near future. Even if she is successful in reducing her monthly health insurance costs by \$250, she would still need to rely on financial help from friends and/or family that has yet to materialize.

Whole Person Analysis

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. AG ¶ 2(a). Applicant held a clearance while she was in military and abided by the rules and regulations concerning the safeguarding of classified information. She is also credited for being candid about her delinquencies, but indicated in November 2005 that she would be working on her delinquent debts. She settled two delinquent consumer credit debts owed to retailers, but had not made any payments on the accounts alleged in the SOR as of November 2007. Her recent efforts to resolve her debts are preliminary and not enough to overcome the concerns for her financial judgment.

FORMAL FINDINGS

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 ⁵

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

⁵The allegation does not represent additional indebtedness, but is resolved against Applicant because she had not taken any action toward satisfying the debt in ¶ 1.d which is likely the same debt.

Elizabeth M. Matchinski
Administrative Judge