

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Between 2001 and 2005, Applicant accrued approximately \$30,000 of delinquent debt. The delinquencies were caused by financial problems generated by her husband's struggling business endeavors. During the past two years, the business has experienced exponential growth, enabling them to satisfy nearly all of the debts. Clearance is granted.

CASENO: 06-12349.h1

DATE: 07/18/2007

DATE: July 18, 2007

In re:)	
)	
-----)	ISCR Case No. 06-12349
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
MARC E. CURRY**

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Department Counsel

FOR APPLICANT

Gary A. Matthews, Esq.
Arnold J. Janicker, Esq.

SYNOPSIS

Between 2001 and 2005, Applicant accrued approximately \$30,000 of delinquent debt. The delinquencies were caused by financial problems generated by her husband's struggling business endeavors. During the past two years, the business has experienced exponential growth, enabling them to satisfy nearly all of the debts. Clearance is granted.

STATEMENT OF THE CASE

On August 22, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find it clearly consistent with the national interest to grant or continue a security clearance.¹ Applicant answered the SOR on October 10, 2006, and requested a hearing.

The case was assigned to me on February 27, 2007. On March 28, 2007, DOHA issued a notice of hearing scheduling the case for May 15, 2007. During the hearing, I received 11 government exhibits, 15 Applicant exhibits, and the testimony of four Applicant witnesses. At the conclusion of the hearing, I left the record open through May 25, 2007 for Applicant to submit additional exhibits. That day, she submitted an additional exhibit. Department Counsel did not object to its admissibility. I then marked it as Applicant's Exhibits P and incorporated them into the record. DOHA received the transcript on May 24, 2007.

FINDINGS OF FACT

_____ Applicant is a 39-year-old married woman with five children, ages 11 through 19. She has a high school diploma, and has worked various part-time jobs over the years. Since 1994, she has been a homemaker. Currently, she is seeking a clearance to enable her to provide administrative support for her husband's consulting firm.² Over the years, she has been minimally involved in managing the family finances.³

Applicant's husband is an Air Force veteran. While in the Air Force, he worked in communications and information technology.⁴ After leaving, he continued to work in these fields for defense contractors through the early 1990s. In approximately 1996, he left the defense contracting industry and began performing information systems implementations for hospitals.⁵ He worked on staff for a hospital for two years.

¹This 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).

²Tr. 248.

³Tr. 268; Exhibit 7, Stipulation of Expected Testimony of Office of Personnel Management Investigative Agent, dated May 11, 2007, at 1.

⁴Tr. 33.

⁵Tr. 37, 176.

In 1998, Applicant's husband left the hospital job, and started a consulting firm.⁶ He does the same type of work he did when employed with the hospital. Throughout the life of the business, he has been very adept at recruiting clients, marketing his business, and servicing the contracts.⁷

Conversely, his financial management skills, for the most part, have been poor. When he first started his business, he failed to set aside money in an income tax escrow account,⁸ and was unable to pay them when due. Also, he failed to segregate his business expenses from his personal expenses, and consequently began losing track of both. During this same period, he became financially overextended further, purchasing two rental properties, and raising race horses.⁹

Applicant and her husband have had sporadic health insurance, since starting the business. This rendered it difficult for them to distinguish between medical bills that were solely their responsibility and those that their insurance provider covered. Also, they experienced financial hardship when the business was not making any money. Consequently, their bills grew delinquent.

By July 2006, Applicant had accrued approximately \$30,400 of delinquent debt. Approximately \$28,590 consisted of state income tax liens filed against her and her husband's property in 2002 for tax year 2000 (subparagraph 1.a), 2004 for tax year 2002 (subparagraph 1.d), and 2005 for tax year 2003 (subparagraph 1.h). By September 2006, they had satisfied them in their entirety, and the liens were released.¹⁰

Approximately \$1,800 consists of medical bills (subparagraphs 1.c, 1.e, 1.f, and 1.g). Neither Applicant nor her family have experienced any chronic or severely disabling injuries. Many of her children, however, have frequently injured themselves while participating in athletics.

She satisfied subparagraphs 1.e and 1.g.¹¹ Subparagraphs 1.c and 1.f, collectively totaling approximately \$1,300, are owed to the same collection agency. She was unaware of them at the time she received the SOR, and is currently in the process of tracking down the original creditors so that she can satisfy them.¹²

⁶Exhibit 1, Security Clearance Application, dated September 23, 2004, at 2.

⁷Exhibit K, Reference Letter of Chief Financial Officer of a Hospital Client, dated March 12, 2007, Exhibit L, Client Reference Letter, dated March 14, 2007, Exhibit M, Client Reference Letter, dated March 14, 2007.

⁸Tr. 188.

⁹Tr. 126-128; 165.

¹⁰Exhibit H, Release of State Income Tax Lien for Tax Year 2000, dated August 17, 2006; Exhibit I, Release of State Income Tax Lien for Tax Years 2002 and 2003, dated September 6, 2006.

¹¹Exhibit P, Receipt of Payment, dated May 22, 2007; Exhibit D, Release of Judgment Lien, dated August 10, 2006.

¹²Answer, dated October 10, 2007, at 1.

The remaining delinquency, subparagraph 1.b, originates from a \$91 bounced check that Applicant wrote to a department store. She paid it.¹³ She attempted to obtain a confirmation of payment before the hearing, but was unsuccessful because the creditor is no longer in business.¹⁴

Applicant's ability to pay these delinquencies in a short period of time, after they had lingered for years, resulted from a drastic improvement in her husband's business in January 2006, after he was awarded several contracts. According to their personal banker, who testified at the hearing, the business' reserves, since that time, have been growing "very steadily and very quickly."¹⁵ Currently, they own several other businesses in addition to the consulting business. The combined gross revenue of the companies, and the gross value of their real estate holdings exceed two million dollars.¹⁶

Since 2004, Applicant's husband has been delegating the financial management of the business to an accountant. Although he had worked with the same accountant since 1999, the work was limited to filing tax returns.¹⁷ Since 2004, the accountant has been handling the "payroll processing, fil[ing] the required tax deposits, . . . preparing annual general ledger[s]. . . and handl[ing] the checkbook[s] for the corporation."¹⁸ Applicant's husband will consult his accountant before making any future investments.

Applicant answered "No" in response to Question 36 (*Your Financial Record - Tax Lien In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?*), Question 38 (*Your Financial Delinquencies - 180 Days - In the last 7 years, have you been over 180 days delinquent on any debt?*), and Question 39 (*Your Financial Delinquencies - 90 days - Are you currently over 90 days past due on any debt(s)*) of the security clearance application (SF 86). Two liens were outstanding when she executed the SF 86. Also, the debts listed in subparagraph 1.b and 1.c were more than 180 days delinquent when she completed it.

Applicant was aware of the state tax liens, but thought they were against property owned solely by her husband.¹⁹ Her husband disclosed the liens on his SF 86, completed on the same day she completed hers.²⁰ She was unaware of the other delinquencies when she completed the SF 86.²¹

POLICIES

¹³Tr. 250.

¹⁴Tr. 251.

¹⁵Tr. 223.

¹⁶Tr. 226, 229 –Testimony of Banker.

¹⁷Tr. 237.

¹⁸Tr. 235.

¹⁹Tr. 277.

²⁰See Husband's SF 86, Exhibit 1 of Industrial Security Clearance Review of Applicant's Husband (ISCR Case No. 06-18535).

²¹Tr. 277.

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (mitigating conditions).

Because the entire process is a scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

The following adjudicative guidelines are raised:

Guideline F - Financial Considerations: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Guideline E - Personal Conduct: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Guideline J - Criminal Conduct: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions pertaining to these adjudicative guidelines that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the conclusions below.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest."²² In reaching this decision, I have drawn only those conclusions that are based on the evidence contained in the record.

The Government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the Government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

CONCLUSIONS

²²See generally, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

Financial Considerations

Applicant is a homemaker whose husband handled the majority of their finances. Because the majority of the debts are in both of their names, however, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*) and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*), applies to her also.

Applicant's financial problems were neither recent nor isolated. Financial Considerations Mitigating Conditions (FC MC) E2.A6.1.3.1 (*The behavior was not recent*), and FC MC E2.A6.1.3.2 (*It was an isolated incident*) do not apply.

Applicant neither earned any income in the late 1990s nor helped with the management of her husband's business which he started at that time. Her financial well-being, however, was totally dependent on the success of the company. FC MC 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)*) applies.

Applicant's husband retained an accountant to manage the finances of his business. This has enabled him to focus more on business development. The business has grown tremendously, enabling him to satisfy all of the delinquencies that he and his wife could identify, in their entirety. Although FC MC 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 neither received counseling, FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), applies because of their repayment efforts over the past 18 months.

Applicant's remaining delinquent debt is minimal in comparison to the debt which she has satisfied. Given the family's improved financial circumstances, and the track record of reform demonstrated by satisfying the overwhelming majority of the delinquencies, I am confident that Applicant will pay the remainder, as promised at the hearing. She has mitigated the financial considerations security concern.

Personal Conduct

Applicant's responses to Questions 36, 38, and 39 of her 2004 SF 86 raise the issue of whether Personal Conduct Disqualifying Condition E2.A5.1.2.2 (*The deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies.

Applicant's husband submitted his SF 86 on the same day as wife. He disclosed the tax liens, that she omitted. Under these circumstances, I conclude her explanation for omitting them was credible, and she possessed no intent to conceal them..

As a homemaker, Applicant is focused on raising her children. Her husband manages the finances. Consequently, her testimony that she was unaware of the other SOR delinquencies at the time she completed the SF 86 was also credible.

Applicant did not falsify her SF 86. PC DC E2.A5.1.2.2 is inapplicable, and there are no personal conduct security concerns.

Criminal Conduct

For the reasons set forth above, Applicant’s responses to Questions 36, 38 and 39 do not constitute falsifications under 18 U.S.C. § 1001.

Whole Person Concept

Applicant has satisfied the majority of her delinquencies. As a homemaker who earned no income, her financial problems were caused by her husband’s past business misfortunes. After struggling for several years, the business is stable and prosperous. Her husband has retained an accountant to ensure that the business’ finances remain organized. These factors render the potential for coercion nonexistent at present, and the potential for recurrence minimal. Evaluating these facts in the context of the whole person concept, I conclude Applicant has mitigated the security concern. Clearance is granted.

FORMAL FINDINGS

Paragraph 1 – Guideline F:	FOR APPLICANT
Subparagraph 1.a - 1.h:	For Applicant
Paragraph 2 - Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Paragraph 3 - Guideline J:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Marc E. Curry
Administrative Judge