

KEYWORD: Financial

DIGEST: Applicant incurred approximately \$14,850 in delinquent debt, for which he has no payment plan in place. He also has two state tax liens totaling approximately \$3,000. He has failed to mitigate the security concerns raised under financial considerations guideline. Applicant's eligibility for a security clearance is denied.

CASENO: 06-12830.h1

DATE: 04/11/2007

DATE: April 11, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-12830
)	
Applicant for Security Clearance)	
)	

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

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred approximately \$14,850 in delinquent debt, for which he has no payment plan in place. He also has two state tax liens totaling approximately \$3,000. He has failed to mitigate the security concerns raised under financial considerations guideline. Applicant's eligibility for a security clearance is denied.

STATEMENT OF THE CASE

On October 26, 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.¹ 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 November 28, 2006, Applicant submitted a notarized response to the SOR, and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the government's written case on January 24, 2007. Applicant received a complete file of relevant material (FORM) on January 31, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the government's case.² The case was assigned to me on March 22, 2007. Applicant submitted additional information on April 2, 2007.³

FINDINGS OF FACT

Applicant admitted all allegations in his SOR response under Guideline F.⁴ 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 43-year-old employee of a defense contractor. He served in the United States Marine Corps (USMC) from 1986 until 2002. Prior to his active duty, he served in the Marine Corps Reserve. He received an honorable discharge in July 2002. He maintained a security clearance for the last ten years of his career. He has worked for his current employer since June 2004. He is married.⁵ On May 3, 2005, he completed his security clearance (SF 86) application.⁶

Applicant's seven debts in the SOR total approximately \$14,850. The debts in the SOR are not in dispute.⁷ Two state tax liens are also included totaling more than \$3,000. Applicant offered

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).

²The government submitted six items in support of its contentions.

³I ordered department counsel to provide affirmative evidence that Applicant received the revised guidelines. Applicant did receive the revised guidelines and submitted an additional response to the FORM on April 2, 2007. Department Counsel did not object.

⁴Item 3 (Applicant's Answer to SOR, dated November 28, 2006) at 1-2.

⁵Item 4 (Application for Security Clearance (SF 86), dated May 5, 2005) at 1-8.

⁶*Id.*

⁷Item 3, *supra* note 3, at 1-2.

no explanation for these debts. Multiple accounts were charged off or placed for collection. Several of the debts have been in collection since 1998.⁸

Applicant has not made any payments on the delinquent accounts. However, he is paying on a \$2,000 federal tax debt on a monthly basis.⁹ This does not appear on the SOR. Applicant provided no evidence of any mitigating conditions involving medical problems or other extenuating circumstances.¹⁰

Applicant's monthly net income is \$3,421.83. He has monthly expenses of \$3,052. He currently pays \$100 a month to the IRS for his debt. Applicant listed a monthly payment to a furniture company of \$254. His monthly net remainder is \$15.83. He lists no assets.¹¹

Applicant provided no information concerning his work record. However, he received various awards while in the military. He affirms his sense of duty for work and his country. He is sincere in his belief that he should be financially responsible.¹²

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.”¹³ 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.

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).

⁸Item 6 (Credit Bureau Report, dated January 4, 2007) at 1-2.

⁹Item 5 (Interrogatories, Answers and Attachments, dated September 11, 2006) at 1-9.

¹⁰*Id.*

¹¹*Id.*

¹²Additional Response to Form, dated April 2, 2007 at 1-2.

¹³ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

“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.”¹⁴ An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.¹⁵ 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.¹⁶

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.¹⁷ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.¹⁸ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹⁹ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.²⁰ The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

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.*²¹

¹⁴ Directive, ¶ E2.2.1.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Directive, ¶ E3.1.14.

¹⁸ Directive, ¶ E3.1.15.

¹⁹ ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).

²⁰ Directive, ¶ E2.2.2.

²¹ AG ¶ 18.

In this matter, the government provided substantial evidence that Applicant accrued seven delinquent debts with an approximate total balance of \$14,850, and has 2 tax liens amounting to \$3,000. He admits they are still outstanding debts. His 2007 credit report confirms the debt. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶19(a), (*inability or unwillingness to satisfy debts*) and FC DC ¶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 him. 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 he still carries a significant amount of delinquent debt. One collection account is from 2001. Despite steady employment, he has not made any payments on these debts.

Applicant provides no evidence or explanation concerning any mitigating conditions 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 circumstance*).

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. This recent endeavor in 2007 to contact two creditors does not mitigate years of ignoring the debt. Also, he indicated he will pay \$50 a month to one credit company. A promise to take action in the future is not sufficient to mitigate the financial considerations concern. All of the debts remain outstanding. He has no structured plan to resolve these debts. Applicant's financial problems remain. It is unlikely they will be resolved in the near future.

FC MC ¶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 he established a record of steady payments or financial stability. He made no attempts to resolve the majority of the delinquent accounts. His recent \$50 payment to one creditor after receiving the SOR is not sufficient to conclude that he made a good-faith effort to resolve his debts despite his intentions to do so in the future.

The issue before me is not whether Applicant is still legally liable for any or all of his outstanding debts, but whether he has presented sufficient evidence of extenuation, mitigating or changed circumstances to warrant a favorable security determination. His remaining unpaid debt constitutes a security concern. He has been employed with his current employer since June 2004. He lists other income on his personal financial statement which is presumably his retirement income. His very low net monthly remainder does raise a doubt about his ability to resolve his 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. He has an Honorable Discharge from the USMC and has various awards. Even an applicant with a good or even exemplary work history may engage in conduct that has negative implications or presents doubt about his 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
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	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