

KEYWORD: Financial

DIGEST: Applicant incurred significant debts, primarily from credit card use, in the 1990s at about the same time her employment began to fluctuate. When she stopped her payments, many of the creditors obtained judgments. For the last two and one-half years, she has consistently and routinely made payments on the judgments and one outstanding debt. While she has not resolved all her debts, she has made a good faith effort to pay her debts. She has mitigated the government's concerns about her finances under Guideline F. Clearance is granted.

CASENO: 06-12930.h1

DATE: 08/06/2007

DATE: August 6, 2007

In re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 06-12930
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
MARY E. HENRY**

APPEARANCES

FOR GOVERNMENT
Ray T. Blank, Jr., Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant incurred significant debts, primarily from credit card use, in the 1990s at about the same time her employment began to fluctuate. When she stopped her payments, many of the creditors obtained judgments. For the last two and one-half years, she has consistently and routinely made payments on the judgments and one outstanding debt. While she has not resolved all her debts, she has made a good faith effort to pay her debts. She has mitigated the government's concerns about her finances under Guideline F. Clearance is granted.

STATEMENT OF THE CASE

On November 29, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Specifically, the SOR sets forth security concerns arising 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. On December 30, 2006, Applicant submitted a notarized response to the allegations. She requested a hearing.

DOHA assigned this case to me on May 10, 2007. It included a Motion to Amend the SOR by the Government. DOHA issued a notice of hearing on May 25, 2007. I held a hearing on June 20, 2007. At the hearing, the Government presented arguments on its Motion to Amend the SOR. Applicant acknowledged receiving the motion and did not object to it. I granted the Government's motion and amended the SOR to include allegations 1.c and 1.d. Six Government exhibits (GE), 1-6, were marked and admitted into evidence without objection. Applicant submitted 17 documents, which were marked and admitted into evidence as Applicant Exhibits (AE), A-Q, without objection. Applicant testified. DOHA received the hearing transcript (Tr.) on July 3, 2007. I held the record open until July 20, 2007 for the submission of more evidence by Applicant. On July 18, 2007, she timely filed a request for one additional week to submit her evidence. The Government did not object to her request. By Order dated July 19, 2007, I granted Applicant's request and held the record open until July 27, 2007. Applicant timely submitted 12 additional documents, which were marked as AE R-CC and admitted into the record without objection.

FINDINGS OF FACT

Applicant admitted the allegations under Guideline F, subparagraphs 1.a-1.c, 1.e, and 1.h. of the SOR.¹ Those admissions are incorporated as findings of fact. She denied the remaining

¹Applicant's response to the SOR, dated December 30, 2006, at 1-2; Tr. at 11-12.

allegations.² After a complete review of the evidence in the record and upon due consideration, I make the following findings of fact.

Applicant, who is 49-years-old, works for a contractor to the Department of Defense. She completed her security clearance application in May 2005.³

Applicant graduated from college with a Bachelor of Science degree in electrical engineering in 1984. Until June 1994, she worked steadily and regularly. Over the next 10 years, her employment fluctuated. Her resume indicates that from 1994 until 1998, she worked two summers. In 1998, she started working full-time, which ended in June 1999. In September 1999, she entered graduate school. She again worked from July 2000 until February 2001. She received a Master of Divinity degree in 2002. She immediately began employment which ended 4 months later because her employer was not paying her regularly. In May 2003, she began part-time employment at a bookstore, a job she continues to work one day a week. She began her current employment in January 2004. During her periods of unemployment, she worked as a substitute teacher.⁴

Applicant incurred significant credit debt in the 1990s. She failed to keep up with her payments when she was unemployed and eventually stopped making any payments. She destroyed most of her credit cards in the 1990s, and has not acquired more credit card debt since then. A review of Appellant's credit reports dated July 14, 2005, August 9, 2006, November 9, 2006, May 1, 2007, and the SOR, shows the following outstanding, unpaid debts and judgments totaling \$39,815, and their current status, as the reason for security concerns under the financial considerations guideline.⁵

SOR ¶	Account Type & Amount, Date of Last Activity	Status	Evidence
1.a	Judgment \$4,218 November 2003	Unpaid	GE 4, GE 5, GE 6
1.b	Judgment \$4,268 March 2003	Paying \$100 monthly	App Ex Y, App Ex Z
1.c	Judgment \$9,081 February 2004	Paying \$100 monthly	App Ex I, App Ex Z
1.d	Credit card \$ 382 June 2001	Unpaid; Barred Statute of Limitations	GE 4, GE 5, GE 6, App Ex U
1.e	Credit card \$3,118 July 2007	Paid in full	App Ex H; App Ex S

²*Id.*

³GE 1 (Applicant's security clearance application, dated May 13, 2005) at 1-2.

⁴*Id.* at 1-3; App Ex O (Applicant's resume); Tr. at 62-67.

⁵GE 3 (Credit report, dated July 14, 2005); GE 4 (Credit report, dated August 9, 2006); GE 5 (Credit report, dated November 9, 2006); GE 6 (Credit report, dated May 1, 2007).

1.f.	Credit card October 2001	\$7,522	Unpaid, Barred Statute of Limitations	GE 4, GE 5, GE 6
1.g	Credit card October 2001	\$1,567	Unpaid, Barred Statute of Limitations	GE 4, GE 5, GE 6
1.h	Credit card	\$8,333	Paid \$500	App Ex K; App Ex Z
1.i	Credit card	\$1,326	Same account number as 1.g	GE 4, GE 5, GE 6

Applicant submitted documentation, reflecting that she paid in full in December 2006 a judgment entered against her by a creditor not listed in the SOR⁶. She also provided documentation which shows that since November 2004, she has been regularly paying on the judgment entered against her in February 2004. The creditor's records reflect that it received two \$20 garnishment payments in March and May 2004 from Applicant's part-time book store employment. The book store then reduced her work hours and stopped further garnishment payments.⁷ Although she has been regularly paying this debt for two and one-half years, she still owes over \$8,000 on the debt.⁸

Applicant initiated payments, at least as early as February 2005, on the judgment entered against her in March 2003. Although the law firm collecting this debt stated that she had paid \$950 on the judgment, her records reflect additional payments of \$1,750 for total payments of \$2,400, leaving a balance of \$2,054. She has not started payments on the November 2003 judgment because she was not aware of this judgment. At the hearing, she credibly stated that she believed she was paying on all the judgments against her. A careful review of the record evidence indicates that a third judgment exists and is unpaid.⁹

Applicant made the final payment on one credit card debt on July 27, 2007. As to the large unpaid credit card debt listed in allegation 1.h, her evidence shows numerous contacts with the creditor listed in the credit reports, at least \$500 in payments which are not reflected by the creditor, and letters stating that she had the wrong account number. She believe she paid the debt listed in allegation 1.d, but cannot provide proof of payment. The record evidence indicates that this debt is

⁶App Ex CC (Copy of court record).

⁷The government incorrectly asserts that this creditor filed for garnishment because it was not satisfied with Applicant's \$100 a month payments. Garnishment of wages is a mechanism to collect a judgment which is not being paid. As long as a debtor makes monthly payments, a state court will not grant a request for garnishment.

⁸App Ex I (Statements from creditor on payments), App Ex Z (Copy of money order receipts).

⁹Applicant submitted copies of the court records for the two judgments she currently pays. *See* App Ex AA (Court docket sheet for allegation 1.b in the SOR); App Ex BB (Court docket sheet for allegation 1.c in the SOR). App Ex AA shows that the judgment in allegation 1.b had two court case numbers. The third judgment has a case number which is different from any of the court case numbers for the other judgments she pays or paid. *See* GE 6, *supra* note 5, at 1; App Ex Y (Documents related to March 2003 judgment); App Ex Z, *supra* note 8.

unpaid and higher than the amount listed in the SOR. She denies owing the other three credit card debts, which are with the same creditor that obtained two judgments against her in 2003.¹⁰

Appellant currently earns approximately \$65,000 a year in gross salary from her two jobs. Her net monthly income totals about \$3,415. Her monthly expenses, including debt repayments and student loan payments, total approximately \$3,100 a month. She drives a 1993 car, which is debt free. She lives with her sister and does not live extravagantly.¹¹

Applicant's management recommends her for a security clearance based on her work ethic and demonstrated ability to handle proprietary data properly. She has not violated security procedures during her employment. She is a respected member of her work team. Her religious co-workers attest to her character and commitment to her church. She contacted several financial counseling agencies about assisting her with her debt payments. She recently retained the services of one of these agencies.¹²

POLICIES

The revised Adjudicative Guidelines set forth disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. An administrative judge need not view the revised adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, are intended to assist the administrative judge in reaching fair and impartial common sense decisions. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the revised AG should be followed whenever a case can be measured against this policy guidance. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.¹³

¹⁰GE 4-6, *supra* note 5; App Ex K (Letters, dated June 19, 2007, April 19, 2007, September 9, 2006, July 25, 2006, April 12, 2006, February 5, 2006, January 19, 2006, December 22, 2005, December 9, 2005); App Ex S (Creditor letter, dated July 27, 2007 and other payment letters); App Ex U (credit report, dated June 26, 2007).

¹¹GE 2(Answers to Interrogatories and attachments); App Ex V (Earnings statements from May through July 2007); Tr. at 62, 121.

¹²App Ex A (letter, dated June 13, 2007); App Ex B (Letter, dated June 12, 2007); App Ex C (Letter, dated June 19, 2007); App Ex D (Letter, dated June 12, 2007); App Ex E (Letter, dated June 18, 2007); App Ex F (Letter, dated June 18, 2007); App Ex N (Debt reduction information); App Ex X (Signed application for financial counseling).

¹³Directive, revised Adjudicative Guidelines (AG) ¶ 2(a)(1)-(9).

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.¹⁴ The government has the burden of proving controverted facts.¹⁵ The burden of proof is something less than a preponderance of the evidence.¹⁶ Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.¹⁷ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁸

No one has a right to a security clearance,¹⁹ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁰ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²¹ Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.²² 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.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

Financial Considerations

Under Guideline F, the “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

¹⁴ISCR Case No. 96-0277 at 2 (App. Bd., July 11, 1997).

¹⁵ISCR Case No. 97-0016 at 3 (App. Bd., Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

¹⁶*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁷ISCR Case No. 94-1075 at 3-4 (App. Bd., Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

¹⁸ISCR Case No. 93-1390 at 7-8 (App. Bd. Decision and Reversal Order, Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

¹⁹*Egan*, 484 U.S. at 531.

²⁰*Id.*

²¹*Id.*; Directive, revised AG ¶ 2(b).

²²Executive Order No. 10865 § 7.

overextended is at risk of having to engage in illegal acts to generate funds.” (AG ¶ 18.) The credit reports reflect several old, large, unpaid debts and judgments. Because of the age of these debts and judgments and their delinquent status, Applicant showed a long term inability or unwillingness to pay her debts. Based on the evidence of record, the Government established the applicability of DC ¶ 19 (a) *inability or unwillingness to satisfy debts* and DC ¶ 19 (c) *a history of not meeting financial obligations* to all admitted allegations and allegation 1.d.

In light of Applicant’s denial of SOR allegations 1.f, 1.g and 1.i, the government has the burden of proving that these unpaid debts are Applicant’s. Although these three controverted debts are listed on her credit reports, this fact alone is insufficient to demonstrate that these are her debts. A review of the credit reports reflects that the account numbers for the debts listed in allegation 1.g and 1.i are the same. In addition, the credit reports show that the date of last activity on these controverted debts is October 2001. In 2003, the named creditor for these debts obtained two judgments against Applicant. The record evidence does not indicate whether the controverted debts are in addition to the judgments obtained by the named creditor or the same. Thus, the government has not met its burden of proving these allegations, which are found in favor of Applicant.

MC ¶ 26 (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* has some applicability.²³ While several judgments were entered against her in 2003 and early 2004, these judgments were based on debts incurred in the 1990s. Applicant has not incurred any substantial credit debt or unpaid loans in the last seven years. She no longer uses credit cards; rather she chooses to pay her bills in cash. She has accepted responsibility for her debt problem and her long ago debts do not cast doubt on her current reliability, trustworthiness or good judgment.

MC ¶ 26 (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* is raised. For a period of 10 years, Applicant worked sporadically. While her initial periods of unemployment are not explained, her later unemployment resulted from job termination and lack wage payment. During her periods of unemployment, she worked as a substitute teacher, a job which did not provide sufficient income to pay all her debts. Given the high level of her debt, she managed her finances to the best of her ability.

MC ¶ 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 is under control* has some applicability. Applicant very recently retained a financial counseling agency to help resolve all issues related to any remaining unpaid debts. She has assume responsibility for her unpaid debts by paying several debts and making monthly payments on other judgment debts.

MC ¶ 20 (d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* applies. After securing full-time employment, Applicant began to repay her debts. She routinely pays \$100 a month to two judgment creditors. While the principal for the debt

²³See ISCR Case No. 04-07360 at 2 (App. Bd. Sept. 26, 2006) (stating partial credit was available under FCMC 6 for debts being resolved through garnishment).

in the allegation 1.c has only been reduced about \$1,000, she has consistently and regularly paid the creditor for more than two years. Likewise, she made monthly payments over the same period of time on another judgment and one old debt, which are now paid in full. She has made attempts to regularly pay on her one remaining large debt (allegation 1.h), but has documented the problems she has encountered with the creditor regarding credit for her past payments and the existence of her account. She retained the financial counseling service to help with this problem. She has made significant efforts to resolve her unpaid judgments.

MC ¶ 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*, and MC ¶ 20 (f) *the affluence resulted from a legal source* do not apply under the facts of this case.

Whole Person Analysis

Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Thus, in reaching this decision, I have considered the whole person concept in evaluating Appellant's risk and vulnerability in protecting our national interests.

Applicant mismanaged her finances in the 1990s. She over used her credit cards, then defaulted on her payments when she did not work full-time or at all. During her periods of unemployment, her family provided some financial support for her basic needs. Her financial circumstances have improved significantly since she began working with her current employer. She is not required to be debt free to have a security clearance, but she is required to manage her income and expenses. She has demonstrated through her evidence that she is managing her income and expenses, as she lives within her monthly income. Her expenses included repayment of her current and past debts, as shown by her consistent payments on her student loan and judgments. She has not incurred any additional unpaid debt in many years. She took control of her debt problems, which has resulted in a slow and steady resolution of her financial problems. She has not taken steps to resolve the November 2003 judgment, as she did not know about it. Given her payment of her other judgments, it is highly likely she will act responsibly towards this debt.

While I have held that the government has not established its case as to allegations 1.f, 1.g and 1.i, I also note that the creditor for these debts is time barred from collecting these debts under the state statute of limitations.²⁴ However, in light of Applicant's recent payments on the debt in

²⁴A State Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving security and stability to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be ha[le]d into court to defend time-barred claims. Moreover, limitations periods discourage plaintiffs from sitting on their rights.

allegations 1.h, the 3-year period from which a creditor can seek collection through legal process may have begun again.

Applicant's supervisors and management praise her work ethic and skills. She properly handles her employer's proprietary data. She has shown a consistent track record for payment of her debt and has acted responsibly towards her debts. Given her consistent compliance with security rules, her work performance and assumption of responsibility for her debts, there is little likelihood of a recurrence of her conduct in the future, and the potential for pressure, coercion, exploitation or duress is nonexistent. I have weighed her work performance, compliance with rules, her acceptance of responsibility for her debts, and her actions taken to resolve her debts and conclude that she has mitigated the Government's concerns about her finances under Guideline F.

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:

SOR ¶ 1-Guideline F :
Subparagraphs a-i:

FOR APPLICANT
For Applicant

DECISION

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

Mary E. Henry
Administrative Judge

Statutes of limitations are, indeed, fundamental to our judicial system.

Carolina Marine Handling, Inc. v. Lasch, 609 S.E.2d 548, 552 (Ct. App. 2005) (internal quotation marks and citations omitted).