

KEYWORD: Financial

DIGEST: Applicant is 42 years old and has worked for a federal contractor since August 2005. Applicant moved in 2002 and the financial arrangements she had anticipated did not work out. She has credit card, medical, house foreclosure and other delinquent debts totaling more than \$34,000. It has been more than four years and she has not resolved her delinquent debts. She stated she was going to have all of her debts discharged in bankruptcy, but no evidence was offered to show the discharge took place. Applicant failed to mitigate the security concerns raised by Guideline F, financial considerations. Clearance is denied.

CASENO: 06-13436.h1

DATE: 03/30/2007

DATE: March 30, 2007

In re:)	
)	
)	
-----)	ISCR Case No. 06-13436
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
CAROL G. RICCIARDELLO**

APPEARANCES

FOR GOVERNMENT

Gina L. Marine, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 42 years old and has worked for a federal contractor since August 2005. Applicant moved in 2002 and the financial arrangements she had anticipated did not work out. She has credit card, medical, house foreclosure and other delinquent debts totaling more than \$34,000. It has been more than four years and she has not resolved her delinquent debts. She stated she was going to have all of her debts discharged in bankruptcy, but no evidence was offered to show the discharge took place. Applicant failed to mitigate the security concerns raised by Guideline F, financial considerations. Clearance is denied.

STATEMENT OF CASE

On August 30, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating 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, alleges security concerns under Guideline F, Financial Considerations.

In a sworn statement dated September 12, 2006, Applicant responded to the SOR allegations. Applicant elected to have her case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on December 20, 2006. The FORM was mailed to Applicant on December 22, 2006, and received on January 5, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not provide additional information. The case was assigned to me on March 13, 2007.

FINDINGS OF FACT

Applicant is 42 years old and has worked as a data management specialist for a federal contractor since August 2005. Applicant is divorced and has two sons ages 19 and 13. The elder attends college. Applicant has a bachelor of science degree and has taken some additional college courses.

Applicant and her sons moved from one state to another in 2002. Applicant and another single mother moved to a new state with an arrangement to split their bills. The other mother moved after two months and Applicant did not have sufficient income to meet her expenses. She admits to all of her delinquent debts except those in SOR ¶¶ 1.b, 1.k, and 1.q. The debt in SOR ¶1.b is for an electric bill from where she lived before she moved. She stated she paid it, but did not provide any documentation. The debt in SOR ¶1.k is a medical bill for her son. She stated her son was covered by medical insurance and the insurance was supposed to pay the bill. She contacted the insurance company in the past and she stated in her answer to the SOR “[a]pparently it was never reconciled.” She did not provide any additional information as to what she did to attempt to reconcile it. She denies the debt in SOR 1. q stating she paid the debt in 2005. No documents were presented to corroborate her statement.

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).

The delinquent debts that Applicant admits are for more than \$34,600. Her largest debt in SOR ¶1.p, is for \$21,263 for a foreclosure on her home when she could not afford to make the mortgage payments. She took a home equity loan, rented the house and was attempting to sell it. At some point she no longer had renters and could not sell the home. She contacted the creditor and they foreclosed.

In August 2005 on her SCA, Applicant stated “I am attempting to clean up my credit and responsibly manage my money and satisfy all outstanding debts to the best of my ability in a timely fashion.”² On her credit report dated August 4, 2006, it shows that two new credit card accounts were opened in November 2005 and both are delinquent.³ Applicant stated in her August 7, 2006 interrogatories:

“I am in the process of filing Chapter 7 Bankruptcy and will no longer be in debt to the past due creditors. I attempted to go to a credit consolidation company after meeting with the investigator’s representative last year. I could not make the payments they were requiring of me. The payments were completely unfeasible for me. I had been trying to save money to file for bankruptcy and I finally completed the bankruptcy paperwork on August 4, 2006. I will be going to court in September and will be relinquished from the debts I have incurred. I have finally gotten into a housing situation where I will be able to afford my current bills and possibly begin working to rectify my credit score.”⁴

Applicant again indicated in her answer to the SOR dated September 12, 2006, “I am in the process of filing for bankruptcy on the above bills.” She provided a document to show she has made payments to a bankruptcy attorney to file a petition, but the payments are not complete. The last payment was made on August 4, 2006, and the statement shows a remaining balance of \$495.⁵ Applicant has not provided any additional information to support that she completed payment towards her bankruptcy filing or that the filing took place, or that her debts have been discharged. She has not provided any information or documentation to support that she has taken any action toward paying her debts

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person’s eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance 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 factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding

²Item 4 at 35.

³Item 5 at 10-11.

⁴Item 5 at p. 5.

⁵*Id.* at 6.

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. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

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.⁶ The government has the burden of proving controverted facts.⁷ The burden of proof is something less than a preponderance of evidence.⁸ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁹ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁰

No one has a right to a security clearance¹¹ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹² Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹³ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.¹⁴ 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.

Based upon consideration of all the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F-Financial Considerations are a concern because 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

⁶ISCR Case No. 96-0277 at 2 (App. Bd. Jul. 11, 1997).

⁷ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

⁸*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁹ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

¹⁰ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

¹¹*Egan*, 484 U.S. at 531.

¹²*Id.*

¹³*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

¹⁴Executive Order 10865 § 7.

who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

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

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards.

Based on all of the evidence, Financial Considerations Disqualifying Condition (FC DC) 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*), apply in this case. Applicant has many delinquent debts that she failed to pay. She stated she intends on filing for bankruptcy, but failed to show her debts have been discharged or that she has taken any action to pay them. She admits she owes most of the debts and they are delinquent.

I have considered all of the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2. (*It was an isolated incident*), 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)*), 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*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant stated she paid two debts and disputed one. She did not provide any corroborating information to support her position. She has many delinquent debts that remain unpaid. I find FC MC E2.A6.1.3.1 and E2.A6.1.3.2 do not apply. Applicant chose to move with another family to a new location and was anticipating sharing expenses. When the other family moved she was required to pay the total amount of the expenses. These conditions were beyond her control. However, many of Applicant's debts are for credit cards, retail establishments, and telephone services. Presumably these types of bills were not intended to be shared. Applicant did not elaborate on exactly what the financial arrangements were that she had with the other family. I find FC MC E2.A6.1.3.3 applies because the initial condition that placed her in a difficult financial position was beyond her control. The move took place in 2002. It now has been more than four years and she has not taken action on resolving her delinquent debts. Applicant has stated in two separate documents that she intends on filing for bankruptcy. She showed proof that she had paid a partial payment to an attorney to assist her. She believed she would be discharged from all of her debts in September 2006. Applicant had the opportunity to provide additional information to show the status of her bankruptcy, but failed to do so. No evidence was presented to show any of her debts have been discharged in bankruptcy. Bankruptcy is a legal way for people to start over financially. However, it does not negate the conduct that may have caused the problems. Applicant opened new accounts in 2005 and failed to make timely

payments. She has not offered evidence to show her conduct is changed. Applicant stated she was going to begin taking care of her bills. Nothing has been offered to show how she is managing her bills. Applicant sought assistance from a credit consolidation company after she was interviewed for her clearance. She could not afford the payments and has taken no further action. No other evidence was presented to show she has received any financial counseling nor is there a clear indication the problem is being resolved. There has been no good-faith showing that Applicant is paying or resolving her delinquent debts. I find FC MC E2.A6. 1.3.4 and E2.A6.1.3.5 do not apply.

The Whole Person Analysis

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. 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 considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I considered Applicant was in a difficult financial situation when her friend left her with all the expenses. I also many of her debts are years old and some are for relatively small amounts, yet she has not paid any of them. I considered her statements that she intended on filing for bankruptcy. I find Applicant has failed to mitigate the financial considerations security concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F is decided against Applicant.

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	Financial Considerations (Guideline F)	AGAINST APPLICANT
	Subparagraph 1.a-1.q:	Against Applicant

DECISION

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

Carol. G. Ricciardello

Administrative Judge