

KEYWORD: Financial

DIGEST: Applicant owes seven delinquent or charged off debts totaling approximately \$13,000. Applicant asserts these debts are being handled through Consumer Credit Counseling Services (CCCS), but failed to show payment to CCCS after the first three months. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from Applicant's unpaid debts. Clearance is denied.

CASENO: 06-15186.h1

DATE: 06/30/2007

DATE: June 30, 2007

In re:)	
)	
)	
-----)	ISCR Case No. 06-15186
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
CLAUDE R. HEINY**

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes seven delinquent or charged off debts totaling approximately \$13,000. Applicant asserts these debts are being handled through Consumer Credit Counseling Services (CCCS), but failed to show payment to CCCS after the first three months. The record evidence is

insufficient to mitigate or extenuate the negative security implications stemming from Applicant's unpaid debts. Clearance is denied.

STATEMENT OF THE CASE

On January 30, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding¹ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR set forth reasons why a security clearance could not be granted or continued due to Financial Considerations security concerns.

On February 24, 2007, Applicant answered the SOR and requested a hearing. In his reply, Applicant stated "I don't really want a hearing, but if that is what it takes, I will do it." On March 25, 2007, Applicant stated he would like a determination made without a hearing. On April 18, 2007, a File of Relevant Material (FORM) was submitted by Department Counsel and received by Applicant on April 26, 2007. Applicant was instructed he had 30 days to submit any objections to the information in the FORM or to supply additional information. The Applicant's response was due on May 26, 2007. As of June 27, 2007, nothing had been received from Applicant. On June 28, 2007, I was assigned the case.

FINDINGS OF FACT

The SOR alleges security concerns for Financial Considerations. Applicant admits being approximately \$13,000 delinquent on seven debts. The admission is incorporated herein as findings of fact. After a thorough review of the record, I make the following findings of fact.

Applicant is a 62-year-old security officer who has worked for a defense contractor since April 2002, and is seeking to maintain a secret security clearance. He has worked at the same government agency for 37 years.

In 1999, Applicant's oldest son was killed in an accident. In 2001, Applicant's wife's illness resulted in her unemployment. Both events contributed to his financial problems. As of September 2006, Applicant gross income was \$1,671 every two weeks and his net pay was \$1,113. (Item 8) In October 2006, Applicant entered into a debt management program with CCCS to address the \$13,546 owed on the seven debts listed in the SOR. The plan required Applicant to make proposed monthly payments of \$352 to CCCS. (Item 8) The two medical bills of \$75 each (SOR 1.b. and 1.c.) were anticipated to be paid off by May 1, 2007.

In February 2007, when Applicant responded to the SOR (Item 3), he attached three documents from CCCS showing he had made payments of \$347 each in December 2006, January 2007, and February 2007. On March 25, 2007, when Applicant again responded to the SOR (Item 4), he included documents from CCCS showing payment in December 2006 and January 2007, but did not include proof of payment for March 2007. The record contains no additional proof of payments to CCCS.

¹Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guideline to be applied here is Guideline F, Financial Considerations.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Financial Considerations. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating

² ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15

an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. Under Guideline F, an Applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

Financial considerations become a security concern when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

The Applicant admits owing seven debts totaling more than \$13,000. Disqualifying Conditions (DC) 19(a) *inability or unwillingness to satisfy debts* and 19(c) *a history of not meeting financial obligations*, apply.

Because Applicant did not respond to the File of Relevant Material (FORM) or submit additional information, the decision must be based on the case record. Applicant has established he made three payments of \$347 each to CCCS. Had the payments continued, it could have established he had initiated a good-faith effort to repay overdue creditors and I would have applied mitigating Condition (MC) 20(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*. Had Applicant responded to the FORM and shown payments for March 2007, April 2007, and May 2007 I would have found it likely he would continue to make his monthly payments. If an Applicant makes monthly payments for six months it is likely he will continue making the monthly payments.

However, it is very common that individuals will enter into a payment plan with CCCS and make one, two, or three payments and then stop making payments. In Applicant's March 25, 2007 response (Item 6) he failed to show he had made his March 2007 payment, which would have been due by that time. It may have been an oversight on his part in failing to include proof of his March 2007 payment, but I cannot assume the payment was made. Given the absence of any documentation in the record that corroborated payment after the first three months, I cannot find a good-faith effort to repay overdue creditors or otherwise resolve debts exists.

None of the other mitigating conditions apply in the Applicant's favor. MC 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* does not apply because the debts remain unpaid and the behavior is recent (was not so long ago). Additionally, there are seven debts so the behavior was not infrequent and there is no showing the debts occurred under circumstances that are unlikely to recur.

MC 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* does not apply. There were factors beyond Applicant's control, i.e., the death of his son in 1999 and his wife's illness and loss of employment in 2001. But these events occurred more than six years ago and Applicant has not paid even the two small debts that were \$75 each.

MC 20(c) *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 there is no evidence of counseling or that the problem is under control. Had Applicant established continued payments, I could have found the problem was being resolved. MC20(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*, does not apply because Applicant admits owing the debts. MC 20(f) *the affluence resulted from a legal source of income*, does not apply because affluence is not at issue.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation and other permanent behavioral changes; potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence in the future. Because Applicant has failed to document payment of his debts beyond the first three months, I find against Applicant on financial considerations.

This decision should not be construed as a determination that the Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under the Applicant's current circumstances a clearance is not recommended, but should the Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid his debts or established compliance with a repayment plan, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Financial Considerations: 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

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.

Claude R. Heiny
Administrative Judge