

KEYWORD: Financial

DIGEST: Applicant has settled three of her overdue debts, and she is now in the process of attempting to resolve her two other past due debts. Applicant is current on all of her recent debts, and she has demonstrated a stable and mature outlook about her finances. Mitigation has been shown. Clearance is granted.

CASENO: 06-17874.h1

DATE: 05/30/2007

DATE: May 30, 2007

In Re:)	
)	
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SSN: -----)	ISCR Case No. 06-17874
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
MARTIN H. MOGUL**

APPEARANCES

FOR GOVERNMENT
Candace Le'i, Esq., Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant has settled three of her overdue debts, and she is now in the process of attempting

to resolve her two other past due debts. Applicant is current on all of her recent debts, and she has demonstrated a stable and mature outlook about her finances. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On December 26, 2006 the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant which 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

In a signed and notarized statement, dated January 31, 2007, Applicant responded in writing to the SOR allegations (RSOR), and she requested a clearance decision based on a hearing record.

The case was initially assigned to another Administrative Judge on February 27, 2007, but it was reassigned to this Administrative Judge on March 20, 2007. A Notice of Hearing was issued to the parties on March 19, 2007, and the hearing was held on April 12, 2007.

At the hearing, Department Counsel offered six documentary exhibits (Exhibits 1-6) and no witnesses were called. Applicant appeared without counsel, offered nine documentary exhibits (Exhibits A through I) and offered her own testimony. The record was held open until April 19, 2007, for Applicant, and Applicant 26, 2007, for Department Counsel to offer post hearing exhibits. Applicant offered a cover letter, outlines of DOHA decisions, and other documents regarding Statute of Limitations, which have been identified as Exhibit J. Department Counsel submitted copies of three DOHA Appeal Board decisions, and the laws from several states regarding Statute of Limitations, which are marked as Exhibit 7. All documentary evidence was entered into evidence without objection. The transcript (Tr) was received on April 23, 2007.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial Considerations) of the Directive. The SOR contained five allegations, 1.a. through 1.e., under Guideline F. Applicant admitted all of the SOR allegations. The admitted allegations are incorporated herein as Findings of Fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and the live testimony and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is 37 years old. She is not married and has no children. Applicant is employed by

a defense contractor, and she seeks to retain a DoD security clearance in connection with her employment in the defense sector.

Paragraph 1 (Guideline F - Financial Considerations)

The SOR lists five overdue debts of Applicant, 1.a. through 1.e., under Adjudicative Guideline F. They will be discussed in the order that they were listed in the SOR:

1.a. This debt is listed in the SOR to Creditor 1 in the amount of \$10,267.79. At the hearing, Applicant testified that she had initially intended to pay of this debt, which is still due in the amount stated above. However, she was informed that it was no longer enforceable since it was now barred by the statute of limitations, and therefore she did not plan to pay off this debt. In her post hearing letter, Applicant indicated that she has now changed her mind and plans to pay off the debts that she believes are barred by the statute of limitations (Exhibit J). She stated,

I have since made the very personal decision to continue debt repayment for my two remaining debts despite the fact that the Statute of Limitations has expired. I realize that regardless of how much time has past, I knowingly and willfully incurred those debts and it is my responsibility still to them (morally if not legally). I have made an appointment to discuss my repayment options with a Credit Counseling organization. . . . Given my disposable income currently, I do not foresee a problem with a clearing up the old debt in a relatively short time.

1.b. This debt is listed in the SOR to Creditor 2 in the amount of \$6,805. This is the second debt referred to in Applicant's letter, which she now plans to pay despite her belief that it is not legally collectible.

1.c. This debt is listed in the SOR to Creditor 3 in the amount of \$1,313. Applicant testified that she had resolved this debt in full with a payment of \$640 on March 5, 2007. Exhibit D establishes that this debt has been settled.

1.d. This debt is listed in the SOR to Creditor 4 in the amount of \$807. Applicant testified that she had resolved this debt in full with a payment of \$685.67 on April 10, 2007. Exhibit E establishes that this debt has been settled.

1.e. This debt is listed in the SOR to Creditor 5 in the amount of \$3,938.08. Applicant testified that she had resolved this debt in full with a payment of \$2,200 on April 11, 2007. Exhibit F establishes that this debt has been settled.

The issue of unenforceable collection of debts barred because of the Statute of Limitations, was raised at the hearing, and the record was held open to allow both Applicant and Department Counsel an opportunity to submit evidence regarding this issue. However, since Applicant now indicates that she intends to resolve these two debts, I find that issue now moot in this case.

In her RSOR and at the PA, Applicant indicated that she had near perfect credit history until 2000. At that time her job location was reassigned without her request, and she was forced to move to a locality with a higher price of living. She was then relocated a second time to an even more expensive place to work and live. Her financial situation became more tenuous, and she consulted a

credit counseling service, but they were unable to help her resolve her financial problems. She did contact all of her creditors in 2002 to attempt to resolve her debts, but she could not reach a manageable arrangement with the creditors.

She conceded that she was so overwhelmed by her financial difficulties and at a loss for a solution, that she simply did nothing. Applicant also lost her job through downsizing, and was unemployed from June through August 2005, when she began her current employment.

Currently, Applicant does not have any other overdue accounts beside those already discussed above. She conceded that credit card debt was part of what led to her fiscal problems, and she does not have any credit cards now, nor does she plan to apply for any in the future.

Applicant submitted into evidence a Personal Financial Statement (Exhibit C) that was prepared on January 17, 2006, which shows a monthly net reminder of \$1,946. Applicant will be able to use this to resolve her last two overdue debts.

Finally, Applicant introduced three letters of recommendation from individuals who know Applicant in her professional setting. They strongly recommended her for a position of trust and described her in extremely positive terms (Exhibit I).

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2).

BURDEN OF PROOF

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to Applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of Applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to Guideline F:

The Government has established that Applicant has had a history of financial difficulties and overdue debts. However, Applicant had the difficult problems of having to relocate two times and each time to more expensive areas, combined with a period of unemployment that contributed to her financial difficulties. The evidence shows that Applicant has resolved three of her debts, and she now avers that she intends to resolve the other two overdue debts. Finally, all of Applicant's other bills are current and she now exhibits responsible financial behavior.

Regarding the Disqualifying Conditions (DC) under Guideline F, I conclude both DC (a), and DC (c) apply, because of Applicant's history of not meeting financial obligations and her previous inability to satisfy her debts. However, I find that Mitigating Condition (MC) (a) applies because the behavior that resulted in Applicant's overdue debts occurred under such circumstances that it is unlikely to recur and does not cast doubt on Applicant's current reliability trustworthiness or good judgement. MC (b) also applies because Applicant went through problems, including loss of employment and being required to relocate to more expensive places to live on two occasions, both of which were beyond her control. MC (c) is applicable because Applicant has received counseling to better manage her finances. Finally, MC (d) applies because Applicant has initiated a good-faith effort to resolve her overdue debts. I, therefore, hold Guideline F for Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1, Financial Considerations, Guideline F: For Applicant

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

DECISION

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

Martin H. Mogul
Administrative Judge