

DATE: October 18, 2007

In re:)
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)
 -----) ISCR Case No. 06-18694
 SSN: -----)
)
 Applicant for Security Clearance)
)
)

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

APPEARANCES

FOR GOVERNMENT

Gina L. Marine, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred approximately \$18,570 in delinquent debt, including many charged off collection accounts. Applicant owes approximately \$6,000 for tax year 2003 to the Internal Revenue Service (IRS). She provided no information concerning a structured plan to pay her creditors, and thus failed to mitigate the security concerns raised under the financial considerations guideline. Applicant's eligibility for a security clearance is denied.

STATEMENT OF THE CASE

On December 14, 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 January 11, 2007, Applicant submitted a notarized response to the SOR, and elected to have her case decided on the record in lieu of a hearing. Department Counsel submitted the Government's written case on August 1, 2007. Applicant received a complete file of relevant material (FORM) on August 7, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's case.² Applicant did not submit any additional information. The case was assigned to me on October 1, 2007.

RULING ON PROCEDURE

On July 31, 2007, the government moved to amend the SOR by deleting and replacing the existing allegation 1.d to conform to the record evidence, and adding the following allegation to the SOR as 1.f.

1.d You are indebted to Appl CD Bk/ Pinnacle Financial Group in the approximate amount of \$2,730, for a delinquent account referred for collection by Cross Country in about July 2004. As of April 27, 2007, this debt has not been paid.

1.f You are indebted to the Internal Revenue Service in the approximate amount of \$6,000 for the tax year 2003. As of October 20, 2006, this debt has not been paid.³

The Applicant did not object to the motion. I granted the government's motion to amend the SOR.

FINDINGS OF FACT

Applicant admitted allegations in subparagraphs 1.a through 1.e in her SOR response under Guideline F. 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:

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 eight items in support of its contentions.

³Item 5 (Applicant's admission in Interrogatories).

Applicant is a 28-year-old employee of a defense contractor. She attended high school from 1993 until 1996. She obtained her GED in 1999. She has worked for her current employer since November 2002. She is married with no children.⁴ On August 23, 2005, she completed her security clearance (SF 86) application.⁵

Applicant was steadily employed after high school. Applicant did not provide any details about her work record.

In 2001, Applicant was diagnosed with melanoma. She required chemotherapy and due to the side effects was ordered by her physician to remain home and out of work. Applicant states she was out of work for almost one year. During that year she worked approximately six weeks.⁶

Applicant's debts in the SOR total approximately \$18,570.⁷ Multiple accounts were charged off or placed for collection. Several of the debts have been in collection since 2002.⁸

Applicant provided some details about her financial status in her February 2006 investigative interview. She acknowledges that her credit is poor and that she has an inability to pay all her bills. She wants to pay her debts, but has not developed a plan to resolve them. However, she stated that she did contact the creditors and will get back to them to make arrangements to pay her bills. During that interview, she noted that she owes \$6,000 in taxes from 2003 to the IRS.⁹

Applicant and her husband earn \$3,395 in monthly net income. After her monthly expenses of \$2,404, she has a net remainder of \$991. She is not making any monthly payments to any creditors listed in the SOR.¹⁰

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.”¹¹ 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.

⁴Item 4 (Application for Security Clearance (SF 86), dated August 23, 2005).

⁵*Id.*

⁶Item 5 (Answer to Interrogatories, dated November 2006).

⁷*Id.*

⁸Item 7(Credit Bureau Report, dated April 27, 2007) at 1-3.

⁹Item 5, *supra* note 6, at 8.

¹⁰Item 6 (Personal Financial Statement, dated February 23, 2006).

¹¹ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

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).

“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.”¹² An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.¹³ 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.¹⁴

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.¹⁵ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.¹⁶ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹⁷ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.¹⁸ 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.

¹² Directive, ¶ E2.2.1.

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

¹⁴ *Id.*

¹⁵ Directive, ¶ E3.1.14.

¹⁶ Directive, ¶ E3.1.15.

¹⁷ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁸ Directive, ¶ E2.2.2.

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.*¹⁹

In this matter, the government provided substantial evidence that Applicant accrued delinquent debts with an approximate total balance of \$18,570. She admits they are still outstanding debts. Her 2007 credit report and answers to her interrogatories confirm all her alleged debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶19(a) (*inability or unwillingness to satisfy debts*) and FC DC AG ¶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 her. 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 Applicant still carries a significant amount of delinquent debt. One collection account is from 2002. Despite steady employment, these numerous debts are delinquent. She provided no explanation of special circumstances that would apply.

She has been in her current position since 2002. She has not provided sufficient evidence or explanation 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 circumstances*).

I have considered the remaining mitigating conditions. 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*); FC MC AG ¶ 20 (d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*); FC MC AG ¶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*)

Applicant has not received financial counseling or developed a structured plan to resolve these debts. Applicant's financial problems remain. It is unlikely they will be resolved in the near future. Applicant has not shown that she established a record of steady payments or financial stability. Thus, I conclude that she has not made a good-faith effort to resolve her debts. Despite her promises to take actions in the future, however sincere, this is not a substitute for a documented track record of remedial actions. The Appeal Board has held that "a promise to take remedial steps in the future is not evidence of reform or rehabilitation."²⁰

¹⁹AG ¶ 18.

²⁰ISCR Case No. 99-0012 (App. Bd. Dec. 1, 1999)(citation omitted).

The issue is not whether Applicant is still legally liable for any or all of her outstanding debts, but whether she has presented sufficient evidence of extenuation, mitigation or changed circumstances to warrant a favorable security determination. Her remaining unpaid debt constitutes a security concern. She has been employed with her current employer since 2002. She has not been able to resolve her delinquent debts. 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. An applicant with a good or even exemplary work history may engage in conduct that has negative implications or presents doubt about her 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.

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

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