

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant's accrual of \$8,700 of post-Chapter 7 bankruptcy debt generates a security concern. Her financial problems have coincided with a history of medical problems, and the failure of her children's father to pay child support. Since 2006, she has been steadily resolving her delinquencies, has obtained a part-time job, and has retained a counseling agency which helped her develop a payment plan. She has mitigated the security concern. Clearance is granted.

CASENO: 06-19324.h1

DATE: 07/27/2007

DATE: July 27, 2007

In re:	)	
	)	
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SSN: -----	)	ISCR Case No. 06-19324
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
MARC E. CURRY**

**APPEARANCES**

**FOR GOVERNMENT**

J. Theodore Hammer, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

\_\_\_\_\_Applicant's accrual of \$8,700 of post-Chapter 7 bankruptcy debt generates a security concern. Her financial problems have coincided with a history of medical problems, and the failure of her children's father to pay child support. Since 2006, she has been steadily resolving her delinquencies, has obtained a part-time job, and has retained a counseling agency which helped her develop a payment plan. She has mitigated the security concern. Clearance is granted.

### **STATEMENT OF THE CASE**

On January 26, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) explaining why it was not clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended. DOHA received her answer and request for a hearing on February 26, 2007.

The case was assigned to me on April 18, 2007. DOHA issued a notice of hearing on April 27, 2007, scheduling it for May 21, 2007. During the hearing, I received 33 government exhibits, six Applicant exhibits, and the testimony of three Applicant witnesses. DOHA received the transcript on June 6, 2007.

### **PROCEDURAL MATTERS**

\_\_\_\_\_The government withdrew SOR subparagraph 2.b(14).<sup>1</sup> Applicant did not answer subparagraph 1.n, "On or about May 9, 2003, you made and issued two checks in amounts greater than \$200 drawn on a bank account with insufficient funds," asserting, in essence, that the allegation was vague and overbroad. The government moved to amend it to read as follows: "On or about May 9, 2003, you made and issued one check in an amount greater than \$200 drawn on a bank account with insufficient funds." Applicant did not object, and I granted the motion.

Although an SOR does not have to satisfy the strict requirements of a criminal indictment, it must still place an applicant on adequate notice of the allegations so that she may have a reasonable opportunity to respond and prepare a defense.<sup>2</sup> Subparagraph 1.n, as amended, does not meet this minimum threshold. Moreover, it remains vague and overbroad. I did not consider it in making my decision.

### **FINDINGS OF FACT**

\_\_\_\_\_Applicant admitted subparagraphs 1.a through 1.d, 1.f, and 1.h through 1.l. She denied subparagraphs 1.e, 1.g, 1.m, 1.o through 1.s, and Paragraph 2. The SOR admissions are incorporated into the findings of fact. In addition, I make the following findings of fact.

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<sup>1</sup>Tr. 100.

<sup>2</sup>ISCR Case No. 03-07826 (App. Board June 17, 2005 at 3).

Applicant is a 38-year-old single woman with two children, ages 12 and eight. The children's father is an ex-boyfriend with whom she lived from 1993 to 1999. She has a high school diploma, and is working toward an undergraduate degree in criminal justice. For the past two and a half years, she has worked as a security specialist.<sup>3</sup>

Applicant is highly respected at her job. Her immediate supervisor characterizes her as a "huge asset" to the company.<sup>4</sup> The company vice president, testifying on her behalf, stated that she continuously receives accolades from government customers.<sup>5</sup> Her company awarded her with one of its most prestigious awards, the Customer Recognition Award, on two occasions between 2005 and 2006.<sup>6</sup>

Applicant has a history of financial problems. They began in 1994 when a difficult pregnancy caused her to miss five months of work.<sup>7</sup> Although she received disability, it only constituted 60 per cent of her income, and she fell behind on her car payments. Shortly thereafter, she arranged for the car to be voluntarily repossessed.<sup>8</sup>

In 1995, Applicant lent \$1,500 to a friend who was being prosecuted for writing bad checks.<sup>9</sup> The friend failed to pay the loan. Also, she gained access to Applicant's social security number, and stole her identity, using it to open a phone account, and generating a \$1,700 bill.<sup>10</sup> Applicant ultimately was unsuccessful in challenging the phone bill, and had to pay it.

In 1996, Applicant cosigned a loan for her boyfriend. She became responsible for payments after he failed to make them.<sup>11</sup> She struggled to make the payments, and ultimately grew delinquent on both her boyfriend's car note, and her own car note.<sup>12</sup> Ultimately, both were repossessed.

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<sup>3</sup>Tr. 24.

<sup>4</sup>Tr. 155.

<sup>5</sup>Tr. 169.

<sup>6</sup>Customer Recognition Awards, dated January 31, 2006 and July 20, 2006, as listed in Answer, dated February 26, 2007 at 19 and 21.

<sup>7</sup>Tr. 54.

<sup>8</sup>Exhibit 3, Signed, Sworn Statement, dated August 19, 2002, at 4.

<sup>9</sup>Tr. 60.

<sup>10</sup>Tr. 65.

<sup>11</sup>Exhibit 3 at 4; Tr. 38.

<sup>12</sup>Tr. 38.

In June 1998, Applicant bounced a check to a convenience store in the amount of \$35. (Subparagraph 1.s).<sup>13</sup> She satisfied it four months later.<sup>14</sup>

In approximately 1998, Applicant underwent a sterilization procedure.<sup>15</sup> It was unsuccessful, and she became pregnant with her second child in 1999. The child's health was fragile at birth, requiring two months of inpatient monitoring in a hospital intensive care unit, and generating costly medical bills.<sup>16</sup>

In July 1999, Applicant wrote a check to a dentist for approximately \$116 with insufficient funds. (Subparagraph 1.r) She neither received notice from her bank at the time nor the dentist's office, because she moved shortly after writing the check.<sup>17</sup> During the course of a routine police stop in 2003, the officer performed a record's check, and discovered the misdemeanor charge. Applicant paid it, whereupon it was *nolle prossed*.<sup>18</sup>

In August 1999, Applicant filed for Chapter 7 bankruptcy (subparagraph 1.a).<sup>19</sup> The bankruptcy court discharged her debts the following December.<sup>20</sup> The discharged debts exceeded \$65,000. Approximately \$30,000 constituted the deficiencies remaining from the repossession of her car and her boyfriend's car.<sup>21</sup>

Applicant continued to struggle with her finances after the bankruptcy discharge. In February 2000, she purchased another car.<sup>22</sup> She grew behind on payments, and returned it to the dealer, leading to its voluntary repossession in January 2001. (Subparagraph 1.m) Approximately five months later, she negotiated a settlement of \$1200, and satisfied it.<sup>23</sup>

In June 2000, Applicant bounced a check to a gas station (Subparagraph 1.q). She paid it in August 2000.<sup>24</sup>

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<sup>13</sup>Exhibits 20a and 20b, Court Records, dated June 2, 1998 and June 29, 1998, respectively.

<sup>14</sup>Exhibit 20c, Payment Receipt, dated October 20, 1998.

<sup>15</sup>Tr. 43.

<sup>16</sup>*Id.*

<sup>17</sup>Tr. 94.

<sup>18</sup>Tr. 95; Exhibit 19, Court Records, dated September 3, 2003.

<sup>19</sup>Exhibit 9, U.S. Bankruptcy Court Records; discharge entered December 23, 1999.

<sup>20</sup>*Id.*

<sup>21</sup>*See* Exhibit 9, Schedule F at 20 and 22.

<sup>22</sup>Exhibit 3, at 5.

<sup>23</sup>Tr. 114; Exhibit 14, Excerpt from Credit Bureau Report showing zero balance as of December 2006.

<sup>24</sup>Exhibit 18c, Receipt, dated August 29, 2000.

In July 2000, Applicant obtained a child support order against her ex-boyfriend which he failed to pay.<sup>25</sup> In 2001, he was incarcerated, and spent the next five years in prison.<sup>26</sup> She received no child support payments during that time. Currently, he owes approximately \$54,000 of delinquent child support payments.<sup>27</sup>

In November 2000, a friend loaned Applicant \$400. When she attempted to repay the loan, she wrote a check that bounced. Her friend pressed charges, then withdrew them after Applicant paid her (subparagraph 1.p).<sup>28</sup>

In January 2001, Applicant was charged with writing a check with insufficient funds after bouncing a \$13 check to a grocery store (subparagraph 1.o). She was found not guilty, after she presented evidence that she paid it before the hearing.<sup>29</sup>

In 2002, Applicant underwent a major surgical procedure.<sup>30</sup> She was out of work for 8 weeks while recuperating.<sup>31</sup>

By March 2006, Applicant had accrued approximately \$8,700 of post-bankruptcy delinquencies. In April 2006, she got a raise.<sup>32</sup> By September 2006, Applicant's ex-boyfriend had left prison and begun making child support payments.<sup>33</sup> In December 2006, she satisfied the delinquent medical bill listed in subparagraph 1.g.<sup>34</sup> Also that month, she negotiated a settlement with the creditor listed in 1.e, and satisfied it for \$884.<sup>35</sup>

Applicant was able to make these lump sum payments with her parents' help. They have gifted her a total of \$5,000 since 2005.<sup>36</sup> She also used money from this gift to pay debts that were the subject of the DSS investigation, but not listed in the SOR.<sup>37</sup>

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<sup>25</sup>Exhibit B, State Department of Social Services Payment Chronology, dated May 16, 2007

<sup>26</sup>The incarceration did not relate to his failure to pay child support.

<sup>27</sup>Exhibit B, dated May 16, 2007.

<sup>28</sup>Letter of Friend, dated February 23, 2007, as listed in Answer at 80.

<sup>29</sup>Exhibits 16a and 16b, Court Records, dated January 2, 2001 and July 11, 2001, respectively.

<sup>30</sup>Tr. 145.

<sup>31</sup>*Id.*

<sup>32</sup>Tr. 119.

<sup>33</sup>*Id.*

<sup>34</sup>Credit Bureau Report Excerpt, date February 21, 2007, as included in Answer at 79.

<sup>35</sup>Letter from Creditor, dated February 15, 2007, as listed in Answer at 78.

<sup>36</sup>Tr. 115.

<sup>37</sup>Tr. 116.

In January 2007, Applicant began researching financial counseling services. She retained one the following month. With the help of a counselor, she developed a payment plan that consolidated all the remaining SOR debts (subparagraphs 1.b through 1.d, 1.f, and 1.h through 1.l). Under the plan, she pays the counseling agency \$264 monthly, whereupon, the agency distributes a portion of the payment to each creditor. Applicant has been making payments since March 2007.

In February 2007, Applicant obtained a part-time job. She works 16 hours per week.<sup>38</sup> In April 2007, she obtained another raise. Currently, after expenses, Applicant has \$636 remaining after expenses, monthly.<sup>39</sup> She has two credit cards, and pays their respective balances in their entirety each month. She has opened savings accounts for both children, and maintains \$1,300 in her own savings account. At the hearing, the vice president of her company testified that she “absolutely” will receive a five to six per cent raise in October 2007.

Applicant completed a security clearance application in October 2005. In response to Section 29 (*Public Record Civil Actions In the last 7 years, have you been a party to any public record civil court actions not listed elsewhere on this form?*), she did not disclose a number of public record civil actions as listed in subparagraph 2.b. She asserts that these omissions were unintentional. All of the civil actions related to her finances. Elsewhere on the application, she listed her 1999 bankruptcy, a garnishment, and a judgment. Also, she answered “Yes” in response to Question 27b. (*In the last 7 years, have you had your wages garnished or had any property repossessed for any reason?*), and Section 28b. (*Are you currently over 90 days delinquent on any debt(s)?*). Also, she elaborated at length about her financial problems in the “Additional Comments” section of the security clearance application.<sup>40</sup>

## POLICIES

The adjudicative guidelines, as revised December 29, 2005, and implemented September 1, 2006, apply to the analysis of this case. In addition to brief introductory explanations for each guideline, they are divided into those that may be considered in deciding whether to deny or revoke an individual’s eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual’s eligibility for access to classified information (mitigating conditions).

Because the entire process is a scrutiny of a number of variables known as the “whole person concept,” all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (1) the nature and seriousness of the conduct and surrounding 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.

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<sup>38</sup>Tr. 68-69.

<sup>39</sup>Tr. 125-130. Applicant’s calculations do not include income from child support, which has remained sporadic.

<sup>40</sup>Exhibit 1 at 28.

The following adjudicative guidelines are raised:

Guideline F - Financial Considerations: 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.

Guideline E - Personal Conduct: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

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

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest."<sup>41</sup> In reaching this decision, I have drawn only those conclusions that are based on the evidence contained in the record.

The Government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the Government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

## CONCLUSIONS

### **Financial Considerations**

Applicant's history of financial problems trigger the application of Financial Considerations Disqualifying Conditions (FC DC) 19(a): *inability or unwillingness to satisfy debts*, FC DC 19(c): *a history of not meeting financial obligations*, and FC DC 19(e): *consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis*. Applicant experienced a difficult pregnancy in 1994, a child born extremely premature in 1998, and a serious medical procedure in 2002. All generated costly medical bills, and rendered her temporarily unable to work. These problems were exacerbated by Applicant's problems with the father of her children. While they were together, he seldom earned a steady income to help with the family finances. After they separated, he did not pay child support.

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<sup>41</sup>See generally, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

Applicant's financial problems cannot solely be contributed to her health and her ex-boyfriend. A number of bad decisions, such as loaning money to a friend who was facing prosecution for writing bad checks, co-signing a loan for her ex-boyfriend, and buying a car three months after getting a bankruptcy discharge also contributed. Financial Considerations Mitigating Condition (FC 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.

In the past 7 months, Applicant has satisfied several debts, organized a payment plan with the help of a financial counselor, and obtained a part-time job to generate extra income to pay her debts. Currently, she has ample income to pay her remaining debts, and will soon be getting a raise that will further ensure her ability to satisfy the delinquencies. FC 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*, and FC MC 20(d): *the individual initiated a good-faith effort to repay overdue creditors otherwise resolve debts* apply. Applicant has mitigated the financial considerations security concern.

### **Personal Conduct**

Applicant demonstrated questionable judgment when she wrote a series of bad checks between 1999 and 2002. Her propensity to write bad checks during this time was more indicative of financial hardship than dishonesty. Moreover, there is no evidence that she has written a bad check in more than four years. She has mitigated the personal conduct security concern with respect to the bad checks.

Applicant's omission of several public record court cases from Question 29 of the security clearance application raises the issue of whether Personal Conduct Disqualifying Condition (PC DC) 16 (a) *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*, applies.

All of the omissions involve court cases related to Applicant's troubled finances. She elaborated upon her financial condition in a candid and comprehensive manner elsewhere on the security clearance application. In this context, I conclude her failure to list the court actions, as stated in the SOR, does not constitute intentional falsification. PC DC 16 (a) does not apply. Applicant has mitigated the personal conduct security concerns.

### **Whole Person Concept**

Applicant has been gradually regaining control of her finances for the past 7 months. When considered alone, this does not mitigate the security concern in light of the length of time she has had financial problems, and their recurrence after a 2001 discharge. Applicant's current effort toward improving her finances have included working with a financial counselor, and generating extra income through obtaining a part-time job. Also, she has been able to make payments toward debt reduction while simultaneously investing in three savings' accounts.



I was particularly impressed with the fact that Applicant has been successfully reducing her delinquencies while taking college courses, raising two children by herself, executing her full-time job responsibilities in an exemplary manner, and working at a part-time job. Consequently, the concern generated by the recurrence of delinquencies after the bankruptcy discharge is outweighed by the fortitude that she has demonstrated in rehabilitating her finances. Considering these factors in light of the whole-person concept, particularly with respect to her maturity, the presence of rehabilitation, and the minimal potential for coercion, I conclude she has mitigated the security concern. Clearance is granted.

**FORMAL FINDINGS**

Paragraph 1 – Guideline F:	FOR APPLICANT
Subparagraphs 1.a-1.s:	For Applicant
Paragraph 2 - Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant

**DECISION**

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

Marc E. Curry  
Administrative Judge