

KEYWORD: Financial

DIGEST: Applicant is a 36-year-old material coordinator who has worked for a federal contractor since September 2004. She had \$50,000 in delinquent debts discharged in bankruptcy in 2002. She continued to experience financial problems and acquired additional delinquent debts. She was unemployed for nine months in 2004. Since then she took minimal action regarding her delinquent debts until her security clearance became an issue. Applicant's past and present financial history raise security concerns. She failed to mitigate Guideline F, financial considerations security concerns. Clearance is denied.

CASENO: 06-19435.h1

DATE: 08/29/2007

DATE: August 29, 2007

In re:	)	
	)	
	)	
-----	)	ISCR Case No. 06-19435
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
	)	

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

**APPEARANCES**

**FOR GOVERNMENT**

Richard A. Stevens, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

Applicant is a 36-year-old material coordinator who has worked for a federal contractor since September 2004. She had \$50,000 in delinquent debts discharged in bankruptcy in 2002. She continued to experience financial problems and acquired additional delinquent debts. She was unemployed for nine months in 2004. Since then she took minimal action regarding her delinquent debts until her security clearance became an issue. Applicant's past and present financial history raise security concerns. She failed to mitigate Guideline F, financial considerations security concerns. Clearance is denied.

## **STATEMENT OF CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on January 4, 2007, detailing the basis for its decision—security concerns raised 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.

In a sworn statement dated January 26, 2007, Applicant responded to the SOR allegations admitting all of them. Applicant elected to have her case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on July 11, 2007. The FORM was mailed to Applicant on July 16, 2007, and received on July 20, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded on July 23, 2007 with additional material. Department Counsel had no objections and the documents were included in the record. The case was assigned to me on August 15, 2007.

## **FINDINGS OF FACT**

Applicant is a 36-year-old material coordinator who has worked for a federal contractor since September 2004. Prior to then she was unemployed since February 2004. She is single and has no children. Applicant filed for bankruptcy in 2001 as alleged in SOR ¶ 1.a. Her only explanation was that she got in over her head and had been living with someone who left and was paying half of all of the bills.<sup>1</sup> In April 2002 she had \$50,000 in debt discharged in bankruptcy. No accounting or explanation was provided as to what type of debts she had accumulated that were discharged nor what actions she had taken prior to the discharge.

The debt listed in SOR ¶ 1.b is for an automobile that was repossessed for nonpayment in about January 2004. The amount owed is \$1,743.63. No information was provided as to the status of this debt.

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<sup>1</sup>Item 5 at 5.

The debt listed in SOR ¶ 1.c is for the amount of \$356 went into collection in January 2004. No information was provided as to the status of this debt.

The debt listed in SOR 1.d is presumably for telephone services in the approximate amount of \$2,977. The account was placed in collection in March 2004 and no information was provided as to the status of this debt.

The debt listed in SOR 1.e is to a credit union in the approximate amount of \$7,233 for the balance owed on a automobile that was repossessed for nonpayment in March 2004. She negotiated a repayment plan with the collection firm. The balance on the debt has increased to \$8,203.20. She agreed to pay \$170.90 per month for 48 months.<sup>2</sup> She provided proof that she made monthly payments in October, 2006, November 2006 and December 2006.<sup>3</sup> No further documentation was provided that she has continued to make monthly payments.

The debts listed in SOR ¶¶ 1.f and 1.g are in the amounts of \$98 and \$134 respectively and were forwarded for collection in March 2005 and December 2005. Both were paid on January 31, 2007, from Applicant's tax refund.<sup>4</sup>

Applicant's personal financial statement (PFS) dated October 2006 shows a net monthly salary of \$1,948 and expenses as \$1,737, with a remainder monthly balance of \$211.<sup>5</sup> Her statement includes the \$170.90 monthly payment for the balance owed on her repossessed car and a loan from a credit union for \$15,000, for which she pays \$302 monthly. Her PFS does not show payments to any other creditors. Applicant has not provided any additional documentation to show she is repaying her debts or has contacted creditors to resolve them.

Applicant stated in her answer:

In Dec. 2006 I moved into [a] cheaper home for the main reason of getting my finances squared away. I am planning to pay my debts one at a time once I am settled in my home. I am working on the biggest debt now. At the same time I plan to pay the smaller ones first and work my way up. After losing my job, I lost everything and had to move in with my dad. I am back on my feet now and will get this taken care of.

In her response dated July 23, 2007, she did not provide additional information as to what further actions she has taken on her delinquent debts since moving into her new home.

## POLICIES

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<sup>2</sup>Item 4 at 4.

<sup>3</sup>*Id.* at 7.

<sup>4</sup>Response dated July 23, 2007.

<sup>5</sup>Item 6 at 5.

“[N]o one has a ‘right’ to a security clearance.”<sup>6</sup> As Commander in Chief, 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.”<sup>7</sup> The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”<sup>8</sup> An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>9</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>10</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>11</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>12</sup> 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.<sup>13</sup>

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information.<sup>14</sup> “Substantial evidence” is “more than a scintilla but less than a preponderance.”<sup>15</sup> The Guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.<sup>16</sup>

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.<sup>17</sup> An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant

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<sup>6</sup>*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>7</sup>*Id.* at 527.

<sup>8</sup>Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

<sup>9</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>10</sup>*Id.*

<sup>11</sup>*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

<sup>12</sup>Executive Order 10865 § 7.

<sup>13</sup>*See* Exec. Or. 10865 § 7.

<sup>14</sup>*See Egan*, 484 U.S. at 531.

<sup>15</sup>*See v. Washington Metro. Area Transit Auth.*, 36 F.3rd 375, 380 (4th Cir. 1994).

<sup>16</sup>*See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996)

<sup>17</sup>*See* Directive ¶ E3.1.15.

or continue his security clearance.”<sup>18</sup> “[S]ecurity clearance determinations should err, if they must, on the side of denial.”<sup>19</sup>

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 facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

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

Financial Considerations are a security 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 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.

Based on all of the evidence, Financial Considerations Disqualifying Condition (FC DC) 19(a) (*inability or unwillingness to satisfy debts*) and FC DC 19(c) (*a history of not meeting financial obligations*), apply in this case. Applicant has debts that are delinquent. She had \$50,000 in debts discharged in bankruptcy in 2002. Bankruptcy is a legitimate means of resolving delinquent debts and obtaining a fresh financial start. However, Applicant slid back into financial difficulty and many of her debts are again in a collection status and have been since as far back as January 2004.

I have considered all of the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC 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*), 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*), 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 or otherwise resolve debts*). Applicant’s debts are recent and some remain unpaid. She has paid two debts and has a repayment plan for a third, but failed to specifically address and provide information on the other debts. Applicant had \$50,000 in debt discharged in bankruptcy in 2002 giving her a new financial start. She was unemployed for a

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<sup>18</sup>ISCR Case No. 01-207000 at 3 (App. Bd. Dec. 19, 2002)

<sup>19</sup>*Egan*, 484 U.S. at 531; see Guidelines ¶ 2(b).

period of approximately nine months in 2004. This event obviously set her back financially. However, her debt in SOR ¶1.b was sent to collection in January 2004, prior to her unemployment and after her bankruptcy, which means she was delinquent on her debt while she was employed. The debts listed in SOR ¶¶ 1.f and 1.g were relatively small debts that have since been paid, but those debts were sent to collection in March 2005 and December 2005, again while Applicant was employed. She did not pay either of those debts until her security clearance became an issue. No explanation was provided regarding why these debts were not paid timely. Based on Applicant's history, I find that the circumstances that her behavior is likely to recur and her actions do cast doubt on her reliability and good judgment. I find FC MC 20(a) does not apply.

I have considered the circumstances regarding Applicant's unemployment and the results it had on her financial situation. These circumstances were beyond her control. However, she provided little explanation as to why after having her debts discharged in bankruptcy she was again in a financial crisis prior to her unemployment. Applicant filled out her security clearance application in June 2005 and was aware that her financial status was a concern. Some of the circumstances she presented were beyond her control, but it has been three years since her unemployment and there is little evidence that she addressed her finances until her security clearance became an issue. I find FC MC 20(b) does not apply.

Applicant started a repayment plan on the debt for her repossessed automobile, but only provided proof of three payments. She paid two other debts that were in collection status for more than a year before being paid. She failed to take action on her other debts or provide information regarding them. She offered no evidence she has sought financial counseling. Her efforts to resolve her debts were many months after she was employed. The concern is that Applicant having already been provided a clean slate after bankruptcy is again in financial difficulty and has not sought counseling. It is too early to conclude that she will not continue on the same financial road. I find FC MC 20(c) and (d) do not apply.

### **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 his or her 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.

In addition to considering the specific disqualifying and mitigating conditions under the Guidelines, I have also considered the adjudicative process factors listed in ¶ 2a (1)-(9) of the Guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Specifically these are: (1) the nature, extent and seriousness of the conduct; (2) the circumstances and 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 extent to which participation was voluntary; (6) the presence or absence of rehabilitation and other permanent 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. Although the presence

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

I considered all of the evidence provided and the “whole person” concept in evaluating Applicant’s risk and vulnerability in protecting our national interests. After weighing the disqualifying and mitigating conditions under Guideline F and evaluating the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations. 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.	Against Applicant
	Subparagraph 1.b.	Against Applicant
	Subparagraph 1.c.	Against Applicant
	Subparagraph 1.d.	Against Applicant
	Subparagraph 1.e.	For Applicant
	Subparagraph 1.f.	For Applicant
	Subparagraph 1.g.	For 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