

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a mail clerk for a defense contractor. She presented insufficient information to explain, refute, or mitigate 15 delinquent debts totaling almost \$15,000. She noted that she would file bankruptcy to resolve the debts. She has yet to file a bankruptcy action. Clearance is denied.

CASENO: 06-19880.h1

DATE: 08/31/2007

DATE: August 31, 2007

In Re:	)	
	)	
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SSN: -----	)	ISCR Case No. 06-19880
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

Rita C. O'Brien, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a mail clerk for a defense contractor. She presented insufficient information to explain, refute, or mitigate 15 delinquent debts totaling almost \$15,000. She noted that she would

file bankruptcy to resolve the debts. She has yet to file a bankruptcy action. Clearance is denied.

### **STATEMENT OF THE CASE**

On March 14, 2007, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), using the Adjudicative Guidelines (AG) promulgated by the President on December 29, 2005, and implemented by the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on March 19, 2007. The SOR alleges security concerns under Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on May 2, 2007. She admitted the sixteen allegations under Guideline F, noting that two of the delinquent debts had been satisfied.<sup>1</sup> She denied the allegation under Guideline E with an explanation. She elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on June 13, 2007. Applicant received a complete file of relevant material (FORM) on June 19, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Appellant was granted an extension until August 19, 2007 to reply. Her reply, dated August 16, 2007, was received by Department Counsel on August 28, 2007.<sup>2</sup> On August 28, 2007, Department Counsel forwarded Applicant's response and noted no objection to consideration of the response.<sup>3</sup> The case was assigned to me on August 15, 2007.

### **FINDINGS OF FACT**

Applicant is 36 years old and has been a mail clerk for a defense contractor since January 2006. She was married with three children. Her husband left the family leaving her a single mother raising the children. As part of her employment with the defense contractor, Applicant submitted

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<sup>1</sup>The Government moved to delete SOR allegation 1.b and the reference to allegation 1.b in SOR allegation 2.a because Applicant presented sufficient information in response to the SOR that the \$5,487 judgment had been satisfied by garnishment. *See*, Item 3, attachment 1. The motion is granted and allegation 1.b, and the reference to allegation 1.b in allegation 2.a are deleted.

<sup>2</sup>Item 9.

<sup>3</sup>Item 12.

a security clearance application on January 24, 2006.<sup>4</sup> Subsequent investigation reveals Applicant has delinquent debts.<sup>5</sup>

Delinquent debt 1 (SOR 1.a) is a judgment for \$3,484. Applicant presented sufficient information to establish that her former husband's wages were garnished to pay the judgment. All but about \$600 of the judgment had been paid.<sup>6</sup> Since the judgment was being paid by garnishment of her husband's wages, and they were not communicating, she was not aware the judgment had not been satisfied.<sup>7</sup>

Applicant admitted to all of the remaining delinquent debts. These debts included a medical account for \$62 (SOR 1.c); a telephone debt to SPRINT for \$631 (SOR, 1.d); a cable bill to COMCAST for \$239 (SOR 1.e); a telephone bill to Bell South for \$882 (SOR 1.f); an account with First Bank more than 180 days delinquent for \$588 (SOR 1.g); an account with Miraglia for \$237 more than 180 days delinquent (SOR 1.h); an account with Washington Mutual more than 180 days delinquent for \$455 (SOR 1.i); another cable debt with COMCAST more than \$180 days delinquent for \$255 (SOR 1.j); an account with AAC for \$527 (SOR 1.k); an account with Natcreadj for \$325 (SOR 1.l); an utility account with PG&E for \$96 (SOR 1.m); an account with Palisades for \$661 (SOR 1.n); an account with Drivefin for \$10,311 more than 180 days delinquent (SOR, 1.o); and an account with First Premier more than 180 days delinquent for \$411 (SOR, 1.p).<sup>8</sup>

In her response to the FORM, Applicant noted that her debt problems arose because she became a single mother caring for three children. Her husband was responsible for much of the delinquent debts. He would purchase items, lose his job, and not able to pay for the items. He left the family placing the burden on her to pay the debts. However, all she was able to do was provide her children with the necessities of living. In response to an interrogatory, Applicant stated that she would file for bankruptcy for these debts.<sup>9</sup> Applicant contacted an attorney in 2006 to file bankruptcy for her, but the action was terminated because she could not pay the lawyer's fees.<sup>10</sup> When she has the funds, she will again try to file a bankruptcy action. She wants to lower the amount of her debt.<sup>11</sup> She recently contacted a credit counseling agency through her employer for some assistance in resolving her debts.<sup>12</sup>

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<sup>4</sup>Item 4.

<sup>5</sup>Items 6 and 7.

<sup>6</sup>See, Item 3.

<sup>7</sup>Item 9.

<sup>8</sup>Item 3.

<sup>9</sup>Item 5.

<sup>10</sup>Item 10.

<sup>11</sup>Item 9.

<sup>12</sup>Item 11.

Applicant responded “NO” to question 27(d) on her January 2006 security clearance application asking if there were any unpaid judgments against her. Approximately \$600 is still owed on a judgment entered against she and her husband. Garnishment of her husband’s wages paid most of the judgment. Applicant thought the entire judgment was paid by the garnishment.<sup>13</sup>

## 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.”<sup>14</sup> Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.<sup>15</sup>

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. The adjudicative guidelines for this case are the guidelines promulgated by the President on December 29, 2005, and implemented by the Department of Defense on September 1, 2006. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, and the whole person concept.<sup>16</sup>

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. An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person. An administrative judge should consider: (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 applicant’s age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (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 of recurrence.<sup>17</sup>

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.<sup>18</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of

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<sup>13</sup>See, Item 3.

<sup>14</sup>*Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>15</sup>Directive ¶ E2.2.1.

<sup>16</sup>AG ¶ 2(a).

<sup>17</sup>*Id.*

<sup>18</sup>See Exec. Or. 10865 § 7.

Defense have established for issuing a clearance.

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.<sup>19</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>20</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>21</sup> The government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating condition, and an Administrative Judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.<sup>22</sup> “[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.”<sup>23</sup> “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.”<sup>24</sup>

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

Guideline F - Financial Considerations: A security concern exists because a 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.<sup>25</sup>

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.<sup>26</sup>

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<sup>19</sup>Directive ¶ E3.1.14.

<sup>20</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

<sup>21</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>22</sup>ISCR Case No. 99-0597 (App. Bd. Dec 13, 2000).

<sup>23</sup>ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

<sup>24</sup>*Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

<sup>25</sup>AG ¶ 18.

<sup>26</sup>AG ¶ 15.

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

## CONCLUSIONS

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

Applicant's delinquent debts noted in credit reports and admitted by Applicant bring the matter within Financial Considerations Disqualifying Conditions (FC DC) ¶ 19(a) (Inability or unwillingness to satisfy debts), and FC DC ¶ 19(c) (A history of not meeting financial obligations). Since Applicant admitted fourteen of the fifteen alleged delinquent debts, I conclude the above disqualifying conditions have been established.

Appellant's answer to the SOR only questions one of the debts, a judgement almost completely paid by garnishment of her husband's wages. This debt still has a remaining balance that neither Applicant nor her husband satisfied. Applicant was made aware of the remaining amount of the debt but presented no information on any efforts to pay the debt once advised the debt was still outstanding.

Applicant stated that she became a single mother raising three children after her husband left the family. Most of the debts were incurred by her former husband who lost jobs and left her to pay the debts. She raised 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). While the issue was raised by Applicant's response, she presented no additional information concerning any efforts to make arrangements to pay some of the debts. The debts are basically for small amounts and not for necessities of life for her or her children. None of the 15 debts, no matter how small or large, have been addressed. She has not shown that she acted responsibly under the circumstances.

Applicant's proposed solution to resolving the 15 debts was to file a bankruptcy petition. Bankruptcy is a legal and permissible means of resolving debt problems. However, promises to take an action in the future is not sufficient to establish a good-faith intent to resolve debts. FC MC ¶ 20(d) (The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply.

Applicant's response also does not raise 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 judgement). The debts have not been paid, so the failure to resolve debts is recent. There are 15 debts so her debt accumulation is frequent, and there are no known circumstances that would indicate that her financial problems would not recur.

Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating 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 situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. Applicant admits to 15 delinquent debts totaling over \$15,000. Applicant stated she would file for bankruptcy to pay these debts, but has yet to file or take other action to resolve them. She presented no proof of any inquiries on the debts or attempts to make payments.

Applicant's failure to list a judgment not fully paid in response to question 27(d) on her security clearance application raises Personal Conduct Disqualifying Condition (PC DC) ¶ 16(a) (the deliberate omission, concealment, or falsification of relevant and material facts from the personal security questionnaire, personal history statement, or similar form used to conduct investigations . . . determine security clearance eligibility or trustworthiness). Personal conduct is always a security concern because it asks the central question does the person's past conduct justify confidence the person can be trusted to properly safeguard classified information. The security clearance system depends on an individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified information is in the best interest of the United States Government. A deliberate omission or false statement on a security clearance application is a criminal offense under federal law.<sup>27</sup>

The judgment was entered against both Applicant and her husband. Applicant knew her husband's wages were garnished for the judgment. Almost all of the over \$3,000 judgment, except for about \$600, had been paid by the garnishment. She never received a notice that the garnishment had not completely paid the judgment. Her explanation that she believed the entire judgment had been satisfied is reasonable under the circumstances. The question on the security clearance application asks if there were any judgments in the last seven years that were not paid. It is conceivable for Applicant to believe the judgment was paid and her answer of "no" was correct. This is even clearer since the other judgment initially listed as a security concern by the government had been paid in full by garnishment. I find Applicant did not intentionally fail to provide correct information in response to question 27(d) on the security clearance application.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not eligible for access to classified information. Applicant has shown an irresponsible attitude toward her debts. She presented insufficient information to explain the debts or mitigate the disqualifying conditions. She failed to carry her burden to refute, extenuate, or mitigate the fifteen delinquent debts. I conclude Applicant has not mitigated the security concerns for financial considerations. She did mitigate security concerns raised under the guideline for Personal Conduct.

### **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

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<sup>27</sup>10 U.S. C. § 1001.

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Deleted by Government
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
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	Against Applicant
Subparagraph 1.l.:	Against Applicant
Subparagraph 1.m.:	Against Applicant
Subparagraph 1.n.:	Against Applicant
Subparagraph 1.o.:	Against Applicant
Subparagraph 1.p.:	Against Applicant

Paragraph 2, Guideline E:

FOR APPLICANT

Subparagraph 2.a.:	For Applicant
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### **DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant or continue access to classified information for Applicant. Clearance is denied.

Thomas M. Crean  
Administrative Judge