

KEYWORD: Financial

DIGEST: Applicant is 47 years old and has been employed as an engineer designer for a defense contractor since June 2004. He had three outstanding delinquent debts totaling approximately \$13,000. He proffered evidence of payment of these debts. Applicant has mitigated the financial considerations security concerns. Clearance is granted.

CASENO: 06-20248.h1

DATE: 06/14/2007

DATE: June 14, 2007

In re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 06-20248
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
JACQUELINE T. WILLIAMS**

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 47 years old and has been employed as an engineer designer for a defense contractor since June 2004. He had three outstanding delinquent debts totaling approximately

\$13,000. He proffered evidence of payment of these debts. Applicant has mitigated the financial considerations security concerns. Clearance is granted.

STATEMENT OF THE CASE

On July 7, 2004, Applicant executed a Security Clearance Application (SF 86).¹ On January 23, 2007, the Defense Office of Hearings and Appeals (DOHA) declined to grant a security clearance, and issued a Statement of Reasons (SOR)² 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 for SORs issued after September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued.

On February 12, 2007, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to another Administrative Judge on March 13, 2007. A Notice of Hearing was issued on April 10, 2007, scheduling the hearing for May 1, 2007. Due to workload constraints, the case was assigned to me on April 30, 2007. The hearing was conducted as scheduled. At the hearing, the Government submitted three exhibits (Exs. 1-3) and Applicant submitted four exhibits (Exs. A-D), all of which were admitted into the record without objection. The record was left open until May 21, 2007, to give Applicant time to submit additional documents. By memorandum dated May 23, 2007, the Government forwarded two additional documents submitted by Applicant, without objection. These documents were identified as Exs. E and F and admitted. The transcript (Tr.) was received on May 14, 2007.

FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to financial considerations under Guideline F, subparagraphs 1.a through 1.c. Those admissions are incorporated herein as findings of fact. He denied the allegation in subparagraph 1.d. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is 47 years old and works as an engineer designer for a defense contractor. His first marriage ended in divorce in 1997.³ His daughter is 19 and his son is 12. He remarried in 1998 and has a six-year-old child.⁴

On December 27, 1999, Applicant petitioned for Chapter 7 bankruptcy. He was released from his discharged debts on June 9, 2000.

Applicant was indebted to a jewelry store in the amount of \$287. This debt was initially included in the bankruptcy but later reaffirmed. This account was settled and has been paid in full.

¹Ex. 1 (Security Clearance Application, dated July 7, 2004).

²Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive).

³Tr. 28.

⁴Tr. 30.

Applicant proffered evidence of payment of \$201.26 in full settlement of this account.⁵ There is now a zero balance in this account.⁶

During his second marriage, Applicant left his home to move to another state for a contractor position. He was solely responsible for paying for his expenses to move to the other state. He continued supporting his family at home while he was away. The contractor did not get the contract, so he was laid off and returned home to his family.⁷ He was out of work for about a month. Debts became delinquent and his finances were fragile, eventually the debts overwhelmed his means to pay them off. In October 2002, his wife lost her job.⁸ The family went from a two-income household, to one income. She was unemployed for a year and one-half.⁹ During this period, debts fell behind because of nonpayment. When his wife returned to work in 2004, the financial strain decreased. Some creditors wanted to be paid in full on a delinquent account and would not accept monthly or partial payments.¹⁰

In February 2004, a delinquent debt belonging to Applicant was placed for collection in the amount of \$3,315.30. Applicant was informed that he could settle this debt for \$2,700.¹¹ By letter dated March 19, 2007, he satisfied this debt in full.¹² A Notice of Satisfaction of this debt states that the debt was satisfied on February 26, 2007.¹³

Applicant owed \$9,630.60 for an account placed for collection in February 2004. In a letter dated January 22, 2007, Applicant was informed that a judgment was issued for \$6,373.31. On March 27, 2007, he received a letter from the creditor confirming the settlement of this account for \$5,150.¹⁴ He made an agreement to make monthly payments until the debt was paid in full. At the

⁵Applicant's Answer (Attachment, check number 334978, payable to jewelry store for \$201.26).

⁶Ex. A (Letter from jewelry store).

⁷Tr. 31.

⁸Tr. 25-26.

⁹Tr. 25.

¹⁰Tr. 34-36.

¹¹Applicant's Answer (Attachment).

¹²Ex. B (Letter, confirming payment of \$2,700, dated March 19, 2007).

¹³Ex. C (Release of Judgment or Notice of Satisfaction).

¹⁴Ex. D (Letter, confirming settlement of account for \$5,150).

time of the hearing, he stated that he had made one payment for \$1,000.¹⁵ On May 9, 2007, he was to pay another \$500.¹⁶ On May 22, 2007, he made the final payment of \$3,650 to the creditor.¹⁷

Applicant is in control of his finances. He earns \$57,000 annually and his wife earns \$50,000 annually. He pays \$799 monthly for child support through a payroll deduction.¹⁸ He will continue to pay that amount until his son is 18. He is current on his child support payments. He recently refinanced his home.¹⁹ He will be paying off a car note for \$19,000 and another one for \$3,000.²⁰ He only has two credit cards that he uses for emergencies.²¹

POLICIES

“[N]o one has a ‘right’ to a security clearance.”²² 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.”²³ The President 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.”²⁴ An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.²⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁶ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. It is merely an indication that the applicant has not

¹⁵Tr. 20.

¹⁶Tr. 23.

¹⁷Ex. F (Check number 333431, payable to creditor for \$3,650).

¹⁸Tr. 28-29.

¹⁹Tr. 40.

²⁰Tr. 39.

²¹Tr. 40.

²²*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²³*Id.* at 527.

²⁴Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

²⁵ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²⁶*Id.*; Directive, ¶ E2.2.2.

met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.²⁷

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security clearance 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 listed in the Directive and AG ¶ 2(a).

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards, and I reach the following conclusions.

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.

Applicant filed for bankruptcy in 1999 and his debts were discharged in June 2000. He was indebted on delinquent debts to three creditors for about \$13,000. Thus, 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*) apply. The Government has established a *prima facie* case for disqualification under Guideline F, financial considerations.

Various factors can mitigate financial considerations. Applicant's wife was unemployed for one year and one-half. Their two-family income was cut in half and they were besieged with living expenses and bills that strained their tight budget. By the time she went back to work in 2004, they were playing catch up with their delinquent debt. Applicant is no longer in a dire financial situation. He proffered evidence of payment of all the debts listed in the SOR. The record does show that he was able to settle some of the debts for less money than he originally owed. However, he did not shirk his responsibility for payment of those debts. Once he refinances his house, he should have a much better cash flow. Based on those facts, Financial Considerations Mitigating Conditions (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*) and ¶ FC MC 20(c) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) apply.

I have considered all the evidence in the case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. Applicant has had some precarious financial situations to deal with during the past few years. His wife was unemployed for more than a year. Numerous debts became delinquent. Once she returned to work,

²⁷Exec. Or. 10865 § 7.

the family was slowly on the road to managing their finances and paying off their delinquent accounts. Applicant has mitigated the Government's case. Allegations 1.a through 1.d of the SOR are found for Applicant. Based on the evidence of record, it is clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, I conclude Applicant is suitable for access to classified information.

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 (Financial Considerations):	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

DECISION

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

Jacqueline T. Williams
Administrative Judge