

KEYWORD: Financial

DIGEST: Applicant incurred delinquent debt after his divorce in 2002. He has a repayment plan for some of his debt. Some of the debt is on unknown medical accounts. He has mitigated the security concerns raised under the financial considerations guideline. Applicant's eligibility for a security clearance is granted.

CASENO: 06-20464.h1

DATE: 08/31/2007

DATE: August 31, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-20464
)	
Applicant for Security Clearance)	
)	

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

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred delinquent debt after his divorce in 2002. He has a repayment plan for some of his debt. Some of the debt is on unknown medical accounts. He has mitigated the security

concerns raised under the financial considerations guideline. Applicant's eligibility for a security clearance is granted.

STATEMENT OF THE CASE

On April 30, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant.¹ The SOR alleges 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. The SOR detailed reasons why DOHA could not make the preliminary finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On June 18, 2007 Applicant submitted a notarized response to the SOR allegations, and elected to have his case decided at a hearing. On July 11, 2007, the case was assigned to me. A Notice of Hearing was issued on July 24, 2007.² At the August 9, 2007 hearing, the Government introduced Government Exhibits (GX) 1 through 6 into evidence without objections. Applicant testified and introduced Applicant Exhibits (AX) A through E into evidence without objections from Department Counsel. DOHA received the transcript on August 20, 2007. At Applicant's request, I held the record open until August 16, 2007. Applicant timely filed a document. This submission was marked and entered into the record as AX F. Department Counsel had no objection.

FINDINGS OF FACT

Applicant admitted the factual allegations in subparagraphs 1.a, 1.b, 1.d, 1.e, 1.f, and 1.k in his SOR response under Guideline F. He did not deny the remaining allegations but did not know the origin of the accounts.³ After a complete review of the evidence in the record and upon due consideration, I make the following findings of fact:

Applicant is a 46-year-old employee of a defense contractor. He joined the United State Army in 1981. While in the military he received his GED in 1986. Applicant was honorably discharged in 1992. After that, he served in the National Guard part time.⁴ When Applicant worked in the civil service from 1993 until 2003, he had no need for a security clearance. On April 29, 2005, he completed his security clearance application (SF 86).⁵

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).

²Applicant waived his right to 15 days notice.

³Applicant's Answer to SOR, dated June 7, 2007.

⁴GX 1 (Application for Security Clearance (SF 86), dated April 29, 2005).

⁵*Id.*

Applicant's first marriage ended in a difficult divorce in 2002. He has three children from his first marriage who lived with their mother. After his divorce, Applicant paid child support in the amount of \$800 monthly.⁶ Despite the fact that Applicant had health insurance coverage for his ex-wife and the children, when a child was ill Applicant's ex-wife would take them to the emergency room instead of a physician's office.⁷ Applicant continued to pay for the additional medical bills as well as the first mortgage on the family home. As a result, he struggled financially and certain medical bills remain unpaid. These are reflected in the SOR as allegations 1. c through 1. j.

Applicant's wife, at the time of divorce agreed to keep her car and make the payments. However, after a period of time, she returned the car to Applicant. He paid on his wife's car for a period of time (even though the car was in her name), but he could not keep up the payments Applicant returned the car as a voluntary repossession (allegation 1.b).⁸ He did not begin payments on the deficiency because his wife did not pay the second mortgage as she agreed and that amount was garnished from his civil service pay. Thus, he had even less money to pay his bills. He has completely paid the second mortgage.⁹ However, he had to prioritize his bills so that he could manage. He now stands ready to address this debt (1.b).

Applicant applied for his current position in 2003, but at that time he did not need a security clearance for his work. He has successfully worked for the contractor for more than three years. As part of his security investigation, he was interviewed in 2006. He explained the nature of his debts, including a voluntary repossession of his wife's vehicle. However, he had no knowledge of some of the medical debts prior to the investigation. He has called the regional hospital to track down the unknown medical collection accounts. They referred him to a collection agency but then he reached a dead end. He is still in the process of locating the accounts.¹⁰

Applicant developed a repayment plan for his medical accounts. He now pays \$50 monthly. The amount goes to one collection agency which has the various medical accounts.¹¹ In addition, a sum of \$100 is automatically deducted monthly from his checking account for the debt alleged in SOR 1.k.¹²

At the hearing, Applicant explained that the alleged debt in SOR 1.l, is not listed under his name. He contacted the bank and they have no record of the account. Applicant's name and social security number do not appear on any accounts from the bank. Department Counsel stated that the

⁶Tr. 21.

⁷*Id.*

⁸Tr. 68.

⁹Tr. 73; GX 5 (Financial Interrogatories).

¹⁰Tr. 85.

¹¹ITr. 29.

¹²AX D (Credit Union Statement).

Government agrees with Applicant's response to the allegation. However, the allegation is not amended.¹³

The current status of Applicant's alleged debts listed in the SOR is as follows:

SOR ¶	Type of Account/ Amount	Status	Evidence
1.a	Physician (2006) \$27	PAID	AX A
1.b	Auto voluntary repossession (2006) \$3,478	UNPAID	Tr. 47; 68; 78.
1.c	Medical collection (2006) \$289	payment plan \$50	AX D
1.d	Medical collection (2006) \$408	payment plan (same as above)	AX D
1.e	Medical collection (2006) \$626	payment plan (same as above)	AX D
1.f	Medical collection (2005) \$780	payment plan (same as above)	AX D
1.g	Medical collection (2005) \$87	payment plan (same as above)	AX D
1.h	Medical collection (2005) \$385	payment plan (same as above)	AX D
1.i	Medical collection (2005) \$91	payment plan (same as above)	AX D
1.j	Medical collection (2005) \$102	payment plan (same as above)	AX D
1.k	Collection account (2006) \$5,787	payment plan \$100	AX B and C
1.l	Credit charge off (2001) \$4,406	not his account ¹⁴	Tr.19
1.m	Medical collection (2004) \$66	unpaid unknown account	Tr. 30

¹³Tr.19-20.

¹⁴This account does not have Applicant's name or social security number on it. Counsel agreed with that statement.

1.n	Medical collection (2004) \$178	same as above	Tr. 30
1.o	Medical collection (2004) \$63	same as above	Tr. 30
1.p	Medical collection (2004) \$65	same as above	Tr. 30

Applicant remarried after his divorce in 2002. He and his current spouse earn a monthly net income of \$4,716. After expenses he has a net remainder of \$1,596. He is current on his other obligations. He has no delinquent accounts. His child support payments ended two years ago. He is paying his debts according to his repayment plans. He is in the process of contacting the collection agency to negotiate a settlement for the car repossession.¹⁵

Applicant’s logistics manager praises his duty performance. He has found him to be straightforward in his dealings with people, honest, knowledgeable of his duties, and a person of integrity.¹⁶ Applicant is an employee of the highest caliber.¹⁷ Applicant received a letter of recommendation and endorsement from the project manager with whom he has worked for four years.¹⁸ Applicant has a reputation for an outstanding work ethic, professionalism, and dedication to doing a proper job. He was awarded a bonus for outstanding performance.¹⁹ Applicant informed his management of the financial considerations concerns. His business manager reports that Applicant has no violations of security procedures or protocols. His security manager reports that Applicant maintains the right attitude toward security related matters. In sum, he is recommended as a solid citizen who poses no security risk as a contractor employee. His latest performance evaluation (2007) rates Applicant as “better than most.” He is a key player and valued asset to the department.²⁰

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.”²¹ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and

¹⁵AX E (Personal Financial Statement, dated August 2007).

¹⁶AX F (Recommendation Letter from Logistics Department Manager).

¹⁷*Id.*

¹⁸AX F (Letter from Business Manager).

¹⁹*Id.*

²⁰AX F (Performance Review 2007).

²¹ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

procedures for safeguarding classified information and determining trustworthiness within the executive branch.

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.”²² An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.²³ 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.²⁴

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.²⁵ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.²⁶ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”²⁷ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.²⁸

The scope of an administrative judge’s decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determinations as to Applicant’s allegiance, loyalty, or patriotism.

CONCLUSIONS

²² Directive, ¶ E2.2.1.

²³ Directive, Revised Adjudicative Guidelines (AG) 2 (a)(1)-(9).

²⁴ *Id.*

²⁵ Directive, ¶ E3.1.14.

²⁶ Directive, ¶ E3.1.15.

²⁷ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²⁸ Directive, ¶ E2.2.2.

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

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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.²⁹

Based on all 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 acknowledged the delinquent debts and credit reports confirm the various medical accounts and charged off accounts.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. I considered the Financial Considerations Mitigating Condition (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 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*), 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 under control*), FC MC 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), and FC MC 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*).

AG 20(a) does not provide a temporal or specific definition of what constitutes "recent" conduct. The majority of Applicant's debts are in a payment plan. His overall conduct with his creditors does not cast doubt on his current reliability, trustworthiness, and good judgment. While he should have been more diligent, and made greater efforts to resolve his delinquent debts prior to 2006, he has shown sufficient unusual circumstances to establish his financial problems are "unlikely to recur." Based upon my evaluation of the record evidence as a whole, I conclude AG 20(a) partially applies because he currently has no new debt. His recent conduct is a strong indication that he will avoid future delinquent debt. He no longer has child support payments and he and his wife are making a substantial income with a monthly remainder to pay on his bills. His intent is to locate the unknown medical accounts and pay them.

Applicant disclosed some information to support application of AG 20 (b) and (c). His former spouse's conduct contributed to his financial problems. She returned her vehicle to him, and since he could not afford the payments he voluntarily returned the car. However, he now has to pay the deficiency left after the sale of the car. She also did not pay the second mortgage as agreed, and the

²⁹AG ¶ 18.

amount was garnished from Applicant's pay. Applicant's conduct does not warrant full application of this mitigating condition because he has received no financial counseling, and he did not act more aggressively and responsibly to resolve his delinquent debts. He failed to provide evidence showing he maintained communication with his creditors over the years. However, there are some "clear indications that the problem is being resolved or is under control," and he receives partial credit.

AG 20(d) partially applies. He is current on his mortgage and car loan. He has no new delinquent debt. He has a repayment plan for some of the medical debts and the collection account. While Applicant did not actually dispute the alleged debt in SOR 1.1, he explained at the hearing that he called the bank and they had no information on the account. Department Counsel at the hearing agreed with Applicant in that the account does not have his name or social security number. Thus, AG 20 (e) partially applies. However, he did not provide "documented proof to substantiate the basis of the dispute or provide evidence of actions to resolve the issue."

The issue is not whether Applicant is still legally liable for any or all of his outstanding debts, but whether he has presented sufficient evidence of extenuation, mitigation or changed circumstances to warrant a favorable security determination. Applicant has 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. Applicant is a mature individual who suffered the consequences of a difficult divorce. He provided for his three children and accepted many financial responsibilities after the divorce. He has an exemplary work record. He also served honorably in the military. He has some delinquent debt as a result of the divorce. Applicant has not spent above his means or been negligent or dishonest.

Applicant was candid and straightforward at the hearing. He has a budget and a repayment plan. He is working diligently to locate unknown creditors. It must be noted that his financial difficulties were in large measure a product of an unforeseen circumstance. As to the voluntary repossession of the car, Applicant prioritized his debts, and is now ready and able to address that account. It is clear he has the means and intent to do so.

More importantly, it is unlikely that Applicant will experience such financial problems in the future. He is financially solvent. He lives well within his means and his demeanor reflects that he takes this matter seriously and is in charge of his finances. I conclude he has mitigated the security concerns under the financial considerations guideline.

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: FOR APPLICANT

Subparagraph 1.a - 1.p: For Applicant

DECISION

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

Noreen A. Lynch
Administrative Judge