

KEYWORD: Financial

DIGEST: Applicant is a 29-year-old computer technician working for a defense contractor. He has five alleged debts listed in the statement of reasons (SOR) totaling approximately \$25,000. One of the debts was paid in 2004. He began a debt repayment plan in 2007 for the others. He is currently pursuing a settlement against a judgment. His debt problems resulted from periods of unemployment. For the last two years he has shown his financial responsibility by not generating any new delinquent debt. Applicant has mitigated security concerns arising under financial considerations. Clearance is granted.

CASENO: 06-20533.h1

DATE: 06/13/2007

DATE: June 13, 2007

In re:)	
)	
)	
-----)	ISCR Case No. 06-20533
SSN: -----)	
)	
Applicant for Security Clearance)	

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

APPEARANCES

FOR GOVERNMENT

John B. Glendon, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a 29-year-old computer technician working for a defense contractor. He has five alleged debts listed in the statement of reasons (SOR) totaling approximately \$25,000. One of the debts was paid in 2004. He began a debt repayment plan in 2007 for the others. He is currently pursuing a settlement against a judgment. His debt problems resulted from periods of unemployment. For the last two years he has shown his financial responsibility by not generating any new delinquent debt. Applicant has mitigated security concerns arising under financial considerations. Clearance is granted.

STATEMENT OF THE CASE

On April 1, 2005, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). On January 23, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons why, under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines issued on December 29, 2005, and implemented by the Department of Defense, effective September 1, 2006, DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to continue a security clearance for Applicant. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR on February 23, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on April 11, 2007. I scheduled a hearing for May 9, 2007.

The hearing was convened as scheduled on May 9, 2007 to evaluate whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Five Government Exhibits (GE 1-5) were admitted. Applicant's one exhibit (AE A) was admitted into the record without objection. Applicant testified on his own behalf, as reflected in the hearing transcript (Tr.) received on May 18, 2007. At Applicant's request I held the record open for a post hearing submission. On May 16, 2007, he submitted two letters of reference and a statement concerning one of his debts (AE B, C, and D). On June 1, 2007, Applicant submitted a final document (AE E). The documents were admitted into the record without objection and the record closed.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, ¶ 1.d and 1.e are incorporated herein. He denied allegations 1.a, 1.b, 1.c, and 1.f because he paid some of the accounts.¹ In addition, after a thorough and careful review of the evidence and exhibits, I make the following findings of fact:

Applicant is a 29-year-old computer technician working for a defense contractor. He is engaged to be married in June 2007. Also, he has one child from a previous relationship born in 2000.² He has no military experience. Applicant earned a General Equivalency Diploma (GED) in 1999. He completed an application for a security clearance on April 1, 2005.³

When he initially finished his high school education, Applicant worked with various contractors. He would work for three to four months and be laid off for perhaps two months before another contract would begin. This uneven employment led to financial difficulties. In 2001, Applicant received his first full time government position. At that time he did not need a security clearance.⁴

During his work with the government, he again found himself subject to the vagaries of contract work. His longest period of unemployment was generally two months. In 2001-2002, he was unemployed a couple of weeks at a time twice. When he was laid off, his bills could not be paid in full. In addition, he learned about four years ago that he is the father of a seven-year old girl. He engaged in a custody battle and incurred approximately \$15,000 for legal fees.⁵ Applicant now has partial custody.⁶

As Applicant struggled to pay his bills, he took part time work to supplement his income. At times he worked several part time jobs. He used personal loans at first to establish a credit rating, but when he became unemployed at various times, he used credit for daily expenses including a cell phone. In 2002, he purchased a car and made payments on the vehicle until he defaulted in March 2003. He did a voluntary repossession.⁷ Originally, his father cosigned the car loan, but his father lost his job and filed for bankruptcy in 2004. Initially Applicant believed the bankruptcy voided his liability. Applicant then used a personal loan to pay for the car.⁸

Since January 2005, he has been employed with his current defense contractor. He paid off some bills and is earning a stable income. As to the debts in the SOR, 1.a is the same as 1.e.

¹Applicant's response to the SOR, dated February 23, 2007.

²Tr.16.

³GE 1 (Security Clearance Application, dated April 1, 2005) at 1-13.

⁴Tr. 15.

⁵Tr.16.

⁶Tr.32.

⁷Tr.62.

⁸Tr.50.

Applicant settled the debt for \$258.35 in May 2007.⁹ Applicant paid the debt 1.b (cable) of \$277 in February 2004 and December 2006.¹⁰ Debt 1.c was transferred to a collection company. Applicant settled by paying \$859 with a money order in 1998. It still appears on his credit report and he has called repeatedly to have the collection company take care of the matter. About four months ago, Applicant contacted a credit reporting company to again request assistance in deleting this amount from his credit report.¹¹ Applicant is in repayment status with debt 1.d since January 2007. This is

⁹AE A; Tr. 40.

¹⁰*Id.*

¹¹Tr.37.

a personal loan with a balance of \$4,102. He pays \$110 a month through an automatic checking account withdrawal and is current in his payments.¹²

The largest debt (a judgement) is for \$13,000 to an automobile company. His father included this car in his 2004 bankruptcy. However, this did not discharge Applicant's liability. He learned about this approximately one year ago. He asked for a hearing, but never received notice. On March 13, 2007, his credit union advised him that a Writ of Garnishment was issued on February 22, 2007. To date Applicant's \$6,375.40 in his credit union savings account has been frozen for payment toward that debt. Applicant contacted a lawyer as soon as he learned about the judgement. Currently, he is attempting to settle this obligation out of court with the company. Applicant is willing to pay the remainder of the debt. He has repeatedly contacted the auto company to reach a settlement.

Applicant's current employer praises him as an intelligent and motivated individual. He is rated as above average on his annual reviews. He has made consistent contributions to the company in his three years as a lead installer. He has been exposed to highly classified materials without incident. His peers regard him as a valuable team member.¹³

Applicant earns approximately \$2,000 net a month.¹⁴ His fiancée has a net monthly income of \$1,400.¹⁵ He pays monthly child support in the amount of \$178. He does not have a car loan. After his monthly expenses, his net monthly remainder is \$800.¹⁶ He is current on his corporate credit card by paying the balance each month. He is financially stable. He has a 401 (k) account. However, as stated above, his savings account was garnished without his knowledge in the amount of \$6375.40. His two delinquent debts are being resolved. He accepts responsibility for paying his debts.

POLICIES

The revised Adjudicative Guidelines (AG) set forth set forth both disqualifying conditions and mitigating conditions applicable to each specific 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 factors listed in the Directive. Specifically these are: (1) the nature, extent and seriousness of the conduct and surrounding circumstances; (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 extent to which participation is 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

¹²AE C.

¹³AE B.(Character References, dated May 2007).

¹⁴GE 5 (Personal Financial Statement, dated November 13, 2006) at 1.

¹⁵Tr. 71.

¹⁶Tr. 78.

clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.¹⁷ The government has the burden of proving controverted facts.¹⁸ The burden of proof is something less than a preponderance of evidence.¹⁹ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.²⁰ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²¹

No one has a right to a security clearance²² and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²³ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁴ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²⁵ 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 security clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. Based upon consideration of the evidence, I find Guideline F of the revised AG most pertinent to the evaluation of the facts in this case. That guideline reads in pertinent part:

¹⁷ ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).

¹⁸ ISCR Case No. 97-0016 at 3 (App. Bd. Dec 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

¹⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

²⁰ ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

²¹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

²² *Egan*, 484 U.S. 518, at 531.

²³ *Id.*

²⁴ *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

²⁵ Executive Order 10865 § 7.

Guideline F - Financial Considerations. The Concern: *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.*²⁶

In this matter, the government provided substantial evidence that Applicant accrued five delinquent debts since 2000. He admits there are still two outstanding debts and he was slow to pay these bills. Consequently, Financial Considerations Disqualifying Condition (FC DC), AG ¶ 19(a), (*inability or unwillingness to satisfy debts*) and FC DC, AG ¶ 19(c), (*a history of not meeting financial obligations*) apply.

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. Several incidents occurred in Applicant's life which led to periods of unemployment and employment instability. Such conditions (outside his control) contributed to Applicant's acquisition of delinquent debt. He never questioned the legitimacy of the debts. However, he did believe that his father's 2004 bankruptcy relieved him of the debt owed to the auto company. He became more active in pursuing his debts after he was in steady employment with his current employer. Therefore, FC MC, AG ¶ 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*) applies.

Financial Considerations Mitigating Condition (FC MC), ¶ AG 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*) does apply in part due to his continuing repayment and settlement efforts.

While Applicant has not received financial counseling, he paid two accounts in full and is negotiating a settlement on the judgement. FC MC, AG ¶ 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*) does apply to some extent.

In the past years, Applicant was not always in a position to resolve his debt. He attempted to pay his bills until his unemployment. Therefore, FC MC, ¶ 20(d), (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies to a small degree.

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 clearance decision. His remaining unpaid debt does not constitute a security risk. In 2007, he began repayment of his other delinquent debts. Due to the nature and timing of the judgment against him, he has not totally resolved that debt.

²⁶ AG ¶ 18.

Whole Person Analysis.

I have considered both the record and Applicant in light of the “whole person” concept. He is an earnest, young man who at the hearing acknowledged that living within ones means and satisfying debts, as well as meeting financial obligations, is imperative to demonstrate good judgement and willingness to abide by rules and regulations. He realized the financial delinquencies would be considered a negative. He is open, honest and has not hidden the situation. He firmly believes he is handling his debt properly at this point. He admits that he made mistakes when younger. He has not incurred any other delinquent debt in two years. His financial circumstances have greatly improved. The potential for pressure, coercion, exploitation, or duress is low. He is current on his present financial obligations, and has a very positive employment history since 2005. His greater awareness of financial responsibilities will result in a continuously improving trend of financial circumstances.

In sum, the likelihood of new debt problems is low. Applicant's financial case shows his willingness to utilize his repayment plan to resolve his delinquent debts. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the security concerns pertaining to financial considerations. Clearance is granted.

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
Subparagraph 1.e.	For Applicant
Subparagraph 1.f	For Applicant

DECISION

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

Noreen A. Lynch.
Administrative Judge