

KEYWORD: Financial

DIGEST: The Statement of Reasons (SOR) alleged Applicant owed approximately \$22,000 on ten past due accounts. She received a low-interest loan from her company and has paid the majority of the debts. Her payment for the last seven months to a settlement service shows she is serious about addressing her past due obligations. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from financial considerations. Clearance is granted.

CASENO: 06-20868.h1

DATE: 09/14/2007

DATE: September 14, 2007

In re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 06-20868
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
CLAUDE R. HEINY**

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Statement of Reasons (SOR) alleged Applicant owed approximately \$22,000 on ten past due accounts. She received a low-interest loan from her company and has paid the majority of the debts. Her payment for the last seven months to a settlement service shows she is serious about

addressing her past due obligations. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from financial considerations. Clearance is granted.

STATEMENT OF THE CASE

On April 27, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding¹ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR set forth reasons why a security clearance could not be granted or continued due to financial considerations security concerns.

On June 15, 2007, Applicant answered the SOR and requested a hearing. On July 5, 2007, I was assigned the case. On August 14, 2007, a Notice of Hearing was issued for the hearing held on August 28, 2007. At the hearing, Government presented four exhibits (Gov Ex). Applicant submitted four exhibits (App Ex). The record was kept open to allow Applicant to submit additional documents, which were received on September 11, 2007. Department Counsel having no objections, the documents were admitted into evidence as App Ex E. On September 7, 2007, DOHA received the transcript (Tr.).

FINDINGS OF FACT

The SOR alleges security concerns for financial considerations. Applicant admits owing ten debts totaling approximately \$21,700. The admission is incorporated herein as findings of fact. After a thorough review of the entire record, I make the following findings of fact.

Applicant is a 50-year-old accounts payable manager who has worked for a defense contractor four years, and is seeking to obtain a security clearance. The owner and vice president of her company states Applicant is loyal, trustworthy, very dedicated, reliable, organized, utilizes sound judgment, and ensures the job gets done. She is “truly an asset to our company.” (App Ex A)

Applicant’s husband was in the Air Force. She accompanied him to various locations around the world which resulted in numerous periods when she was unemployed. She was unemployed during 1993 and 1994, August 2004 to January 2005, and May 2005 to March 2007, when her husband was stationed in England. She was unemployed from June 1998 to December 1999, when her husband was stationed in Japan. She was also unemployed from December 2001 to March 2003 and from June 2003 to September 2003, when she obtained her current job. In September 2003, Applicant’s husband retired from the Air Force as an E-6 and they moved to their current location.

In December 2003, Applicant and her husband purchased a home for \$156,000 at an interest rate of \$5.2%. They currently owe \$147,000 on the house. (Tr. 48) At this time, both Applicant and her husband were working and her husband was receiving retirement pay. They incurred debts to furnish the home and for other reasons.

In 2004, Applicant’s husband obtained a civilian job but was laid off after eight months due to illness. In 2005, her husband’s heart problems resulted in him being hospitalized for two months.

¹Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

Her husband does not work and is not expected to work in the future. When her husband was no longer able to work, Applicant's financial problems began. During this period her mother became very ill with cancer. Applicant's mother, father, sister, daughter-in-law, and her sister's children all moved into Applicant's home.

Applicant was able to make the mortgage payment, utilities' payment, and pay for food, but other obligations went unpaid. Applicant has always been current on her mortgage. (Tr. 48) In December 2006, she sought debt consolidation through a financial settlement service. She started making payments in February 2007. (App Ex C, Tr. 43) Under their agreement, Applicant paid \$436 each month to the company. Their fee was the first four monthly installments plus payment 18% of all payments thereafter. Once the company received their fee, funds would start to accumulate. Once sufficient funds have been accumulated, the company would make settlement offers to the various creditors. She has made seven payments which total more than \$3,000; the company has yet to settlement any debt. Applicant is currently getting calls from creditors which she refers to her financial settlement service.

Applicant self-reported her debts to the company security officer. (Tr. 84). Following a refresher briefing on what employees are required to tell the security manager, Applicant came forward with her disclosures. Without this action, the debts would normally not have been discovered until a periodic reinvestigation which would not have occurred for another six or seven years. (Tr. 84) At the time of the hearing, Applicant was unaware she could obtain a company loan to handle her financial obligations.

Following the hearing, Applicant terminated her agreement with the settlement service. She obtained a \$20,000 loan at a four per cent interest rate from her company, which is to be repaid by a \$416 monthly deduction from her pay. The repayment amount is less than the \$436 monthly payment she made to the settlement service for the last seven months. Applicant used the loan money to pay three accounts with the same department store: \$1,448 (SOR 1.e), \$2,362 (SOR 1.g), and \$795 (SOR 1.c). She settled a \$2,160 debt (SOR 1.a) for \$1,930. She paid the \$355 credit card debt (SOR 1.d). She paid \$1,500 on air filtration equipment debt (SOR 1.h and 1.i). She paid \$7,148 on a military credit card not listed on the SOR. She has spent approximately \$15,500 of the \$20,000 loan on her past due debts. There is no evidence related to the \$1,181 credit card debt (SOR 1.b) and the \$2,929 credit card debt (SOR 1.j).

The last debt not addressed is the \$6,137 debt (SOR 1.f). The creditor is a collection agency that normally purchases past due accounts receivable for a few cents on the dollar. The debt was not one of the nine listed debts she was asked about in the February 2006 interrogatories. (Gov Ex 2), nor does the debt appear on her credit reports in the record: March 2006 (Gov Ex 4); January 2007 (Gov Ex 2); or March 2007 (Gov Ex 7).

Applicant's prior vehicle was unreliable so a 2006 Buick van was recently purchased. Applicant has an 80-mile round-trip to work and back. (Tr. 52) The monthly payments are \$571. Her husband's income from military service has remained the same at \$4,088, but the portion that is disability income has increased. Her husband now receives \$3,003 in disability pay from the Department of Veterans Affairs. (App Ex D) Applicant's yearly income is \$42,000. (Tr. 82) Applicant and her husband have monthly income of \$6,541, monthly expenses of \$3,283, and a monthly net remainder of \$1,540. (Gov Ex 2) Applicant has \$153 per month going to a retirement plan. (Tr. 59) Applicant has not attended any financial management classes. (Tr. 62) Applicant is

current on her home mortgage payments, utility payments, and vehicle payments. She has \$7,000 in her company 401(k) retirement plan. (App Ex E) Applicant's husband is currently using his G.I. Bill educational benefits to return to school taking basic classes.

Applicant has learned that nothing is for certain. Her finances were good when both her and her husband were working and he also had his retirement pay. She never expected her husband to become ill. (Tr. 67)

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guidelines to be applied here are Guideline F, financial considerations.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt

² ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15

about an applicant's suitability for access to classified information in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, financial considerations. A person's relationship with his 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 position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations.

Financial considerations become a security concern when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Applicant owed approximately \$22,000 on ten debts. Disqualifying Conditions (DC) 19(a) "inability or unwillingness to satisfy debts" and 19(c) "a history of not meeting financial obligations apply."

Mitigating Conditions (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," applies. The events leading the inability to repay her debts in a timely manner are unlikely to recur. Following her husband's retirement from the Air Force they moved to their present location and purchased and furnished their home. They are not likely to move again, purchase, and furnish another home. When the debts were incurred both Applicant and her husband were working plus they had his retirement pay. They have purchased a new van which is not likely to need replacing in the near future. Applicant's parents, sister, and other relatives no longer live with her.

I find 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," has some applicability. Applicant's husband's illness and loss of job were unforeseen events. Applicant has learned nothing is for certain and she must plan accordingly.

Applicant has demonstrated a change in her financial management. There is a clear indication the problem is being resolved or under control. 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," applies. MC 20(d) "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts, applies." For MC 20(d) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good-faith effort to repay. A systematic, concrete method of handling her debts is needed, which is present here. In February 2007, she started making \$436 monthly payments to a settlement service. It appears the only one

who profited from the \$3,000 she paid was the settlement service. Even though Applicant no longer uses this service she made sufficient payments to the settlement service to establish she is serious about addressing her past due obligations.

At the hearing she learned she could obtain a low interest loan from her company that could be repaid from her pay. She immediately took advantage of this, obtained a \$20,000 loan, repaid more than \$15,000 of her debt. Two debts totaling approximately \$4,000 have not been addressed. I am confident Applicant will address these debts because she has addressed her other debts.

The final debt (SOR 1.f) does not appear on any of Applicant's credit reports and was not of concern when she was sent an interrogatory in February 2006. The nature of this obligation is too speculative to say it creates a security concern.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future. I find for Applicant as to financial considerations.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 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
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant

DECISION

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

Claude R. Heiny
Administrative Judge