

KEYWORD: Financial

DIGEST: Applicant is 46 years old and has been employed by a federal contractor as a custodian since November 2004. She has been steadily employed since 1998. She has two children. Applicant has eleven delinquent debts totaling approximately \$8,000 that remain unpaid. Ten of the debts have been placed for collection and one is charged off. The debts date back to 2002 through 2006. Applicant failed to provide amplifying information as to any action she has taken to pay or resolve her debts. Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Clearance is denied.

CASENO: 06-21244.h1

DATE: 05/31/2007

DATE: May 31, 2007

In re:)	
)	
-----)	ISCR Case No. 06-21244
SSN: -----)	
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
CAROL G. RICCIARDELLO**

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 46 years old and has been employed by a federal contractor as a custodian since November 2004. She has been steadily employed since 1998. She has two children. Applicant has eleven delinquent debts totaling approximately \$8,000 that remain unpaid. Ten of the debts have been placed for collection and one is charged off. The debts date back to 2002 through 2006. Applicant failed to provide amplifying information as to any action she has taken to pay or resolve her debts. Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. DOHA issued a Statement of Reasons (SOR) on November 28, 2006, detailing the basis for its preliminary decision—security concerns raised under Guideline F (Financial Considerations). This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive), and the revised adjudicative guidelines approved by the President on December 29, 2005, and implemented effective September 1, 2006 (Guidelines). In Applicant's undated answer to the SOR, she elected to have her case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on February 28, 2007. The FORM was mailed on March 1, 2007, and received on March 9, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not provide any additional information. The case was assigned to me on May 24, 2007.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 46 years old and has been employed as a custodian for a federal contractor since November 2004. She has two children, whose ages were not provided. In her security clearance application (SCA) Applicant listed that she has been steadily employed since May 1998.¹

Applicant admitted she owes all the debts listed in the SOR, except the debt in subparagraph 1.k, that was resolved through a court proceeding and the debt was dismissed.² Applicant stated the debt in subparagraph 1.f was incurred while she was unemployed. However, this debt was placed for collection in January 2003. This assertion contradicts Applicant's SCA that lists she has been

¹Item 4.

²Item 3.

steadily employed since 1998. Applicant stated she is unable to pay this debt “at this time.”³ Applicant did not provide any amplifying information as to what action she intends to take to pay it in the future or resolve it otherwise. Applicant also stated she had been receiving some child support payments for her children from their father and then it abruptly stopped.⁴ She failed to provide any other amplifying information about the ages of her children and what efforts she has taken, if any, to pursue child support payments.

Applicant did not provide any information to show she is attempting to resolve any of the debts listed in the SOR. She did not provide any information as to why the debts were incurred and why they are delinquent. She has eleven delinquent debts. Ten debts are in a collection status and one debt was charged off in July 2005. The oldest debt was placed for collection in December 2002 and the most recent was placed for collection in June 2006. No information was provided as to Applicant’s income status or if she has received any financial counseling.

POLICIES

“[N]o one has a ‘right’ to a security clearance.”⁵ 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.”⁶ The President has 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.”⁷ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”⁸ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹⁰ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.¹¹ It is merely an indication that the applicant has not

³*Id.*

⁴*Id.*

⁵*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁶*Id.* at 527.

⁷Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

⁸ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

⁹*Id.*

¹⁰*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

¹¹Executive Order 10865 § 7.

met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.¹²

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information.¹³ “Substantial evidence” is “more than a scintilla but less than a preponderance.”¹⁴ The Guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.¹⁵

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.¹⁶ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹⁷ “[S]ecurity clearance determinations should err, if they must, on the side of denial.”¹⁸

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

CONCLUSIONS

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.

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

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence

¹²See Exec. Or. 10865 § 7.

¹³See *Egan*, 484 U.S. at 531.

¹⁴See *v. Washington Metro. Area Transit Auth.*, 36 F.3rd 375, 380 (4th Cir. 1994).

¹⁵See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996)

¹⁶See Directive ¶ E3.1.15.

¹⁷ISCR Case No. 01-207000 at 3 (App. Bd. Dec. 19, 2002)

¹⁸*Egan*, 484 U.S. at 531; see Guidelines ¶ 2(b).

that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

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 has many debts that have been delinquent for years with no action toward resolving them and no information or indication that she intends on paying them.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered 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 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*), 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 is under control*), and FC MC 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant's debts are recent and unpaid and she failed to provide any information as to her intent to resolve them. The lack of information on any good-faith effort to repay or take action on the debts and the age of the debts casts doubt on her reliability and good judgment. Applicant alluded to a period of unemployment; however, this contradicted her SCA where she listed she had been steadily employed since 1998. She also stated she had been receiving child support, but it stopped. She did not provide enough information to show she took any action to pursue reinstatement of the payments. Applicant was employed when her debts became delinquent. She has not shown the conditions that may have caused her financial problems were beyond her control, or that she has acted responsibly under the circumstances. Applicant has not provided any evidence that she intends to pay her delinquent debts or has made a good-faith effort to resolve them. Therefore, I find none of the above mitigating conditions apply.

Whole Person Analysis

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. 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 his or her 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.

In addition to considering the specific disqualifying and mitigating conditions under the guideline, I have also considered the adjudicative process factors listed in ¶ 2a (1)-(9) of the Guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Specifically these are: (1) the nature, extent and seriousness of the conduct; (2) the circumstances and 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 was 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 clearance is not outcome determinative, the Guidelines should be followed whenever a case can be measured against this policy guidance.

I considered the whole person in evaluating the case. I considered all of the information provided in Applicant's answer and the attached documents.

After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant her a security clearance.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
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:	For Applicant
Subparagraph 1.l:	Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Carol G. Ricciardello
Administrative Judge