

KEYWORD: Financial

DIGEST: Applicant and her husband incurred significant unpaid credit card debt in 1998 and 1999. Her husband sustained disabling injuries in two separate automobile accidents, which impacted his ability to obtain and maintain steady employment. In the last 10 years, Applicant always worked. At times, only her income paid the bills. She continues to timely pay her bills, has paid several delinquent bills, and initiated payment plans for all but one long delinquent debt barred from collection under state law. She has mitigated the government's security concerns regarding her finances. Clearance is granted

CASENO: 06-22262.h1

DATE: 04/27/2007

DATE: April 27, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-22262
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
MARY E. HENRY**

APPEARANCES

FOR GOVERNMENT

Richard Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant and her husband incurred significant unpaid credit card debt in 1998 and 1999. Her husband sustained disabling injuries in two separate automobile accidents, which impacted his ability to obtain and maintain steady employment. In the last 10 years, Applicant always worked. At times, only her income paid the bills. She continues to timely pay her bills, has paid several delinquent bills, and initiated payment plans for all but one long delinquent debt barred from collection under state law. She has mitigated the government's security concerns regarding her finances. Clearance is granted.

STATEMENT OF THE CASE

On December 14, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Specifically, the SOR sets forth security concerns arising 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. On January 23, 2007, Applicant submitted a notarized response to the allegations. She requested a hearing.

DOHA assigned this case to me on February 12, 2007, and issued a notice of hearing on March 5, 2007, which Applicant received 11 days before the hearing. At the hearing on March 20, 2007, Applicant waived her right to receive notice of the hearing 15 days prior to the hearing. I conducted the hearing as scheduled.¹ The government submitted six exhibits (GE) which were marked and admitted into the record as GE 1-6 without objection. Applicant submitted five exhibits (App Ex), which were marked and admitted as App Ex A-E without objection. Applicant and one witness testified. I held the record open until April 10, 2007, for Applicant to submit further documents, which she did. Applicant submitted ten additional documents, which were marked and admitted as App Ex F through O without objection. The hearing transcript (Tr.) was received on March 30, 2007.

FINDINGS OF FACT

Applicant admitted all the allegations under Guideline F of the SOR.² Those admissions are incorporated as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following findings of fact.

¹Tr. at 9.

²Applicant's response to the SOR, dated January 23, 2007, at 1-2.

Applicant, a 41-year-old woman, holds an Associate of Arts degree and a Bachelor of Science degree in business management. She works as a financial analyst for a Department of Defense contractor. She seeks a clearance to increase her career opportunities with her employer. Her supervisor describes her as a person of outstanding character and professional abilities. She always gets the job done and is quick to learn. She received her latest performance evaluation in March 2007. Her supervisor rated her overall at Level 4, the second highest rating.³

Applicant enlisted in the United States Air Force reserves six years ago. She is a staff sergeant whose duties involve personnel administration. She does not have a security clearance as a reservist. Her Air Force Guard supervisor testified on her behalf. She described Applicant as her number one right-hand woman. She stated that Applicant is professional and courteous. Applicant provided excellent customer service and goes above and beyond in the performance of her duties. Her most recent performance rating indicated that she needed little or no improvement in her performance. Her minister, who is also a city councilman, described her as a person of good moral character and a person who can be trusted.⁴

Applicant married in 1991. Her 19-year-old step-daughter is a college student. Her son is 10 years old. At the time of her marriage, Applicant's husband worked as a machinist mate in the United States Navy. In 1993, he suffered a back injury in an automobile accident, which resulted in a 30% disability rating and a disability discharge from the Navy in December 1995. Applicant and her husband accepted a lump sum severance payment of \$35,000 at this time. Because she was pregnant and they were unemployed, they moved in with her mother while her husband unsuccessfully attempted to develop a new work career in her step-father's construction business. After paying taxes, they used the proceeds from the lump sum payment to pay bills and to invest in her step-father's business.⁵

Applicant and her husband retained a lawyer to represent them for the damages they sustained as a result of the 1993 car accident. They eventually settled their case. Their lawyer received approximately \$33,000 in fees, and under its subrogation rights, the Navy recovered the cost of the medical services it rendered to her husband. They received about \$25,000, which they used for living expenses and bills. A few years later, her husband sustained an injury to his shoulder in a one-car automobile accident. They received a \$3,500 settlement for his injuries.⁶

Applicant began her current employment in 1997. At the same time, her husband started working as a contractor for the same employer. The employer furloughed her husband in 1998. Her husband then obtained a manufacturing job, but because of his shoulder injury, he could not perform the duties of the job. Likewise, because of his back injury, he cannot do heavy lifting jobs. For the last ten years, Applicant has worked steadily, but her husband has been unable to obtain full-time

³GE 1 (Applicant's security clearance application, dated September 30, 2005) at 1-2; App Ex A (Undated letter); App Ex O (March 2007 performance evaluation); Tr. at 20-21.

⁴App Ex B (Air Guard evaluation); App Ex K (Letter dated March 23, 2007); Tr. at 19-21, 72-74.

⁵Tr. at 27, 40-42, 44-45, 47-50.

⁶*Id.* at 67.

steady employment, which impacted their ability to pay bills. He started working as a caddy master at a golf course in May 2006.⁷

A review of Appellant’s credit reports dated January 17, 2001, October 26, 2005, October 17, 2006, and the SOR shows 6 unpaid debts totaling \$15,332.⁸ The current status of these debts is as follows:

SOR ¶	TYPE OF DEBT (DATE)	AMOUNT	CURRENT STATUS
1.b	Gasoline credit card (1986)	\$ 800.00	Unpaid (Barred by the statute of limitations)
1.c	Credit card (1999)	\$9,939.00	Payment plan
1.d	Medical bill (2000)	\$ 165.00	Paid
1.e	Medical bill (2000)	\$ 135.00	Paid
1.f	Credit card (2002)	\$3,603.57	Payment plan
1.g	Medical bill (2004)	\$ 690.00	Payment plan

Applicant used the two delinquent credit cards to pay monthly living expenses until 1998. She stopped paying these bills when her husband was unemployed in 1998. She paid the two small delinquent medical bills in July and August 2006.⁹ She recently made arrangements to make monthly payments on three of her four remaining delinquent debts. She will pay \$100 a month on her largest credit card debt, \$100 a month on the one remaining medical bill, and \$75 a month on the remaining credit card debt. She obtained a gasoline credit card 20 years ago. She timely paid the card and paid the bill in full. Not long after her marriage, she added her mother to this credit card account as an authorized user. The credit card company gave her mother a separate card and mailed the monthly bills to her mother, who paid the bills for awhile, then stopped paying the bill. Her mother never advised her that the bill had not been paid. In her efforts to resolve this debt, she learned that the creditor is no longer in business. The new owner of the company cannot locate an account in her name. With the exception of the unpaid medical bill, all the accounts listed in the SOR were time barred from collection under state law.¹⁰

Applicant earns approximately \$3,461 a month in gross salary, including her recent merit pay increase, with a net monthly pay of approximately \$2,436. From her reserve duty, she receives

⁷GE 1, *supra* note 3, at 2; Tr. at 21, 28-30.

⁸GE 4 (Credit report, dated January 17, 2001); GE 5(Credit report, dated October 26, 2005); GE 6 (Credit report, dated October 17, 2006).

⁹App Ex I (Copy of cancelled check, dated July 19, 2006); App Ex J (Copy of cancelled check, dated August 2, 2006).

¹⁰App Ex L (Copy of cancelled checks, dated January 30, 2007 and February 28, 2007); App Ex M (Copy of cancelled checks, dated January 30, 2007 and February 28, 2007); App Ex N (Copy of cancelled checks, dated January 30, 2007 and February 28, 2007); Tr. at 23-25,30-32, 65.

approximately \$257 a month in net pay. Her total net monthly income is approximately \$2,693.¹¹ Her husband anticipates that he will earn approximately \$25,000 this year from his employment. Because his work is directly related to good golfing weather, his monthly earnings fluctuate. She anticipates his income will increase as the weather for golf improves. In March 2007, her husband contributed \$562 before taxes to the household income and will contribute approximately \$1,300 before taxes in April 2007. Her husband occasionally performs side jobs for which he receives payments. The amount of his earnings is unknown.¹²

Applicant's monthly expenses include a mortgage payment of \$1400, two car payments totaling \$1,088, utilities of \$242, gasoline of \$300, car insurance of \$321, food of \$125, miscellaneous expenses of \$75 and credit card payments of approximately \$200 for total monthly expenses of \$3,751. Her credit reports reflect that she timely pays her existing credit cards and other debts.¹³ In addition, Applicant will resume paying her education loan in June 2007. She estimates this payment at \$115.¹⁴ Under the payment agreements she established, Applicant pays \$275 a month on her delinquent debts for total additional expenses of almost \$400 a month.

The SOR alleges that the Air Force denied Applicant a security clearance based on financial considerations. She admits that she does not have a clearance, but denies that it was for financial reasons. She met with an investigator and signed a statement on May 14, 2001 acknowledging the debts identified in allegations 1.c, 1.f and 1.g. She also stated that her husband was not working and that she was the sole provider for the family and that she would start paying the debts when her husband began working full-time. She had no further contact with anyone from the Air Force until several years later, when her supervisor requested her to sign a letter acknowledging the denial of her clearance for non-compliance. She believes that the Air Force Central Adjudication Facility may have sent her a letter requesting information similar to that which has been requested for this application. She never received the letter.¹⁵ The government has not provided any documentation which sets forth the reasons for the denial of her clearance by the Air Force, or establishes that she was properly served with the documents related to her prior denial.

POLICIES

The revised Adjudicative Guidelines set forth disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. An administrative judge need not view the revised adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the

¹¹App Ex G (Copies of Applicant's last three paycheck statements); App Ex H (Copies of Applicant's military pay statements for January, February and March 2007).

¹²Her husband's employer did not deduct taxes from his pay. App Ex F (Copies of Applicant's husband's last three earnings statements); Tr. at 54.

¹³Tr. at 30-31, 33-40.

¹⁴Applicant consolidated her school debt to get a fixed interest rate for her loans. Tr. at 36, 56-57.

¹⁵Applicant's response to the SOR at 1; GE 3 (Applicant's signed statement, dated May 14, 2001) at 1-2; Tr. at 22-23.

complexities of human behavior, these guidelines, are intended to assist the administrative judge in reaching fair and impartial common sense decisions. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the revised AG should be followed whenever a case can be measured against this policy guidance. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.¹⁶

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 the evidence.¹⁹ Once the government has met its burden, the burden shifts to the 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 clearance,²² 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 Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism 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 clearance.

¹⁶Directive, revised Adjudicative Guidelines (AG) ¶ 2(a)(1)-(9).

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

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

¹⁹*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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

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

²²*Egan*, 484 U.S. at 531.

²³*Id.*

²⁴*Id.*; Directive, revised AG ¶ 2(b).

²⁵Executive Order No. 10865 § 7.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth 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. (AG ¶ 18.) Applicant has significant unpaid old debt, which occurred when her husband was unemployed. Based on the evidence of record, DC ¶ 19 (a) *inability ... to satisfy debts* and DC ¶ 19 (c) *a history of not meeting financial obligations* apply.

Applicant's debt problems arose because of several events in the past. Her husband suffered a significant injury in a car accident which led to his discharge from the Navy and an inability to work in his chosen career. During the 11 years subsequent to his discharge, her husband has not worked steadily. His inability to find steady full-time employment impacted their ability to pay monthly living expenses. For awhile, they financed normal living expenses with credit cards. However, they stopped paying two credit card debts when he lost his job in 1998. Since this time, his employment has not been steady and reliable. Thus, their inability to resolve these debts continued. She denied, until recently, any knowledge of the debt alleged in paragraph 1.b of the SOR. Many years ago, she added her mother to this account as an authorized user. The creditor provided her mother was a separate credit card and mailed the bills to her mother. Her mother, however, never told her about this unpaid debt. MC ¶ 26 (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* applies because of her husband's unemployment and her mother's withholding of information on the payment of a credit card debt.

Applicant has not retained the services of a financial counselor. Thus, 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* does not apply.

Applicant paid the two smallest debts listed in the SOR about nine months ago. Three months ago, she verbally advised the creditors for the two largest delinquent debts and the one remaining medical bill that she would begin payments on these debts. In compliance with her promise, she began monthly payments on these time barred debts in January 2007. She has attempted to locate the creditor for her very oldest debt. Because of the age of this debt and the sale of the creditor company, she has been unable to develop a payment plan for this debt, which cannot be collected under state law. MC ¶ 20 (d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* applies.

Whole Person Analysis

Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Thus, in reaching this decision, I have considered the whole person concept in evaluating Appellant's risk and vulnerability in protecting our national interests.

Under the 3-year State's statute of limitations, which applies to 5 of her 6 unpaid SOR debts, the creditors were time barred from collecting these debts.²⁶ The State Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving security and stability to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be ha[le]d into court to defend time-barred claims. Moreover, limitations periods discourage plaintiffs from sitting on their rights. Statutes of limitations are, indeed, fundamental to our judicial system.

Carolina Marine Handling, Inc. v. Lasch, 609 S.E.2d 548, 552 (Ct. App. 2005) (internal quotation marks and citations omitted). Thus, the debt alleged in 1.b is time barred from collection. However, in light of Applicant's recent payments on the debts alleged in allegations 1.c, 1.f and 1.g, the 3-year period from which a creditor can seek collection through legal process begins again. State Code ¶ 15-3-120.

Applicant and her husband used his severance payment to pay existing debts in 1996 and to pay for living expenses. They lived with her mother to reduce expenses while they started to rebuild their work careers after his injury and discharge from the Navy. By 1997, both were working. In 1998, her husband lost his job, and although he found new work, his shoulder injury along with his back injury ended his ability to work at this job or other jobs requiring heavy physical labor. During this time they got behind in their bills. Her husband has worked off and on over the last 10 years. While she has been able to keep current on their normal living expenses, she could not repay their old debt. Her regular bills are current.

With the exception of the \$690 medical bill, the debts listed in the SOR could not be collected because the creditor had been barred by the state statute of limitations from legally collecting this debt. However, her agreement to pay these debts removes the statute of limitations for the creditor. By initiating payments on this debt, Applicant has acted responsibly.

Applicant's current expenses exceed her monthly bills by a significant amount each month. While the credit reports indicate that she is current on her monthly payments, a concern arises about how she continues to pay her monthly obligations, that she may be over extended, and thus, unable to meet the commitments she has made. Her husband's monthly income will improve during the golf

²⁶See ISCR Case No. 04-07360 at 2 (App. Bd. Sept. 26, 2006) (stating partial credit was available under FCMC 6 for debts being resolved through garnishment).

season, which will lessen the financial stress during that period of time, and is a factor to consider. His supplement income from odd jobs must also be considered in assessing her overall financial situation. She and her husband are living right on the edge within their means.

Her employer praises her work skills and work ethic. Her latest performance appraises gives her the second highest employee rating. Likewise, she is highly respected for her work in the Air Force reserves. In reviewing all the facts of this case, there is little potential for pressure, coercion, exploitation or duress. I have weighed the applicable mitigating factors, her responsible conduct in paying old debt, and her current financial situation. Since she stopped her two credit card payments in 1998 or 1999, she has not incurred any large, unpaid debt. Her unpaid medical expense debts totaled less than \$1,000, and is now around \$500. Despite the periodic loss of her husband's income, she managed to continue to regularly pay her bills. Although she continues to juggle her finances, she remains timely on her debt payments. She has mitigated the government's security concerns. Accordingly, Guideline F is found in favor of Applicant.

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:

SOR ¶ 1-Guideline F :
Subparagraphs a-g:

FOR APPLICANT
For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is granted.

Mary E. Henry
Administrative Judge