

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is 39 years old, divorced, and has a teen-aged daughter who has a son. Applicant works for a defense contractor. She had financial difficulties in her early twenties after her divorce and the loss of her job. She resolved those problems by paying her creditors in a Chapter 13 bankruptcy. She mitigated the current financial problems by repaying all but \$1,043. She mitigated the personal conduct security concern. Clearance is granted.

CASENO: 06-22473.h1

DATE: 08/27/2007

DATE: August 27, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-22473
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
PHILIP S. HOWE**

APPEARANCES

FOR GOVERNMENT

D. Michael Lyles, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 39 years old, divorced, and has a teen-aged daughter who has a son. Applicant works for a defense contractor. She had financial difficulties in her early twenties after her divorce

and the loss of her job. She resolved those problems by paying her creditors in a Chapter 13 bankruptcy. She mitigated the current financial problems by repaying all but \$1,043. She mitigated the personal conduct security concern. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On January 10, 2007, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. Applicant answered the SOR in writing on January 31, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on May 2, 2007. On June 6, 2007, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence, except Government Exhibit 5, the 2005 security clearance application (SCA). It was not admitted because Applicant objected on the basis it was not signed, and the Government did not move again for its admission at the end of the evidence (Tr. 18, 100). The Government had no objection to Exhibits E to H submitted by Applicant within the additional time allowed. DOHA received the hearing transcript (Tr.) on June 27, 2007.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 39 years old, divorced in 1988, and has a 19-year-old daughter who has a two-year-old son. Applicant lives alone after being in an 11-year relationship with a man who had three daughters. During that relationship, Applicant worked and gave money to her boyfriend with which to pay the household debts. She trusted him to pay those bills and did not keep her knowledge current on those debts. Her boyfriend did not work at all times during the relationship, placing the income burden for the household on Applicant. Applicant works for a defense contractor. She is regarded as very competent and trustworthy by her supervisors. She completes all tasks in a professional manner, including highly sensitive non-classified projects. (Tr. 13, 44, 45, 49, 60, 61, 71; Exhibits 6, A-D)

Applicant accumulated debts by 1991, when she was 22 years old, and the loss of her job then, all of which led her to file a Chapter 13 bankruptcy. She could not make some payments and her parents told her instead that they would help pay her debts. Applicant dismissed that first bankruptcy filing on August 23, 1991, on that understanding. Her parents did not do so, and Applicant had to file Chapter 13 bankruptcy again on September 16, 1991. That bankruptcy was not completed successfully and was dismissed on February 5, 1993. A third and final time Applicant filed for Chapter 13 bankruptcy on October 8, 1993, and it was successfully completed. Applicant was discharged in this bankruptcy on April 14, 1997. Applicant does not remember the specific

¹Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

amount of the debt included in the final bankruptcy, but recalls it may have been about \$10,000. (Tr. 29-34, 94, 95; Exhibits 1, 2)

Applicant has two incidents of writing checks without sufficient funds in her account to pay these checks. The first incident was in January 1991. She pled no contest to the two charges, and received a sentence of 20 days in jail (suspended), and a fine of \$216, \$100 of which was suspended. The second incident occurred on March 29, 1997. Again, she pled no contest to the charge, and was fined \$500. Those fines were paid. (Tr. 70, 71; Exhibits 3-5)

Applicant failed to file and pay her city income taxes in 1993, 1996 to 1998, 2000 to 2005. She assumed her employer withheld the income tax from her pay checks. She did not verify that assumption. She did not file her city tax returns for some years, in particular 2003. She claimed the filing requirement "slipped her mind." Since April 3, 2007, she has an installment payment agreement with her residence city to pay \$250 monthly to retire the \$5,239.39 tax debt. (Tr. 67-71; Exhibits F, G)

Applicant has no credit cards. She has her income, now about \$3,000 monthly, directly deposited into a savings account. She pays her bills electronically by means of a computer or with a money order. She does not have a checking account because she remembers the problems she had in 1991 and 1995 with the insufficiently funded checks. She tries to save about \$400 monthly. Her net income monthly after expenses is about \$950. She has a budget in place for her income and expenses. Her grandson has a genetic ailment, and Applicant gives her daughter about \$100 for medications to cover expenses not paid by insurance. She gives her daughter another \$150 monthly to cover her expenses, because her daughter works part-time in a low-paying job. Applicant had a hip replacement in 2006, causing her to miss some work time. Her insurance pays 80% of the cost, and Applicant has medical expenses to pay for the remaining 20% of the bills. Applicant wants to buy a house and is trying to resolve her debts to clear her credit record. Applicant intends to repay her debts one by one. Applicant has a high school degree and a few college credits. (Tr. 37-40, 44, 50, 55, 62-64, 81, 90; Exhibit H)

Applicant has 13 delinquent debts listed in the SOR. Two delinquent debts are listed twice. Of these debts, Applicant has paid two in full, and has installment payment agreements for five debts. The remaining four debts are disputed and total \$1,043. Specifically, the delinquent debts are as follows:

Subparagraphs 1.j (\$2,075 judgment) and 1.o (\$1,179 judgment) are for the same apartment rental debt. The difference in amounts is not explained in any exhibit. Both debts resulted from judgments on the same day of June 2003. This debt is being paid at \$100 monthly. Applicant is saving her money to settle the debt for \$700. She has saved nearly that entire amount to be able to pay the settlement. (Tr. 43, 72; Exhibits 9, 10, Answer)

Subparagraphs 1.k (\$25 for a returned check) and 1.l (\$108 for a returned check) were paid in October and November 2006, respectively. (Tr. 54, 76; Exhibits 9, 10, Answer)

Subparagraph 1.m (\$1,674 for utility bills) is being paid regularly, and now has an amount due of \$208. (Tr. 76, 77; Exhibits 9, E, Answer)

Subparagraph 1.n (\$201 for a mail order business) is a debt Applicant denies as valid. She claims her former boyfriend ordered something from this company, but she did not. The name used to order the item consisted of her nickname and the boyfriend's last name. It remains unpaid. (Tr. 35, 36, 78; Exhibit 9)

Subparagraphs 1.p and 1.q are each for \$213 for a hospital bill. Applicant had insurance with the company for whom she worked. She attempted to have the insurance company pay the bill, but it is unresolved at present. She asked her former employer to check the status of the payment. (Tr. 37-40, 83; Exhibits 9, 10)

Subparagraph 1.r (satellite television service bill for \$391) is a debt not yet repaid. (Tr. 85; Exhibits 9, 10)

Subparagraph 1.s is for a cell phone service provider. Applicant denies she owes his bill because she never had service with that company. She uses a pre-paid cell phone. This debt remains unpaid, and Applicant disputes its validity. (Tr. 40, 85; Exhibits 9, 10, Answer)

Subparagraph 1.t is a medical debt for \$62. She is paying the collection agency \$50 monthly to repay this bill and several others that agency is collecting. The total debt is about \$300. (Tr. 86; Exhibits 9, 10, Answer)

Subparagraph 1.u is for \$130 owed on a tanning salon membership. This debt is unpaid. (Tr. 87; Exhibit 9)

Subparagraph 1.v is for a judgment from 2004 in the amount of \$795.92. Applicant denies the validity of this debt. It is not listed on the credit reports submitted as exhibits. Applicant has not paid this debt and disputes its validity. (Tr. 42; Exhibits 9, 10)

Applicant completed a Public Trust Position Application (PTPA) on October 8, 2003. She did not list her disorderly conduct charge of January 2003. She misread Question 16 because she thought the fine cutoff amount was \$150, which was the amount of her fine. She thought the date of her offense was 10 years ago, beyond the seven year limit of the question. She had no explanation of why she thought that January 2003, charge was 10 years before October 2003. Next, Question 20 on the same PTPA asked Applicant if she had delinquent debts older than 180 days. She answered "no" because she asked her boyfriend, who paid the bills with the money she gave him, if any debts were that old. He told her none were delinquent. She did not keep track of the debts and relied on him to do so. She claims she was not aware of the delinquencies until the Government investigator talked to her in 2006. (Tr. 13, 46-49, 90-92; Exhibits 3, 6, Answer)

Applicant admitted she completed a security clearance application (SCA) on March 9, 2005. This document was marked as Exhibit 5 for identification, but was not admitted into evidence. Applicant testified about the SCA at the hearing. Applicant answered Question 26 on this SCA about offenses for which she was arrested for, charged with, or convicted of in the past seven years, except traffic offenses with fines less than \$150, with a "no." She again failed to list the 2003 disorderly conduct arrest and conviction. She gave the same explanation for failing to list it in 2005 as she did in 2003. Applicant denied deliberately failing to list her 180 day delinquent debts in answer to Question 38, or her current 90 day delinquent accounts in answer to Question 39, giving

as her reason her past reliance on her boyfriend who paid the household bills with the money she gave him. (Tr. 13, 46-49, 90-93; Exhibits 3, 6, Answer)

POLICIES

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.” *Id.* at 527. 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 the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being

eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that 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. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

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

Guideline E: Personal Conduct: The Concern: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

CONCLUSIONS

Financial Considerations: Applicant had financial difficulties from the time of her marriage 18 years ago until 2006. She incurred debts that she could not repay, due to a low income resulting from her high school education, a divorce, and lack of financial sophistication. She filed Chapter 13 bankruptcy three times between 1991 and 1993, unable to pay and complete the first two filings. Finally, she successfully completed the 1993 filing in 1997. She failed to pay her city income taxes for a number of years, because she thought the tax was deducted from her pay by her employer, and at the same time she failed to file the tax returns with the city because the requirement "slipped her mind." The disqualifying conditions applicable are Financial Considerations Disqualifying Condition ¶19.a. (inability or unwillingness to satisfy debts), ¶19.c. (a history of not meeting financial obligations), and ¶19.g (failure to file annual local income tax returns).

Applicant's successful Chapter 13 bankruptcy in 1997 shows she tried to repay her creditors, not just eradicate her debts. That pattern of attempting to repay her debts is shown again in her current efforts to repay the current delinquent debts.

Applicant showed at the hearing she is making efforts to repay her debts to clear her financial record in preparation to buying a house. She has installment payment agreements with several creditors, and has repaid two. The SOR contains four allegations that should be only two because of duplications on the credit reports. Only three debts remain unpaid at present (Subparagraphs 1.r, 1.s, and 1.u), totaling \$842. She disputes Subparagraphs 1.s and 1.n as not being her debts. A delinquent debt total of \$842, plus the disputed debt contained in Subparagraph 1.n for \$201 equals only \$1,043, not a significant amount.

Applicant's explanation why her local income taxes were not paid for several years has two reasonable bases. First, the time periods coincide with the 11 years she spent living with her former boyfriend who was not paying bills as she expected. Second, her expectation that her employers would withhold income taxes from her paychecks. This second expectation is a reasonable one, compounded by her obvious lack of financial sophistication and higher education. She made a mistake about the tax process, and relied on her assumptions based on state and federal income taxes being withheld. She trusted her live-in boyfriend more than she should have.

The Financial Considerations Mitigating Conditions applicable are ¶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), ¶20.d (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts), and ¶20.e (the individual has a reasonable basis to dispute 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). Applicant demonstrated an awareness and dedication to control her finances and repay her debts, pre-dating the SOR. Applicant expressed her intention to repay her debts one by one, and has submitted proof that she is doing so. It is likely that she will continue paying off her unpaid debts based on her performance to date.

Personal Conduct: Applicant did not disclose certain information as alleged in the SOR on her 2003 PTPA. She did not disclose the same information on her 2005 SCA, as alleged in the SOR. She explained both failures occurred because she misread the question on the \$150 traffic offenses, and did not believe it applied to her situation. As to the questions related to delinquent debts, she relied on her former live-in boyfriend's statements and did not personally review her financial matters.

Personal Conduct Disqualifying Condition (DC) which applies is ¶16.(a) involving deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, or determine trustworthiness. If the failure to disclose is deliberate, then this DC applies.

However, Applicant's explanations of why she did not disclose the same information on two Government forms is reasonable, credible, and persuasive. She misread the first question on the fine

minimums for disclosure. She did not read the question carefully enough to understand it applied to minor traffic fines. She also miscalculated the disclosure period for her disorderly conduct charge, which she repeated at the hearing, showing a deficit of math skills primarily. Her offense was minor and that behavior was infrequent in her life. Regarding the debts, she relied on what her live-in boyfriend told her about their debts. She trusted, but did not verify. She did not learn of her delinquent debts until the Government investigator told her what they were in 2006. The same errors being made on two forms completed two years apart shows the same mind-set and detrimental reliance on her boyfriend and her math abilities.

Whole Person Analysis

“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.” AG ¶ 2(a). “Each security clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy.” Directive ¶ 6.3. “Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.” AG ¶ 2(a). In evaluating Applicant’s case, I have considered the adjudicative process factors listed in the AG ¶ 2(a).

Applicant’s testimony is credible and persuasive on her medical and family ailments and debt obligations. She married and was divorced at an early age. She has a minimally employed single daughter whose son has a chronic medical condition. She is also credible and persuasive in her testimony about her efforts to repay her debts. She admitted she previously spent money on shopping for items, but has stopped doing so. She reduced her discretionary spending. Her unpaid debts total approximately \$1,043 and not the \$7,000 listed in the SOR.. She is saving money and working to repay her debts, and is resolved to control her spending in the future. She does not have any credit cards and no checking account, reducing the opportunities for overspending. Her bankruptcies resulted from her divorce and job loss in 1991. She learned from her earlier problems and mistakes. She rehabilitated herself by identifying the problems and correcting them. Her debt repayment actions are recent, but debt accumulation is not recent in the past two years. Applicant is trying to live responsibly. Her mistakes on her PTPA and SCA resulted from misunderstanding and detrimental reliance. She had no deceptive motivation for her conduct. Based on the evidence Applicant presented, there is little likelihood of recurrence.

Furthermore, without Exhibit 5, and with her denials of Subparagraphs 2.d and 2.e, the findings on those allegations must be for Applicant. Applicant objected to Exhibit 5 and its admission, and it was never admitted into evidence. The Government’s stated (Tr. 100, 101) that it did not put the document into evidence and were not pursuing those allegations, although the Government mistakenly referred to Exhibit 6 instead of Exhibit 5. I assume Exhibit 5 was the correct reference and the two allegations Applicant denied.

Therefore, considering all of the evidence, I conclude the financial considerations security concern for Applicant. I also conclude the personal conduct security concern for Applicant. Finally, I conclude the “whole person concept” for Applicant based on her continued efforts to repay her debts and not avoid them, her evaluations from her supervisors, and the totality of her explanations and the evidence introduced.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs 1.a to 1.v: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraphs 2.a to 2.e: 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 a security clearance for Applicant. Clearance is granted.

Philip S. Howe
Administrative Judge