

KEYWORD: Financial

DIGEST: It was alleged Applicant owed nine creditors approximately \$26,000. Two of the debts are the same obligation. He has paid three of the debts, is negotiating to pay two others, and disputes the remaining four debts. He was the victim of identity theft. The record evidence is sufficient to mitigate or extenuate the negative security concerns stemming from financial considerations. Clearance is granted.

CASENO: 06-23031.h1

DATE: 09/25/2007

DATE: September 25, 2007

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In re:)	
)	
-----)	ISCR Case No. 06-23031
SSN: -----)	
)	
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

It was alleged Applicant owed nine creditors approximately \$26,000. Two of the debts are the same obligation. He has paid three of the debts, is negotiating to pay two others, and disputes the remaining four debts. He was the victim of identity theft. The record evidence is sufficient to

mitigate or extenuate the negative security concerns stemming from financial considerations. Clearance is granted.

STATEMENT OF THE CASE

On April 10, 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 18, 2007, Applicant answered the SOR and requested a hearing. On July 23, 2007, I was assigned the case. On August 11, 2007, a Notice of Hearing was issued for the hearing held on August 29, 2007. At the hearing, the government presented four exhibits (Gov Ex). Applicant testified and submitted 25 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 Z. On September 12, 2007, DOHA received the transcript (Tr.).

FINDINGS OF FACT

The SOR alleges security concerns for financial considerations. In his response to the SOR, Applicant indicated a number of the debts had been paid and denied nine of the debts indicating they resulted from identity theft. The admissions are incorporated herein as findings of fact. After a thorough review of the entire record, I make the following findings of fact.

Applicant is a 37-year-old data base developer who has worked for a defense contractor since August 2005. He is seeking to obtain a security clearance.

In the Summer of 2000, Applicant—then age 30—cosigned a \$16,691 automobile loan (App Ex P) for a female acquaintance. Applicant had known this person for about a year. (Tr. 37) The transaction involved a down payment, which was not paid resulting in the \$927 debt listed as SOR 1.a. The woman who obtained the car then left the area and failed to make the loan payments. The vehicle was repossessed which resulted in a \$5,701 debt (SOR 1.i.) Applicant has tried but has been unsuccessful in locating the woman.

Applicant made an offer to settle the repossession debt for 40% of the amount due. (Tr. 41) The creditors rejected the offer and Applicant has now offered to settle for 50%. Once an agreement is reached, Applicant will pay this debt. (Tr. 41)

The car was purchased at a dealership. Routinely when a car is purchased the seller provides the purchaser with copies of all paperwork submitted to buy the car. This would include not only the loan agreement, but all paperwork submitted by Applicant and the other person in order to secure a loan.

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

The month after cosigning on the car, Applicant returned to school obtaining a bachelor's and master's of science degree in information systems. (Tr. 43, App Ex A) A year later,² Applicant noticed a number of fraudulent accounts appeared on his credit reports that he had not opened. Three of the accounts (SOR 1.c, 1.d, and 1.e) were opened in July 2000. Applicant reported the accounts to the police and disputed the accounts with the credit reporting companies. The police stated they would do what they could, but since the accounts had been opened several years prior, little could be done to locate the fraudulent party. (Tr.36) When Applicant learned of the fraud, he obtained a credit monitoring service. (Gov Ex 2, App Ex Q)

In July 2000, a bank credit card account was opened resulting in a \$3,212 debt (SOR 1.b). That debt was sold to a collection firm (SOR 1.f). Another collection firm purchased the debt. (App Ex T) The current collection firm has offered to settle the matter for \$5,415. Applicant is disputing this debt. A \$4,000 debt to an electronic store is alleged in SOR 1.g. The debt was sold to a collection firm and then placed with another collection firm. (App Ex U) Applicant is disputing this debt.

In 2004, Applicant began working as a student worker and graduate student making \$888 per month. Applicant's income for 2004 was \$12,400. (App Ex B) He began paying the accounts and paid off a number of debts. He has also paid his \$5,486 student loan. He is current on his student loan repayments, which are automatically debited from his account monthly. (Tr. 29) With the exception of his student loans, Applicant has not incurred any new debts. Applicant's income for 2005 was \$25,247 (App Ex C) and \$60,332 for 2006 (App Ex D). Applicant is currently paid \$27 per hour. As of mid-August 2007, his year-to-date income was \$35,653. (App Ex E)

Applicant has more than \$14,500 in his checking and savings accounts. (Tr. 30, App Exs F, G, H) In the last four years, Applicant has paid \$28,000 to assist his parents. (Tr. 30) Applicant is current on his utility bills and other obligations. (Tr.31, App Exs I, J, K, L, M) Applicant has one credit card, which is current. (App Exs N, O) Applicant's August 2007 credit report (App Ex P) lists Applicant as "pays as agreed" on numerous accounts. Applicant owns two lots in a golf course community, which he has recently put on the market asking \$72,000 for each of the lots. (Tr. 63, App Ex Z)

A summary of the nine debts listed in the SOR follows:

		Creditor	Amount	Current Status
1	a	Down payment on a vehicle. Applicant was cosigner.	\$927	Applicant is prepared to pay this debt. Applicant contacted creditor. Creditor no longer has the debt listed in their system due to its age. (Tr.33)
2	b	Original telephone debt placed with a collection firm.	\$822	PAID. Settlement was accepted and made on this account. (Gov Ex 4, App Exs V, W)

²At the hearing, Applicant stated he was unaware of the fraudulent accounts until 2004. (Tr. 23)

3	c	Bank Credit card debt. Same debt as f.	\$3,212	Applicant disputes this debt due to identity theft. Account opened July 2000. (App Ex T) Account does not appear on Applicant's current credit reports. (Tr. 34)
4	d	Department store credit card.	\$562	Applicant alleges identity theft. Account opened July 2000.
5	e	VISA credit card	\$1,281	PAID. Identity theft. Account opened July 2000. (App Ex Y)
6	f	Collection agency. This is the same debt as that alleged in c.	\$9,148	Applicant disputes this debt. Alleged identity theft. The creditor has offered to settle this for \$5,400. (App Ex T)
7	g	Electronics store credit card.	\$4,008	Applicant disputes this debt. Alleged identity theft. (App Ex U)
8	h	Collection firm.	\$518	PAID. Originally a department store debt. Sold the various collection firms. (App Ex X)
9	i	Vehicle repossession. Applicant had cosigned.	\$5,701	Applicant is negotiating to settle this debt. Once settlement is reached, Applicant will pay the debt. (Tr. 41)
		Total debt listed in SOR	\$26,179	Amount includes duplication of debts.

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 guideline to be applied here is 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.³

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 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 his finances so as to meet his 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 \$19,000 on past due accounts. Although the SOR alleges nine debts, two of the debts are the same debt, which the creditor offered to settle for \$5,400. Disqualifying Conditions (DC) 19(a) “inability or unwillingness to satisfy debts” and 19(c) “a history of not meeting financial obligations,” apply.

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

Applicant has paid three payments on the debts (SOR 1.b, 1.e, and 1.h). Mitigating Condition (MC) 20(d) “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” applies to these debts.

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,” has some applicability. During the Summer of 2000, Applicant cosigned on a loan and the car was later repossessed. It is unlikely Applicant will ever cosign on another loan. Applicant has contacted both creditors related to his loan (SOR 1.a and 1.i). Once the creditor in SOR 1.a (\$927) can locate the debt, Applicant is willing to pay that debt. Applicant is negotiating a settlement agreement concerning the repossession debt listed in SOR 1.i. (\$5,701) Once a settlement has been reached, Applicant is willing to pay this debt.

Shortly after Applicant cosigned the car loan, a number of fraudulent accounts were opened. Applicant was unaware of the accounts until years later. Routinely, when a vehicle is purchased a copy of the paperwork is provided the purchaser. This would included the financial information Applicant submitted as cosigner. Since this involved a loan, Applicant’s paperwork would have revealed much financial information about Applicant. When aware, he contacted the police, but because of the passage of time little could be done.

Applicant is disputing three debts due to this identity theft. The debt in SOR 1.c and 1.f are the same obligation. MC 20(e) “the individual has a reasonable basis to dispute the legitimacy of 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, “applies. Applicant should pay his obligations, but is not responsible to pay for fraudulent accounts.

The criminal actions of another is a condition that is beyond Applicant’s control. I find the 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,” to apply. Although not specifically listed as an example in MC 20(b), Applicant could not control the fraudulent actions of another and has acted responsibly once he was made aware of it.

Applicant is paying his debts as agreed. His students loan payments are an automatic deduction from his banking account each month. Although employed only since 2004, Applicant has been able to provide his parents with \$28,000 in support and accumulate \$14,000 in his savings and checking accounts. Additionally, he has two lots which he recently put on the market at \$72,000 each. Applicant has sufficient funds to pay all of the debts listed in the SOR should he be found liable for them. 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.

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

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**