

DATE: November 30, 2007

In Re:)
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)
 -----) ISCR Case No. 06-23179
 SSN: -----)
)
 Applicant for Security Clearance)
)
)

**DECISION OF ADMINISTRATIVE JUDGE
MATTHEW E. MALONE**

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate security concerns raised by her financial problems, which include more than \$17,000 in past due or delinquent debt accrued since 2003. Her failure to timely act to pay or resolve her debts and her ongoing mismanagement of her personal finances undermined her claims her debts resulted from circumstances beyond her control and that her finances will improve in the future. Clearance is denied.

STATEMENT OF THE CASE

On March 23, 2005, Applicant submitted a Security Clearance Application (SF 86) to request a security clearance needed for her current employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to give Applicant a security clearance. On July 20, 2007, DOHA issued to Applicant a Statement of Reasons (SOR) alleging she owed more than \$20,976 for 11 delinquent credit obligations (SOR ¶¶ 1.a - 1.k). The SOR allegations raise security concerns addressed in the Revised Adjudicative Guidelines² under Guideline F (financial considerations).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on September 11, 2007, and I convened a hearing on October 11, 2007, at which the parties appeared as scheduled. Without objection, I admitted seven exhibits offered by the government (Gx. 1 - 7). Applicant testified in her own behalf, and offered four exhibits, which were admitted without objection as Applicant's Exhibits (Ax.) A - D. On November 11, 2007, Applicant submitted an additional unsolicited exhibit. Despite the fact the record was closed, Department Counsel waived objections to its admissibility. It is included in the record as Ax. E. DOHA received the transcript (Tr.) on October 19, 2007.

FINDINGS OF FACT

In response to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a - 1.d, 1.j and 1.k. Her admissions are incorporated herein as facts. After a thorough review of the pleadings, transcript, and exhibits, I make the following additional findings of fact.

Applicant is 49 years old and works as an electronics technician for a large defense contractor. She has held her current job since July 2004, but was previously employed by the same company as a fabricator/assembler from 1990 until she was laid off in December 1997. Thereafter, she was unemployed for the next three months.³ From February 1998 until returning to her current employer in 2004, she worked in a variety of jobs, but was unemployed at times for a total of about 12 months. Her husband was also laid off from his job in late 1997 and was unemployed for about a year. He was also unemployed for about the first six months of 2006.

Since about 2001, Applicant has experienced financial problems due to her over-reliance on and mismanagement of her personal credit. Before March 2007, she carried five delinquent Capital One credit card accounts totaling \$3,291. She has paid or otherwise resolved four of those accounts

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

² Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, the Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

³ Applicant testified he was unemployed for most of the next year, but her SF 86 (Gx. 1) shows she returned to work as a binder in February 1998.

using a \$5,000 loan she took from her 401(k) account in February 2007. She tried to get a loan from her credit union for the same purpose but was turned down, and still owes \$1,236 for the fifth Capitol One account. Applicant also owes \$9,847 for a delinquent Discover credit card account, \$1,762 for a delinquent Provident credit card, and \$806 for a delinquent Sears credit card.⁴ Applicant also failed to pay three medical bills totaling \$4,031. These accounts were generated when Applicant underwent knee surgery in 1999 or 2000, and have been in collection as far back as 2001.

Applicant asserts the Sears account was her mother's responsibility, but acknowledged she co-signed on the account because her mother is on a fixed income. The Discover card was opened jointly with her husband about five years before they were married. Applicant has blamed the high balance on that account on her husband's excessive spending.⁵ Applicant also testified she had allowed her adult children to obtain now-delinquent credit accounts using her name.⁶

Applicant and her husband live in her mother's house rent free in exchange for paying the utilities.⁷ Applicant brings home about \$2,100 in monthly income after deductions. Her husband brings home about \$1,200 each month.⁸ When she was interviewed by a government investigator in April 2006, Applicant estimated she and her husband (who was not working at the time) had less than \$100 remaining each month after expenses, which did not include any debt payments. At her hearing, she estimated they now have about \$200 remaining monthly.

In February 2006, Applicant and her husband entered into a three-year lease of a new SUV for which they pay \$880 each month, plus another \$400 each month for insurance. This is the third successive car lease they have executed, each one more expensive than the other. Because her husband was unemployed when they executed the lease, Applicant assumed full responsibility for the payments.⁹

Since February 2007, Applicant has used the services of three different credit counseling and repayment companies. She hoped they would consolidate her debts for her and present her with a payment plan. Although she paid monthly fees to the first two companies, neither actually negotiated any repayment of her debts or arranged for a debt consolidation loan.¹⁰ After the hearing, Applicant engaged a third company, which has arranged a repayment plan to resolve the \$17,682 she still owes

⁴Answer to SOR; Gx. 4; Gx. 5.

⁵ Gx. 6; Tr., 74 - 75.

⁶ Tr., 90 - 91.

⁷ Tr., 55.

⁸ Tr., 72.

⁹ Tr., 69 - 70, 80 - 81, 97 - 98.

¹⁰ Ax. C.

in 48 months. However, for the next five months, her monthly payment of \$212 will go to the company's fees rather than pay her debts.¹¹

Applicant is well-respected at work. She has received several letters of appreciation for her work, and has been recognized for her volunteer activities as well.¹²

POLICIES AND BURDEN OF PROOF

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines.¹³ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines.¹⁴ The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties at hearing require consideration of the security concerns and adjudicative factors addressed in Revised Adjudicative Guideline F (financial considerations).

_____ A security clearance decision is intended to resolve whether it is clearly consistent with the national interest¹⁵ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.¹⁶ 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 judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly

¹¹ Ax. E.

¹² Ax. B.

¹³ Directive. 6.3.

¹⁴ Commonly referred to as the "whole person" concept, these factor are:(1) The nature, extent, and seriousness of the conduct; (2) the circumstances 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 is 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.

¹⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

¹⁶ See *Egan*, 484 U.S. at 528, 531.

consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the government.¹⁷

CONCLUSIONS

Financial Consideration. Under Guideline F, “[f]ailure 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.”¹⁸ The government presented sufficient information to support the allegations of delinquent debt in the SOR. Available information shows Applicant still owes more than \$17,000 of the nearly \$21,000 in delinquent debt she has accrued since 2001. The record further shows she has misused personal credit and continues to overspend despite being aware of the government’s concerns about her finances. Further, she has allowed others to use her personal information to get credit without any plan for repayment. The record requires consideration of Guideline F disqualifying conditions 19(a),¹⁹ 19(b),²⁰ and 19(c),²¹ and 19(e).²²

In light of Applicant’s claim that her debts were caused by her lay-off in 1997, the record also requires consideration of Guideline F mitigating condition 20(b).²³ However, the financial effects of her lay-off have been eclipsed by the passage of time and Applicant’s continued employment over most of the 10 intervening years. This mitigating condition also requires Applicant show she acted reasonably in response to the unforeseen events that may have caused her financial problems. She has not done so. Her ongoing misuse of personal credit, and her poor financial decision making, most recently illustrated by her 2006 vehicle leasing agreement which leaves her with little remaining cash each month, make 20(b) unavailable to her. Because the record does not support any of the other Guideline F mitigating conditions, Applicant has failed to mitigate the Guideline F security concerns.

¹⁷ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

¹⁸ Revised Adjudicative Guidelines, ¶ 18.

¹⁹ “a history of not meeting financial obligations;”

²⁰ “indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;”

²¹ “inability or unwillingness to satisfy debts;”

²² “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;”

²³ “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;”

Whole Person. I have evaluated the facts presented in this record and have applied the appropriate adjudicative factors, pro and con, under Guideline F. I have also reviewed the record before me in the context of the whole person factors listed in Section 2(a) of the Revised Adjudicative Guidelines.²⁴ Despite the positive information about her on-the-job performance and her volunteer activities, Applicant has not present information sufficient to find she is not likely to repeat the poor financial conduct that has characterized much of her adult life. To her credit, she has attempted to get professional help to resolve her debts, but her failure to show she has corrected the circumstances underlying her poor financial condition further buttresses the government's doubts about her suitability for a clearance. Such doubts must be resolved in favor of the national security.²⁵ A fair and commonsense assessment²⁶ of all available information before me shows the Applicant has not yet overcome the government's reasonable doubts about his ability to protect classified information and to exercise the requisite good judgment and discretion expected of one who holds a security clearance.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial Considerations):	AGAINST THE APPLICANT
Subparagraph 1.a - 1.d:	Against the Applicant
Subparagraph 1.e - 1.I:	For the Applicant
Subparagraph 1.j - 1.k:	Against the Applicant

DECISION

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

Matthew E. Malone
Administrative Judge

²⁴ See footnote 14, *supra*.

²⁵ See footnote 17, *supra*.

²⁶ See footnote 13, *supra*.