

KEYWORD: Financial

DIGEST: Applicant incurred approximately \$21,765 in delinquent debt, for which he has no payment plan in place. He has failed to mitigate the security concerns raised under the financial considerations guideline. Applicant's eligibility for a security clearance is denied.

CASENO: 06-23412.h1

DATE: 05/31/2007

DATE: May 31, 2007

In re:)	
)	
)	
-----)	ISCR Case No. 06-23412
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
NOREEN A. LYNCH**

APPEARANCES

FOR GOVERNMENT

Candace L. Le'i, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred approximately \$21,765 in delinquent debt, for which he has no payment plan in place. He has failed to mitigate the security concerns raised under the financial considerations guideline. Applicant's eligibility for a security clearance is denied.

STATEMENT OF THE CASE

On January 30, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating that it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.¹ The SOR, which is in essence the administrative complaint, alleged security concerns 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. The revised guidelines were provided to Applicant when the SOR was issued.

On February 23, 2007, Applicant submitted a notarized response to the SOR, and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the government's written case on March 28, 2007. Applicant received a complete file of relevant material (FORM) on April 4, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the government's case.² The case was assigned to me on May 22, 2007. Applicant did not submit additional information.

FINDINGS OF FACT

Applicant admitted all allegations in his SOR response under Guideline F.³ The 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 additional findings of fact:

Applicant is a 29-year-old employee of a defense contractor. After graduation from high school in 1995, he attended college. He received an Associate Arts degree in 2004. He has worked for his current employer since 2005. He is married with five children.⁴ On January 24, 2005, he completed his security clearance (SF 86) application.⁵

Applicant's 18 debts in the SOR total approximately \$21,765. The debts in the SOR are not in dispute.⁶ Applicant offered no explanation for these debts. Multiple accounts were charged off or placed for collection. Several of the debts have been in collection since 2001.⁷

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

²The government submitted eight items in support of its contentions.

³Item 3 (Applicant's Answer to SOR, dated February 23, 2007) at 1-3.

⁴Item 4 (Application for Security Clearance (SF 86), dated January 24, 2005) at 1-10.

⁵*Id.*

⁶Item 3, *supra* note 3, at 1-2.

⁷Item 6 (Credit Bureau Report, dated March 6, 2007) at 1-3.

Applicant has not made any payments on the delinquent accounts. He received numerous requests from creditors to discuss resolution of overdue accounts. However, Applicant did not respond. Applicant provided no evidence of any mitigating conditions involving medical problems or other extenuating circumstances.⁸

Applicant's monthly net income is \$1,850. His spouse also works and earns \$2,221. Thus, the total monthly net income is \$4,071. He has monthly expenses of \$3,405, including a \$397 monthly car loan. His monthly net remainder is \$269. He lists no assets.⁹

Applicant provided no information concerning his work record.¹⁰

POLICIES

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."¹¹ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in ¶ 6.3 of the Directive, and AG ¶ 2(a).

"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."¹² An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.¹³ An administrative judge should consider the following factors: (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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for

⁸*Id.*

⁹Item 5 (Applicant's response to Interrogatories and attachments) dated January 2, 2007.

¹⁰*Id.*

¹¹ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

¹² Directive, ¶ E2.2.1.

¹³ Directive, Revised Adjudicative Guidelines (AG) 2 (a)(1)-(9).

the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.¹⁴

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.¹⁵ Thereafter, the applicant is responsible for presenting evidence 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 Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.¹⁸ The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F of the revised Adjudicative Guidelines (AG) most pertinent to the evaluation of the facts in 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 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.*¹⁹

In this matter, the government provided substantial evidence that Applicant accrued 18 delinquent debts with an approximate total balance of \$21,765. He admits they are still outstanding debts. His 2007 credit report confirms the debt. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶19(a) (*inability or unwillingness to satisfy debts*) and FC DC ¶19 (c) (*a history of not meeting financial obligations*) apply.

With the government’s case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. I considered the Financial Considerations Mitigating Condition (FC MC) AG ¶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*). It does not apply because

¹⁴ *Id.*

¹⁵ Directive, ¶ E3.1.14.

¹⁶ Directive, ¶ E3.1.15.

¹⁷ ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).

¹⁸ Directive, ¶ E2.2.2.

¹⁹AG ¶ 18.

he still carries a significant amount of delinquent debt. One collection account is from 2001. Despite steady employment, he has not made any payments on these debts.

Applicant provides no evidence or explanation concerning any mitigating conditions to support the FC MC AG ¶20 (b) (*the conditions that resulted in the behavior 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 circumstance*).

FC MC AG ¶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 under control*) does not apply. All of the debts remain outstanding. He has no structured plan to resolve these debts. Applicant's financial problems remain. It is unlikely they will be resolved in the near future.

FC MC ¶20(d) (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is not applicable. Applicant has not shown that he established a record of steady payments or financial stability. He made no attempts to resolve the delinquent accounts. He did not respond after receiving the SOR. Thus, I conclude that he did not make a good-faith effort to resolve his debts.

The issue before me is not whether Applicant is still legally liable for any or all of his outstanding debts, but whether he has presented sufficient evidence of extenuation, mitigating or changed circumstances to warrant a favorable security determination. His remaining unpaid debt constitutes a security concern. He has been employed with his current employer since 2005. He lists his wife's income on his personal financial statement, and his net monthly remainder could be used to pay toward the delinquent debt. However, he has chosen not to do that. This does raise a doubt about his ability to resolve his outstanding debt. Applicant has not mitigated the government's concerns under Guideline F.

Whole Person

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. 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 their 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.

I have considered all the evidence and the "whole person" in evaluating Applicant's security clearance determination. Even an applicant with a good or even exemplary work history may engage in conduct that has negative implications or presents doubt about his judgment. Despite steady employment, Applicant has accrued multiple delinquent accounts. It is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

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:

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:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant

DECISION

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

Noreen A. Lynch
Administrative Judge