

KEYWORD: Financial

DIGEST: Applicant has a history of failing to pay her debts. She has not presented sufficient evidence to conclude that she is serious and genuinely interested in satisfying her old debts, such as her student loans and a recent bank loan, which were not discharged in her recent bankruptcy in April 1999. She recently purchase a used vehicle and is making payments on this account and has failed to repay any of her other creditors. Clearance is denied.

CASE NO: 01-02213.h1

DATE: 03/22/2002

DATE: March 22, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-02213

**DECISION OF ADMINISTRATIVE JUDGE**

**WILLIAM R. KEARNEY**

## **APPEARANCES**

### **FOR GOVERNMENT**

Matthew E. Malone

### **FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

Applicant has a history of failing to pay delinquent debts. She has not presented sufficient evidence of her future plans to repay or to satisfy her past indebtedness, to conclude that she is serious and genuinely interested in repaying her old creditors. The record reflects that she recently purchased a used vehicle and is currently making payments on that account, but she has failed to make any attempt to repay her other financial obligations that were not released in her recent bankruptcy.

## **STATEMENT OF THE CASE**

On September 27, 2001, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating DOHA could not make the preliminary affirmative finding <sup>(1)</sup> it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR sets forth allegations that invoke disqualifying factors identified in the Directive under Guideline F (Financial Consideration). On October 19, 2001, the Applicant filed a certified answer to the SOR wherein she admitted all the allegations contained in the SOR and she gave three explanations as to why she could not make payments or satisfy her older creditors as set forth in the various subparagraphs of the SOR. Applicant also elected to have her case decided on the written record, in lieu of a hearing.

On January 2, 2002, the Applicant was provided with a complete copy of the File Of Relevant Material (FORM) dated December 10, 2001, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation of the file of relevant material. Applicant failed to take advantage of this opportunity and she did not file any response to the FORM, which was due within thirty days after receipt of the Form, or on January 31, 2002. The Department Counsel presented eleven exhibits (Items) with the FORM.

I was assigned the case on March 1, 2002, on which date the record in this case was closed.

### **FINDINGS OF FACT**

The SOR alleges financial considerations (Guideline F), wherein an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds, which could indicate that the subject may not properly safeguard classified information.

The Applicant is a 33 year old female employee of a defense contractor since January 1, 1998, and is seeking a security clearance in connection with her employment.

Paragraph 1, subparagraph a., of the SOR alleges that the Applicant filed for Chapter 7 bankruptcy protection on December 3, 1998, as she listed \$49,356.00 in debts. Subsequently, she was discharged in bankruptcy on April 3, 1998. Applicant has admitted all the facts alleged in the SOR. Applicant states that she was following the advice of a financial advisor and was advised to file for Chapter 7 bankruptcy.

Paragraph 1, subparagraph b., of the SOR alleges that the Applicant owes the United State Department of Education approximately \$29,000.00 in federally subsidized student loans that have been placed for collection. These student loans were not discharged in her recent Bankruptcy proceeding. As of August 15, 2001, Applicant had not satisfied or otherwise resolved this and her other indebtedness. Applicant has admitted this allegation. Further, the Applicant also states that she has not been able to keep up with her student loan payments, as she had car problems and purchased a used car from a friend. She pays \$350.00 a month on her car loan, and has stated that after February 2002, she will start paying on her student loan.

Paragraph 1, subparagraph c., alleges that the Applicant owes a bank approximately \$3,345.00 on a delinquent account.

This account has been delinquent since May 1999. As of August 15, 2001, this account has not been satisfied or otherwise resolved. The Applicant has also admitted this allegation. This loan was not included in her bankruptcy of December 3, 1998.

She also states that she purchased a used car and could not make the payments on this account and the recently purchased vehicle.

Paragraph 1, subparagraph d., alleges that the Applicant on August 15, 2001, submitted a Personal Financial Statement that indicates she has a negative remainder balance of approximately \$295.00 each month after paying her current expenses and debts, excluding any payment to those debts listed in subparagraphs 1.b, and 1.c, of the SOR. Applicant has admitted this allegation, and states that she purchased a used car and when it is paid off, she will get started paying on her student loans and other bills.

## POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure, instead, they 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. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in context of factors set forth in Section E. 2.2.1. of the Directive as well. In that vein, the Government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to an Applicant's lack of security worthiness.

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. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The adjudicative process also 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*. Eligibility for access to classified information is predicated upon the individual meeting the personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating the relevance of an individual's conduct, the adjudicator 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 the conduct.
8. The potential for pressure, coercion, exploitation, or duress, and
- 9 The likelihood of continuation or recurrence.

In accordance with the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an Appellants' security clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching a fair and impartial overall common sense determination as required, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record. Determinations under the Directive include consideration of the risk that an Appellant may deliberately or inadvertently fail to safeguard properly classified information as that term is defined and established under Executive Order 12958, effective on October 14, 1995.

#### **GUIDELINE F - FINANCIAL CONSIDERATIONS**

**An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.**

**Conditions that could raise a security concern and may be disqualifying include:**

[1st] A history of not meeting financial obligations;

[3rd] Inability or unwillingness to satisfy debts;

**Conditions that could mitigate security concerns include:**

None of the mitigating conditions are applicable to the facts in this case.

**CONCLUSIONS**

Initially, the Government has the burden of proving any and all controverted fact(s) alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the Applicant who must remove that doubt and establish her security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue her security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an Applicant's judgment, reliability or trustworthiness, the Applicant has a heavy burden of persuasion to demonstrate that she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the Applicant.

In this particular case the Applicant has admitted all the allegations set forth in the SOR, with explanations. She has admitted that she filed for bankruptcy in December 3, 1998, and was discharged in bankruptcy on April 3, 1999; that she still owes approximately \$29,660.00 in Federally subsidized student loans which were not released in her bankruptcy; that she still owes approximately \$3,345.00 on a delinquent account to a bank since May, 1999, which was incurred after her bankruptcy; and that her Personal Financial statement shows that she has a negative remainder of approximately \$295.00 each month after paying her monthly current expenses.

Applicant alleges that she sought financial advice concerning her financial situation and was advised to file for bankruptcy protection, which she did. Her federally funded student loans were not discharged by the bankruptcy Court, and her recent bank loan account was acquired after she was discharged in bankruptcy. She stated in her answer to the SOR that she purchased a used vehicle and that she is paying \$350.00 a month on it, and she does not have sufficient funds to pay her student loans and her other existing debts.

Having considered the record evidence in accordance with the Adjudicative Guidelines of the Regulations, this Administrative Judge concludes that Applicant's financial problems raise a serious security concern under Guideline F. The Applicant has failed to present sufficient and material documentation or evidence to mitigate or extenuate the security concerns raised by her present financial problems.

The evidence of record, together with Applicant's admissions and her sole response to the SOR, established that she has been very delinquent and relaxed in making payments on her past financial obligations. An individual who is financially overextended is at risk and may have to engage in illegal acts to generate funds. A review of the Guidelines under Guideline F, Financial Considerations, reveals that disqualifying factor 1, (a history of not meeting financial obligations), and disqualifying factor 3, (inability or unwillingness to satisfy debts), are most applicable and controlling of the facts in this case. Applicant is apparently living far beyond her means, and has failed to take adequate steps to satisfy her long overdue student loans, and her delinquent debt to a local bank. She has not presented any documentation concerning her future plans for the settlement or the repayment of her existing financial obligations, except her statement that when she is finished paying for her automobile, she will get back to her student loans. Based upon these facts, I cannot conclude that the Applicant has acted in good faith in attempting to settle or otherwise satisfy her outstanding creditors. The Applicant has been very tardy and relaxed in attempting to repay or otherwise satisfy her past overdue debts. Her history of not meeting her financial obligations and her apparent indifference to and disregard of her financial obligations are indicative of poor judgment, unreliability and untrustworthiness on her part. Her financial considerations are of special security concern to the Government.

The evidence of record reveals that she has a history of not meeting her financial obligations, and she has failed to present any evidence or documentation in an attempt to resolve or satisfy her past debts and creditors. Her lackadaisical approach to resolving her past financial obligations is her statement that after February 2002, she will be finished making payments on her vehicle, which will allow her "to get back on track with my student loans." This is totally insufficient as a plan or an attempt to satisfy her outstanding indebtedness and financial obligations. The Applicant has failed to offer any clear indications that her present financial problem is being resolved or that it is under control. Her long pattern of financial irresponsibility casts serious doubt on her judgment, reliability, and trustworthiness, which is required for access to classified defense information. Therefore, I conclude adversely and against the Applicant as to all the allegations under Guideline F, (Financial Considerations), set forth in the SOR.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1, Guideline F (financial considerations): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

### **DECISION**

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

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**William R. Kearney**

**Administrative Judge**



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