

KEYWORD: Financial

DIGEST: After discharging over \$21,000 in debts through Chapter 7 bankruptcy in 1993, Applicant has continued to experience financial problems including a mobile home repossession, collection accounts and dwindling cash flow. She has not paid any of the debts alleged in the SOR, has accrued new delinquencies, and has not presented sufficient information to mitigate the resulting security concerns under Guideline F (Financial Considerations). Clearance is denied.

CASENO: 02-27764.h1

DATE: 07/27/2004

DATE: July 27, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-27764

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

After discharging over \$21,000 in debts through Chapter 7 bankruptcy in 1993, Applicant has continued to experience financial problems including a mobile home repossession, collection accounts and dwindling cash flow. She has not paid any of the debts alleged in the SOR, has accrued new delinquencies, and has not presented sufficient information to mitigate the resulting security concerns under Guideline F (Financial Considerations). Clearance is denied.

STATEMENT OF THE CASE

On November 10, 2003, in accordance with DoD Directive 5220.6, as amended (Directive), the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline F (Financial Considerations). The SOR informed Applicant that, based on available information, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance. [\(1\)](#)

On March 3, 2004, Applicant answered the SOR (Answer), wherein she admitted all of the allegations and chose to have her case decided without a hearing. On June 2, 2004, DOHA Department Counsel submitted a file of relevant material (FORM) in support of the government's preliminary decision, a copy of which Applicant received on June 11, 2004. Applicant timely responded to the FORM (Rebuttal) to which Department Counsel did not object. The case was assigned to me on July 6, 2004.

FINDINGS OF FACT

Applicant's admissions are incorporated herein as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact:

Applicant is 52 years old and has been employed by the same defense contractor as a manufacturing specialist since November 1972. She is a single mother of two boys, ages 20 and 27. In April 1999, she submitted a security clearance application in which she disclosed that she had experienced financial problems.⁽²⁾ A subsequent background investigation revealed she has filed for bankruptcy, lost a mobile home to repossession, and has several delinquent credit accounts.

(SOR 1.a) In 1993, Applicant broke her arm and was unable to work for six months. She fell behind in her financial obligations and had to declare bankruptcy. In June 1993, after one of her creditors obtained a judgment against Applicant, she filed a Chapter 7 petition and was eventually discharged of about \$21,000.00 in debts.⁽³⁾

(SOR 1.d) In 1997, after her mother died, Applicant moved in with her father to help him through their loss. In the process, Applicant fell behind in her mortgage payments on a mobile home she had financed for about \$40,000 in September 1995. She decided to return the mobile home to the dealer with a balance on the mortgage of about \$37,000.⁽⁴⁾ While there is no available information about whether the property was resold or if Applicant owes a deficiency after any such resale, it must be assumed some financial obligation for this account remains. It is also clear, as Applicant told a Defense Security Service (DSS) agent two years ago, that she is unable to resolve this obligation.⁽⁵⁾

(SOR 1.b) Applicant also owes about \$320 for a delinquent credit card account which has been charged off by the creditor as a business loss. She claims this account was discharged through her 1993 bankruptcy under a different company name; however, she has not provided documentation to support her claim. This debt remains unpaid.⁽⁶⁾

(SOR 1.c) Applicant also owes \$260 for a delinquent cable TV account. In 1999, she told DSS she intended to pay this bill; however, there is no information showing she has done so.

(SOR 1.e) Applicant has continued to struggle with her finances since her last interview with DSS in 2002. Her 1999 Personal Financial Statement (PFS) showed she had about \$400 left over each month after expenses, yet, in 2002, her PFS showed she only had about \$90 each month. Applicant relies from time to time on her sons to help with household finances, but she has three accounts not alleged in the SOR that are either late, in collection, or have been charged off.⁽⁷⁾

POLICIES

The Directive sets forth adjudicative guidelines⁽⁸⁾ to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair, impartial, and commonsense consideration of all of available relevant and material information, and application of the pertinent factors and criteria provided in Enclosure 2 of the Directive. Further, the Administrative Judge must consider as appropriate the "whole person" factors listed in Section 6.3 of the Directive. 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. Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed in the Directive under Guideline F (Financial Considerations).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽⁹⁾ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden, it establishes a *prima facie* case that it is not clearly consistent with the national interest for the applicant to have access to classified information. The burden then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.⁽¹⁰⁾

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 consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.⁽¹¹⁾

CONCLUSIONS

Under Guideline F, a security concern exists where it is shown an individual is financially overextended, thus being at risk of having to engage in illegal acts to generate funds.⁽¹²⁾ An inability or unwillingness to pay one's debts and to manage one's finances in a reasonably sound manner may also indicate poor judgment and reliability. Department Counsel has presented sufficient evidence in the FORM to establish a *prima facie* case for disqualification under this guideline and I conclude that Guideline F disqualifying condition (DC) 1⁽¹³⁾ and DC 3⁽¹⁴⁾ apply here.

Applicant's financial difficulties in 1993, standing alone, might not be of much security significance. She fell behind on her bills due to the unforeseen circumstance of an injury and resulting unemployment. She then took action to address her debts through federal bankruptcy protection intended for just such a circumstance. However, over the ensuing 11 years, she has continued to experience unpaid bills, collection actions and a voluntary repossession of a mobile home.

As for the mobile home repossession, my assumption there is still a debt owing is based on experience in other cases where a car is returned and resold or a home mortgage is foreclosed on and the house sold at auction. The car dealer or mortgage finance company generally tries to cover its lost business through resale and expects any difference between the original sale value and the resale price to be satisfied by the original buyer / mortgagee. However, without more information about what happened in this instance, it may still be that the repossession and any resale ended her obligation and Applicant owes nothing. Nonetheless, the fact Applicant fell behind on her mortgage payments in the first place is further indication of her inability to fulfill her financial obligations.

Further, some of her bills were discussed with her in 1999 by a DSS agent. At that time, Applicant stated her intention to pay her debts, and she appeared to have the cash flow each month with which to do so. But she has not paid or otherwise attempted to resolve any of the debts listed in the SOR. Between 1999 and 2002 her financial situation worsened as reflected in her net monthly cash flow, which dwindled from about \$400 to less than \$100. Neither of her financial statements showed she has paid any of the debts listed in the SOR and she has offered no information about how or if she will resolve her financial obligations from now on. In light of the foregoing, there is no basis for application of any of the Guideline F mitigating conditions. I conclude this guideline against the Applicant.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive in Section 6.3. A fair and commonsense assessment⁽¹⁵⁾ of the adverse information about Applicant's financial history raises reasonable doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Absent substantial information to resolve those doubts, which Applicant failed to provide, I cannot conclude it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Financial Considerations (Guideline F): 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

Subparagraph 1.e: 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

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Item 4.

3. Items 4, 5, and 9.
4. Items 5, 6, and 7.
5. Item 6.
6. Items 5, 6, and 7.
7. Item 8.
8. Directive, Enclosure 2.
9. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
10. *See Egan*, 484 U.S. at 528, 531.
11. *See Egan*; Directive E2.2.2.
12. Directive, E2.A6.1.1.
13. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;
14. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
15. Directive, Section E2.2.3.