

KEYWORD: Financial

DIGEST: Applicant has a history of financial delinquencies that includes two Chapter 7 bankruptcy discharges, the last occurring in May 1998, and a repossessed auto on which she is now making payments on the deficiency owing after the vehicle was sold. Applicant has mitigated the security concerns caused by the financial considerations present in this case. Clearance is granted.

CASENO: 02-14436.h1

DATE: 01/26/2005

DATE: January 26, 2005

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-14436

**DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn MacKinnon, Esquire, Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant has a history of financial delinquencies that includes two Chapter 7 bankruptcy discharges, the last occurring in May 1998, and a repossessed auto on which she is now making payments on the deficiency owing after the vehicle was sold. Applicant has mitigated the security concerns caused by the financial considerations present in this case. Clearance is granted.

### **STATEMENT OF THE CASE**

On July 25, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.<sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline F, for financial considerations.

Applicant submitted an answer to the SOR that was received by DOHA on August 29, 2004, denied all SOR allegations except subparagraphs 1.f. and 1.g., and did not indicate whether she wanted a hearing or a decision made on the written record. She was notified of the need for her to make an election, and thereafter submitted a letter, dated October 10, 2003, electing to have her case decided on the written record without a hearing. On August 23, 2004, Applicant notified Department Counsel she had changed her mind and was now requesting a hearing.<sup>(2)</sup>

The case was assigned to me on September 10, 2004. A notice of hearing was issued on November 4, 2004, scheduling the hearing for December 2, 2004. The hearing was conducted as scheduled. The government submitted eleven documentary exhibits that were marked as Government Exhibits (GE) 1-11, and admitted into the record without objection. Applicant testified, and submitted one documentary exhibit that was marked as Applicant's Exhibits (AE) 1, and admitted into the record without objection. The record was held open to provide Applicant additional time to submit documentation in support of her case. Four documents were timely received, marked as AE 2-5, and admitted into the record without

objection. The transcript was received by DOHA on December 13, 2004.

### **PROCEDURAL MATTERS**

Department Counsel moved in writing to amend the SOR on September 8, 2004.<sup>(3)</sup> The motion was allowed over Applicant's objection, adding subparagraphs 1.h., 1.i., and 1.j. in the language stated in the motion. Applicant denied the allegations in subparagraphs 1.h. and 1.i., and admitted the allegation in subparagraph 1.j.

Department Counsel moved to withdraw subparagraphs 1.a., 1.c., 1.d., and 1.e. based upon information Applicant had appended to her answer to the SOR. That motion was granted without objection.

### **FINDINGS OF FACT**

Applicant's admissions to the allegations contained in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 46 years old, single, and has one son who is 15 years old. She graduated from college and was awarded a bachelor of science degree in secretarial science in 1981. She has been employed as a publications specialist by a defense contractor since September 1990. Applicant has possessed a secret security clearance since approximately 1990, and there have never been any complaints made alleging she has mishandled classified information. There have no efforts to revoke or downgrade her security clearance prior to the action herein in issue.

Applicant received a discharge under Chapter 7 of the bankruptcy code in August 1985. She candidly admits that as a recent college graduate who grew up in the projects she had no concept of how to deal with the credit that was extended to her. As a consequence, she made excessive credit card charges wrongly anticipating she would be able to pay the bills as they came due.

She again found herself in financial distress in the mid to late 1990s. Applicant filed for protection under Chapter 13 of the bankruptcy code in February 1997. That proceeding was eventually converted to a Chapter 7 bankruptcy, and Applicant obtained a discharge in May 1998. She attributes her need to file for bankruptcy to the events occurring in her life, including unexpected expenses incurred after she purchased a house, and the illness and death of close relatives.

Applicant had purchased a house and discovered it had major plumbing problems and an insurmountable rodent infestation. She was forced to expend money from her modest income to deal with both issues. During the same time frame, Applicant's grandmother and godmother became terminally ill, with her godmother dying in 1997, and her grandmother in 1998. Applicant found it necessary to travel out of state to visit these relatives during their illnesses on a regular basis, and again was forced her to expend money on other than her daily living expenses.

The SOR alleges several delinquent accounts. The first (subparagraph 1.b.) is a bad check in the amount of \$61.00 that according to GE 9 dates back to June 1998. Applicant credibly testified she has no idea what this account is about, and that she contacted the creditor and they had no record of the account. The next alleged delinquent account (subparagraph 1.h.) is a revolving charge account that according to GE 9 was charged off in 1996. Applicant stated she did not have any knowledge of this account. Considering the account was charged off almost two years prior to her May 1998 discharge in bankruptcy it is likely this account was included in the bankruptcy and was therefore discharged in 1998.

The last alleged delinquent accounts (subparagraphs 1.i. and 1.j.) are both judgments based on a repossessed auto from 2000. Applicant credibly testified the accounts are one and the same, and the different court numbers for the accounts contained in GE 11 are the result of an appeal that was taken from the judgment. She also submitted AE 2 in support of her claim. I find that they do represent a single judgment in the final amount of \$8,067.00. Applicant entered into a payment plan with this creditor by which she made an initial lump sum payment of \$2,000.00 and monthly payments of \$250.00 thereafter. AE 5 discloses that as of November 2004 she was current with the payments and the balance owing has been reduced to \$2,354.00

Applicant testified her post-1998 bankruptcy financial problems were at least in part caused by the need to move her terminally ill mother into a nursing home and to bury her father who didn't leave any money or insurance to cover the costs. Applicant was diagnosed with breast cancer in November 2002, and underwent surgery in January 2003, although she does not blame any of her financial problems on her health issues.

### **POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance 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 ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline F, pertaining to financial considerations, with its respective DC and MC, is most relevant in this case.

### **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

[\(4\)](#)

[\(5\)](#)

clearance for an applicant. The government has the burden of proving controverted facts. The burden of proof in a security clearance case is something less than a preponderance of evidence<sup>(6)</sup>, although the government is required to present substantial evidence to meet its burden of proof.<sup>(7)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(8)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>(9)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(10)</sup>

No one has a right to a security clearance<sup>(11)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(12)</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>(13)</sup>

## CONCLUSIONS

Under Guideline F, a security concern exists when a person has significant unpaid 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. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation 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 found herself with unmanageable debt that caused her to file for bankruptcy protection in 1985, and again in 1997. Subsequent to the 1998 discharge in bankruptcy, Applicant had an automobile repossessed, and a judgment entered against her on the post resale deficiency owing. Disqualifying Condition (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts* apply in this case.

Applicant's second bankruptcy was in large part necessitated by the unforeseen expenses she encountered with the purchase of a house and the illnesses of close relatives. Likewise, the death of her father and illness and death of her mother played a large role in the circumstances leading to the auto repossession and resulting judgment. Applicant entered into a payment plan with the judgment creditor, has remained current on the payments, and has substantially reduced the amount owing. Mitigating Condition (MC) 3: *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 MC 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* apply.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Considering all relevant and material facts and circumstances present in this case, including the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has mitigated the financial considerations security concern that existed in this case. She has overcome the case against her and satisfied her ultimate burden of persuasion. Guideline F is decided for Applicant.

### **FORMAL FINDINGS**

SOR ¶ 1-Guideline F: For Applicant

Subparagraph a: Withdrawn

Subparagraph b: For Applicant

Subparagraph c: Withdrawn

Subparagraph d: Withdrawn

Subparagraph e: Withdrawn

Subparagraph f: For Applicant

Subparagraph g: For Applicant

Subparagraph h: For Applicant

Subparagraph i: For Applicant

Subparagraph j: 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.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. A copy of Applicant's letter requesting a hearing was marked as Appellate Exhibit I, and is included in the record.
3. The motion was marked as Appellate Exhibit II, and is included in the record.
4. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
6. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
7. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
8. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
9. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
10. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
11. *Egan*, 484 U.S. at 528, 531.
12. *Id* at 531.
13. *Egan*, Executive Order 10865, and the Directive.