

KEYWORD: Financial; Personal Conduct

DIGEST: The Applicant owed 25 debts totaling approximately \$16,576. She has paid some of the debts and other were included in her most recent bankruptcy. However, she still owes approximately \$9,500 on 16 debts. The available information is insufficient to mitigate or extenuate the negative security implications stemming from the Applicant's financial concerns. Clearance is denied.

CASENO: 02-17551.h1

DATE: 09/09/2004

DATE: September 9, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-17551

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant owed 25 debts totaling approximately \$16,576. She has paid some of the debts and other were included in her most recent bankruptcy. However, she still owes approximately \$9,500 on 16 debts. The available information is insufficient to mitigate or extenuate the negative security implications stemming from the Applicant's financial concerns. Clearance is denied.

STATEMENT OF THE CASE

On June 18, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On June 14, 2003, the Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing.

On January 13, 2004, the Applicant received a complete copy of the file of relevant material (FORM) dated December 19, 2003, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. On February 9, 2004, the Applicant responded to the FORM. Department Counsel (DC) did not object to the Applicant's response. In the FORM, Department Counsel presented 12 exhibits (Items). The Applicant submitted seven exhibits (App Ex). I was assigned the case on March 5, 2004.

FINDINGS OF FACT

The SOR alleges Financial and Personal Conduct. The Applicant admits to owing five debts. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon

due consideration of same, I make the following additional findings of fact.

The Applicant is 52-years-old, has worked for a defense contractor since April 1980, and is seeking to maintain a secret security clearance.

In October 1989, Applicant and her husband sought Chapter 7 bankruptcy protection because her husband was ill and unable to work. At the time of their filing, their assets were \$39,445 and their liabilities were \$55,431. In February 1990, the bankruptcy court discharged their debts. In November 1993, she obtained a divorce. In May 1997, Applicant again filed for Chapter 7 bankruptcy protection. At the time of filing, her assets were \$34,500 and her liabilities were \$67,047. In September 1997, the bankruptcy court discharged her debts. She filed for the 1997 bankruptcy protection because she "had too much debt to cover while supporting four children." (April 2002 sworn statement) She had not received child support from her former husbands. Following the 1997 bankruptcy she reaffirmed her auto debt. She fell behind in her payments and the finance company obtained a judgment against her. At the time of her bankruptcy filing, she listed her monthly income at \$866 and her monthly expenses at \$1,866.

Applicant's March 2002 and May 2003 credit reports list 25 debts totaling approximately \$16,500. A summary of the debts follows:

	Creditor	Amount Owed	Paid or included in bankruptcy	Current Status
c.	Catalogue Creditor	\$51		Not listed in 1997 bankruptcy schedule of creditors.
d.	Past due rent, placed for collection in September 1997. Same creditor as z. and aa.	\$1,220	\$1,220	The two judgments obtained by this same creditor have been paid.
e.	Judgment finance company	\$2,916	\$2,916	Judgment paid in full through a wage garnishment.
f.	Delinquent account	\$2,276		Not listed in 1997 bankruptcy schedule of creditors.
g.	Lender	\$115		Not listed in 1997 bankruptcy schedule of creditors.
h.	Lender	\$141		Not listed in 1997 bankruptcy schedule of creditors.
i.	Lender	\$115		Not listed in 1997 bankruptcy schedule of creditors.
j.	Credit Service	\$ 63		Not listed in 1997 bankruptcy schedule of creditors.
k.	Leasing	\$196	\$196	Included in 1997 bankruptcy.
l.	Check Service	\$100		Not listed in 1997 bankruptcy schedule of creditors.
m.	Finance Company	\$350		Not listed in 1997 bankruptcy

				schedule of creditors.
n.	Phone company	\$752	\$752	Included in 1997 bankruptcy.
o.	Phone company	\$564	\$564	Included in 1997 bankruptcy.
p.	Phone company	\$563	\$563	Included in 1997 bankruptcy.
q.	Water company	\$305		Not listed in 1997 bankruptcy schedule of creditors.
r.	Store	\$153	\$153	Included in 1997 bankruptcy.
s.	Storage	\$87		Not listed in 1997 bankruptcy schedule of creditors.
t.	Credit Service	\$235		Not listed in 1997 bankruptcy schedule of creditors.
u.	Collection company	\$43		Not listed in 1997 bankruptcy schedule of creditors.
v.	Collection company	\$805		Not listed in 1997 bankruptcy schedule of creditors.
w.	Credit association	\$84		Not listed in 1997 bankruptcy schedule of creditors.
x.	May 1997 judgment	\$2,536		Listed as a secured claim in 1997 bankruptcy.
y.	April 1997 judgment for state income tax	\$1,106		Creditor listed as an unsecured priority claim in 1997 bankruptcy.
z.	June 1998 judgment for unpaid apartment rent	\$900	\$900	Paid in July 1998
aa.	September 1998 judgment for unpaid apartment rent	\$900	\$900	Paid in March 2000
		16576	6944	

In June 2000, Applicant suffered from disability. The record fails to show the extent of the disability or the impact on Applicant's finances caused by the disability. In response to the FORM, Applicant says she has "sought counseling for help in cleaning (her) credit."

In May 2001, Applicant completed a Security Clearance Application, Standard Form (SF) 86. She was asked in question 38 if she had been more than 180 days delinquent on any debt during the prior seven years. She answered "no" to the question. She also answered "no" to question 37, which asked her if during the previous seven years she had any unpaid judgments.

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 the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must 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.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Financial Considerations, Guideline F, the Concern: 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:

1. A history of not meeting financial obligations.
3. Inability or unwillingness to satisfy debts.

Conditions that could mitigate security concerns include:

None Apply.

Personal Conduct, Guideline E, the Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the

person may not properly safeguard classified information.

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

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Conditions that could mitigate security concerns include:

None apply.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, 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." *Id.* at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his 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 his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Financial Considerations, Guideline F. A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. Under Guideline F, an individual is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. The Applicant's financial history provides concern. Disqualifying conditions (DC) a. (A history of not meeting financial obligations) and c. (Inability or unwillingness to satisfy debts.) apply.

There is no indication of extravagant expenditure. Applicant is a single mother, not receiving child support, who is attempting to raise four children on her own. The SOR lists 25 debts totaling approximately \$16,576. She indicates all of her debts were included in her bankruptcy. However only nine of the debts (totaling approximately \$7,000) have been paid or were included in her latest bankruptcy. Sixteen debts totaling approximately \$9,500 remain unpaid.

None of the Mitigating Conditions (MC) apply in the Applicant's favor. MC 1 (The behavior was not recent.) does not apply because the conduct is recent since the debts remain unpaid. MC 2 (It was an isolated incident.) does not apply because there are 16 debts. There was no showing the debts were caused by factors beyond Applicant's control. In June 2000, the Applicant suffered a disability. However, the nature, extent, and financial impact of this disability has not been set forth in the file. Applicant states she has sought financial counseling to correct her credit. The record fails to show the extent of her counseling. Additionally, the record does not establish Applicant's financial difficulties are under control.

Applicant filed for bankruptcy protection in 1989 and 1997. She filed in 1989 because her husband was ill and unable to work. She filed in 1997, because she was unable to meet her financial obligations while trying to raise four children without support. I do not find against Applicant because she had to resort to bankruptcy protection under these

conditions. Accordingly, I find for her as to SOR subparagraphs 1.a and 1.b.

For MC 6 (The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good faith effort to repay. A systematic, concrete method of handling her debts is needed, which is not present here. At the time of her 1997 bankruptcy filing, her monthly expenses exceeded her monthly income by \$1,000. Because the disqualifying conditions apply and none of the mitigating conditions, I find against Applicant as to financial considerations, SOR Paragraph 1.

The Government has satisfied its initial burden of proof under Guideline E, Personal Conduct. Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security.

In May 2001, Applicant completed in an SF 86 and failed to indicate she had been 180 days delinquent on her debts and failed to list two unpaid judgments. Because her answers were false, DC 2-(2) applies. Applicant had numerous accounts which had been written off or turned over for collection, some as early as 1997. A few, but not all, of these debts were included in her 1997 bankruptcy. The unpaid debts were more than 180 days delinquent. Applicant has not adequately explained why she failed to indicate these debts when she completed her SF 86.

On the same SF 86, question 37 asked her about unpaid judgments during the prior seven years. In April 1997, the state obtained a judgment against her for unpaid income tax. The following month, in May 1997, a creditor obtained a judgment against her. Both judgments were listed in Applicant's December 1997 bankruptcy filing. Applicant has failed to adequately explain why she did not list these judgments on her SF 86.

None of the mitigating conditions apply. There is no indication she made a prompt, good-faith effort to correct the falsification before being confronted with the facts or that she subsequently provided correct information voluntarily. I find against her as to personal conduct, SOR Paragraph 2.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

The awarding of a security clearance is not a once in a life time occurrence, but is based on current disqualifying and

mitigating conditions. Under the Applicant's current circumstances a clearance is not recommended, but should the Applicant be afforded an opportunity to reapply for a security clearance, in the future, she may well demonstrate persuasive evidence of her security worthiness. A clearance at this time is not warranted.

FORMAL FINDINGS

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

Paragraph 1 Financial.: AGAINST THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: For the Applicant

Subparagraph 1.l.: Against the Applicant

Subparagraph 1.m.: Against the Applicant

Subparagraph 1.n.: For the Applicant

Subparagraph 1.o.: For the Applicant

Subparagraph 1.p.: For the Applicant

Subparagraph 1.q.: Against the Applicant

Subparagraph 1.r.: For the Applicant

Subparagraph 1.s.: Against the Applicant

Subparagraph 1.t.: Against the Applicant

Subparagraph 1.u.: Against the Applicant

Subparagraph 1.v.: Against the Applicant

Subparagraph 1.w.: Against the Applicant

Subparagraph 1.x.: For the Applicant

Subparagraph 1.y.: For the Applicant

Subparagraph 1.z.: For the Applicant

Subparagraph 1.aa.: For the Applicant

Paragraph 2 Personal Conduct.: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: 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.

Claude R. Heiny

Administrative Judge

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

2. DC 2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities. (E2.A5.1.2.2.)