

KEYWORD: Financial

DIGEST: Applicant is unable to successfully mitigate the security concern raised by her history of financial problems. Clearance is denied.

CASENO: 02-19492.h1

DATE: 09/24/2004

DATE: September 24, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-19492

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL H. LEONARD**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

**FOR APPLICANT**

### **SYNOPSIS**

Applicant is unable to successfully mitigate the security concern raised by her history of financial problems. Clearance is denied.

### **STATEMENT OF THE CASE**

On October 20, 2003, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating the reasons why DOHA proposed to deny or revoke access to classified information for Applicant. <sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline F for financial considerations. In particular, the SOR alleges 9 delinquent debts and one unpaid judgment owed by Applicant. In her answer to the SOR, dated November 11, 2003, Applicant admitted all the SOR allegations, and she requested a clearance decision based on a written record in lieu of a hearing.

On February 3, 2004, Department Counsel prepared and submitted his written case. <sup>(2)</sup> The File of Relevant Material (FORM) was mailed to Applicant on or about February 9, 2004, and it was received by Applicant on February 26, 2004. Applicant's responded with a one-page memorandum, dated March 16, 2004, and a one-page enclosure showing a payment on the delinquent debt alleged in SOR subparagraph 1.f. Otherwise, she submitted no additional information concerning the debts alleged in the SOR. Department Counsel did not object to these matters, and the case was assigned to me March 25, 2004.

### **FINDINGS OF FACT**

Applicant's admissions are incorporated into my findings, and after a thorough review of the record, I make the following essential findings of fact:

Applicant, a 28-year-old married woman, is employed as CM specialist. She has worked for her employer since June 2001. In conjunction with her employment, she completed a security-clearance application in June 2001.

As part of the background investigation concerning Applicant, a credit report was obtained in February 2002 (Item 8). In summary, the credit report revealed eight accounts 120-days past due in the amount of \$10,057.00, and 13 accounts in a collection/charge off status.

Applicant was interviewed as part of the background investigation in June 2001 (Item 7) and again in May 2002 (Item 9). In her June 2001 statement, Applicant explained that she overextended herself financially due to using credit and poor money management. In her May 2002 statement, she explained she incurred much of her debt while in college when she was younger and did not appreciate the consequences of using credit cards. She added that she had not used a credit card since 1996 or 1997. She described her financial situation as "pretty bad," but getting better as she and her husband were working to pay off some of the delinquent debt.

The table below summarizes the details about the debts in the SOR, including a general description, the current status, and cites to the relevant part of the record.

<b>Debt Description per SOR</b>	<b>Current Status</b>	<b>Record</b>
SOR ¶ 1.a: Charged off debt for \$254.00 owed to a finance company	Unpaid	Answer
SOR ¶ 1.b: Charged off debt for \$781.00 owed to a credit card account	Entered into payment agreement; unpaid as of November 2003	Answer
SOR ¶ 1.c: Delinquent debt for \$458.00 owed to a automobile finance company	Paid	Attachment C to Answer
SOR ¶ 1.d: Charged off debt for \$233.00 owed to a credit card account	Unpaid	Answer
SOR ¶ 1.e: Charged off debt for \$2,910.00 owed to a credit card account	Judgment obtained in March 2002; balance reduced to \$1,585.99 as of November 2003	Attachment E to Answer
SOR ¶ 1.f: Charged off debt for \$6,486.00 owed to a credit card account	Entered into payment agreement in February 2004; made initial payment of \$342.50 on February 29, 2004	Response to Form
SOR ¶ 1.g: Charged off debt for \$487.00 owed to a jewelry store	Unpaid	Answer
SOR ¶ 1.h: Charged off debt for	Unpaid	Answer

\$363.00 owed to an installment credit account		
SOR ¶ 1.i: Six delinquent student loan accounts in the approximate amount of \$9,863.00	In default; entered into payment agreement; made 11 consecutive monthly payments of \$125.00; one payment away from rehabilitating the defaulted loans; balance \$11,765.76 as of November 5, 2003	Attachment I to Answer
SOR ¶ 1.j: Unpaid judgement for \$3,113.64 taken in March 2002 for delinquent debt alleged in SOR ¶ 1.e	Balance reduced to \$1,585.99 as of November 2003	Attachment E to Answer

As revealed by the table, Applicant has paid off one debt, entered into repayment agreements

for three debts, entered into a repayment agreement on the money judgment, and four accounts remain unpaid. She has paid approximately \$3,700 on the debts. She continues to owe approximately \$21,612.00, which is described as follows: 1.a - \$254.00; 1.b - \$781.00; 1.d - \$233.00; 1.e - \$1,585.99; 1.f - \$6,144.00; 1.g - \$487.00; 1.h - \$363.00; and 1.i - \$11,765.76.

In her response to the FORM, Applicant points out she is making progress in cleaning up her poor credit record and making an effort to resolve the situation. She also asserts she is doing everything within her power to make payments to the companies she owes.

## **POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each applicable guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on 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.

## **BURDEN OF PROOF**

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(3)</sup> There is no presumption in favor of granting or continuing access to classified information.<sup>(4)</sup> The government has the burden of proving controverted facts.<sup>(5)</sup> The U.S. Supreme Court has

said the burden of proof in a security-clearance case is less than the preponderance of the evidence.<sup>(6)</sup> The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.<sup>(7)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(8)</sup> Once the government meets its burden, an applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against them.<sup>(9)</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(10)</sup>

As noted by the Court in *Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(11)</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

## CONCLUSIONS

Under Guideline F,<sup>(12)</sup> a security concern typically exists for two different types of situations--significant unpaid debts and unexplained affluence; this case involves the former. 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, negligent, or careless in properly handling and safeguarding classified information.

Here, based on the record as a whole, the government has established its case under Guideline F. Applicant's financial history includes four delinquent credit card accounts, three other delinquent accounts, one delinquent auto financing account, six delinquent student loans, and an unpaid money judgment taken by one of the delinquent credit card accounts. By my calculations, she continues to owe more than \$20,000 on these delinquent debts. These facts and circumstances demonstrate a history of not meeting financial obligations as well as inability or unwillingness to pay one's just debts.<sup>(13)</sup> The same facts and circumstances also demonstrate financial irresponsibility.

I have reviewed the mitigating conditions under Guideline F and conclude none apply. The only MC that deserves serious consideration is MC 6.<sup>(14)</sup> It's clear Applicant has made some progress in addressing her delinquent debts. She paid off the auto financing debt, entered into some repayment agreements, reduced the balance owed on the money judgment, and is within one month of rehabilitating her defaulted student loans. To her credit, she says she no longer uses credit cards. Although she has taken these actions, she still owes more than \$20,000.00. At least four delinquent debts remain completely unpaid with little or no action taken by Applicant to repay or resolve these debts. Given the totality of Applicant's financial delinquencies, her positive actions, while noteworthy, are insufficient to constitute a good-faith effort to repay or otherwise resolve her delinquent debts. Time will tell if Applicant can dig herself out of the hole created by her use of credit cards and poor money management and establish a track record of financial

responsibility and stability. At this point, the record is insufficient to conclude she has successfully mitigated the security concern. Guideline F is decided against Applicant.

## **FORMAL FINDINGS**

As required by ¶ E3.1.25 of Enclosure 3 to the Directive, below are my conclusions as to the allegations in the SOR:

SOR ¶ 1-Guideline F: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: For the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

## **DECISION**

In light of all the circumstances presented by the record, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Michael H. Leonard

Administrative Judge

1. This 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).
2. The FORM includes several documents for consideration described as Items 1 - 11. In addition, for reasons unknown to me, the case file contains a duplicate copy of the entire file.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
6. *Department of 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. Directive, Enclosure 2, Attachment 6, at pp. 29-30.
13. DC 1 ("A history of not meeting financial obligations;") and DC 3 ("Inability or unwillingness to satisfy debts;").
14. MC 6 ("The individual initiated a good-faith effort to repay or overdue creditors or otherwise resolve debts;").