

KEYWORD: Financial

DIGEST: Applicant accrued over \$13,000 in delinquent debt through early 2002. Her financial problems began when her now-estranged husband lost his job and are, in part, the residue of a failed marriage. However, over the two years she has not taken sufficient action to pay or otherwise resolve her debts and she has accrued new delinquencies in the form of at least four collection actions against her. Applicant has failed to mitigate the resulting security concerns under Guideline F (Financial Considerations). Clearance is denied.

CASENO: 02-24192.h1

DATE: 08/16/2004

DATE: August 16, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-24192

**DECISION OF ADMINISTRATIVE JUDGE**

**MATTHEW E. MALONE**

**APPEARANCES**

**FOR GOVERNMENT**

Daniel F. Crowley, Esquire, Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant accrued over \$13,000 in delinquent debt through early 2002. Her financial problems began when her now-estranged husband lost his job and are, in part, the residue of a failed marriage. However, over the two years she has not taken sufficient action to pay or otherwise resolve her debts and she has accrued new delinquencies in the form of at least four collection actions against her. Applicant has failed to mitigate the resulting security concerns under Guideline F (Financial Considerations). Clearance is denied.

### STATEMENT OF THE CASE

On December 22, 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 DOHA adjudicators could not make a preliminary affirmative finding based on available information that it is clearly consistent with the national interest to continue Applicant's security clearance. [\(1\)](#)

On January 12, 2004, Applicant responded to the SOR (Answer), wherein she admitted all but one of the allegations [\(2\)](#) and chose to have her case decided without a hearing. On May 18, 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 May 25, 2004. Applicant was afforded 30 days in which to submit additional information in response to the FORM; however, Applicant failed to do so by the June 24, 2004 deadline after which the evidentiary record was closed. The case was assigned to me on July 9, 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 39 years old and is employed by a defense contractor as a security officer. She is a single mother of two children, ages 16 and 14, from her first marriage, which ended through divorce in August 1997.<sup>(3)</sup> Applicant re-married in April 2000, but has been separated from her second husband since July 2002.<sup>(4)</sup>

Sometime in 2000, Applicant's husband lost his job. The couple had to then rely on Applicant's income from her security officer job, and her husband decided to go back to school to improve his chances of getting a better job. As of January 2002, he was due to graduate in January 2003.<sup>(5)</sup>

In March 2002, she submitted a security clearance application in which she listed a credit card account that had been more than 180 days past due.<sup>(6)</sup> A credit report obtained during a subsequent background investigation revealed the aforementioned credit card had been charged off as delinquent with a balance due of \$7,512 (SOR 1.a). Applicant has had this card since before her second marriage, but claims her second husband, who handled their finances, did not pay the card as he should have. This account has not been paid.<sup>(7)</sup>

The report also showed Applicant owed \$300 for an anesthesiologist bill, placed for collection in June 2000. (SOR 1.b) Applicant claims she paid this account with her tax refund sometime in 2003. As it does not appear on her April 2004 credit report, I find this debt has been paid.

The March 2002 credit report also showed Applicant was 60 days delinquent on a car lease.<sup>(8)</sup> In a June 2002 subject interview, Applicant told a Defense Security Service (DSS) agent she and her husband had returned the leased car a few months earlier because they could not make payments, and that they owed a deficiency after sale of about \$5,500. (SOR 1.c)

Applicant and her husband had hoped to begin paying their debts when he graduated in January 2003 and (presumably) return to work. However, they separated in July 2002. Since then, Applicant has paid the aforementioned medical bill, but has incurred other delinquencies. As of April 2004, Applicant has four delinquent accounts totaling about \$840 that have been referred for collection.<sup>(9)</sup>

In June 2002, Applicant's Personal Financial Statement (PFS) <sup>(10)</sup> showed she had about \$50 left over each month after expenses. (SOR 1.d) The PFS does not reflect payments to either the car repossession debt or the credit card debt. Applicant's financial status is further complicated by the fact she owes legal fees connected to a child custody dispute with her first ex-husband. <sup>(11)</sup>

## **POLICIES**

The Directive sets forth adjudicative guidelines <sup>(12)</sup> 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 <sup>(13)</sup> 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. <sup>(14)</sup>

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. [\(15\)](#)

## 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. [\(16\)](#) 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. Applicant has a long-standing and sizable credit card delinquency and another large debt remaining from the voluntary repossession of her car. She has not paid or otherwise resolved either debt. Guideline F disqualifying condition (DC) 1 [\(17\)](#) and DC 3 [\(18\)](#) apply here.

On the other hand, Guideline F mitigating condition (MC) 3 [\(19\)](#) also applies. Applicant appears to be left with debts from her now failed marriage. Accepting her representations that her husband abused her credit card and that his loss of income contributed to her current financial difficulties, she is entitled to some benefit under MC 3. However, there has been little verifiable action on her part to resolve the credit card and automobile debts, and it does not appear she will be able to resolve them in the near future given her most recent PFS and the expected expenses of her child custody dispute. In so concluding, I note Applicant's most current credit report [\(20\)](#) includes four new collection accounts, further proof her financial difficulties are likely to continue for the foreseeable future. While not alleged in the SOR, such information is directly probative of Applicant's suitability for clearance as addressed through Guideline F. As Applicant did not comment on or object to it when she had the opportunity to respond to the FORM, I have considered it in making my decision. In light of the foregoing, and despite the applicability of MC 3, I conclude Guideline F 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 [\(21\)](#) 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 conclude the record evidence shows Applicant has not overcome the information supporting the government's decision to deny Applicant access to classified information.

## 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: For 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 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. Applicant denies the allegation in SOR 1.b.
3. FORM, Item 4.
4. FORM, Item 3.
5. FORM, Item 6.
6. FORM, Item 4.
7. FORM, Items 3, 5, and 7.

8. FORM, Item 5.
9. FORM, Item 7.
10. FORM, Item 6.
11. FORM, Item 3.
12. Directive, Enclosure 2.
13. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
14. *See Egan*, 484 U.S. at 528, 531.
15. *See Egan*; Directive E2.2.2.
16. Directive, E2.A6.1.1.
17. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;
18. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
19. Directive, E2.A6.1.3.3. 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);
20. FORM, Item 7.
21. Directive, Section E2.2.3.