

KEYWORD: Financial

DIGEST: It was alleged Applicant owed on 18 delinquent accounts totaling approximately \$40,000. She has addressed five of the debts, but still owes 13 debts totaling approximately \$35,000. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from a debt of such magnitude. Clearance is denied.

CASENO: 03-18854.h1

DATE: 06/29/2005

DATE: June 29, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No.03-18854

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

It was alleged Applicant owed on 18 delinquent accounts totaling approximately \$40,000. She has addressed five of the debts, but still owes 13 debts totaling approximately \$35,000. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from a debt of such magnitude. Clearance is denied.

STATEMENT OF THE CASE

On August 31, 2004, 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, asserting financial concerns. On September 23, 2004, Applicant answered the SOR and requested a hearing. On November 30, 2004, I was assigned the case. On December 1, 2004, a Notice of Hearing was sent scheduling a hearing convened on December 14, 2004. The record was kept open to allow Applicant to submit additional documents, which were subsequently submitted on February 7, 2005. Department Counsel (DC) having no objection, the documents were admitted into evidence. On December 22, 2004, DOHA received the transcript (Tr.) of the hearing.

FINDINGS OF FACT

The SOR alleges financial consideration concerns. The SOR lists 18 delinquent accounts totaling approximately \$39,600. Applicant admits 12 of the debts have not been satisfied. Those admissions are incorporated herein as findings of fact. After thorough review of the whole record, I make the following additional findings of fact:

The Applicant is 33 years old, has worked for a defense contractor as an engineer since September 1999, and is seeking to maintain a secret security clearance. The Applicant is regarded by those who know her having a very keen intellect, a quick study, self starter, very aggressive in meeting commitments, dedicated, and possessing outstanding organization skills. She has been recognized for exceptional technical leadership, technical skills, and contributions to enterprise success. (App Ex D) Her outstanding performance has earned her merit raises of 7% to 12% per year, well above the average merit raises. (Tr. 36)

Applicant's financial problems stated in the mid 1990 when she was going to school and got married and then divorced. She had married in February 1992. By July 1993, she had gotten rid of her credit cards. In November 1994, she was divorced. Her problems continued when, in the late 1990s or early 2000s, she again obtained credit cards and "was like a kid in a candy store." (Gov Ex 2) She incurred debts buying gifts for her family, on her hobby, skydiving, and for travel. She sought help from the consumer credit counseling service (CCCS) only to be recommended that she seek bankruptcy protection. She discussed her finances with a bankruptcy attorney who suggested she not make any payments on her debts because they would soon be off her credit report. Additionally, she chose not to file for bankruptcy because she wanted to pay her obligations.

Applicant has paid some of her debt and hopes to pay more. In December 2004, she has paid a flying club debt of \$4,213.38 and paid the county attorney \$1,159.92. (App Ex C) Her overall credit score has moved from "very poor" to "poor." She has attended financial counseling, has established a budget, and, with her boyfriend's help, has worked out a spreadsheet (App Ex B, Tr. 24) showing debts, expenses, and income. She now keeps track of every thing she spends. She has one credit card with a small limit, which she obtained to help her reestablish her credit. She lives on a cash basis, paying for everything up front. She has established a saving account to cope with unanticipated bills. As of March 2004, Applicant was living pay check to pay check. (Gov Ex 4) She is not increasing her debt loan by using credit or borrowing. She is paying her current obligations and is slowing working on the older debts. In March 2003, she became a home owner. (App Ex E) She has approximately \$13,000 in her company retirement program and \$600 in savings bonds. (App Ex E) She is current on her student loan, car loan, house payment, and utility bills.

Applicant's February 2004 and December 2004 credit reports shows approximately \$40,000 owed on 18 obligations. A summary of those debts follows:

	Creditor	Amount	Current Status
a	Collection agency for a credit card debt.	\$691	Unpaid.
b	Collection agency.	\$846	Unpaid. The debt appears on February 2004 credit report, but not on December 2004 credit report.
c	Business travel credit card.	\$17,937	Applicant asserts this debt is approximately \$10,000. Applicant has two accounts with the creditor. One was paid satisfactorily. The other, listing \$17,937, was charged off.

d.	Medical debt.	\$50	Applicant asserts this is the same debt as h. and has been paid. See App Ex A.
e.	Department store.	\$704	Unpaid.
f.	tire service.	\$513	Unpaid.
g.	telephone communications.	\$107	Unpaid.
h.	Medical debt.	\$50	Applicant asserts this is the same debt as d. and was paid in June 2003. See App Ex A.
i.	Financial service debt.	\$1,191	Unpaid.
j.	Tanning service bill.	\$159	Unpaid. Applicant agrees this debt is valid. (Tr. 23)
k.	Medical bill.	\$149	Applicant asserts her insurance should have paid this bill, however, she accepted a settlement offer of \$113 and paid this debt. Debt appears on February 2004 credit report, but not on December 2004 credit report.
l.	Cable bill.	\$221	Asserts debt was paid Summer of 2002.
m.	Apartment debt.	\$4,922	Unpaid. See Gov Ex 4. Debt appears on February 2004 credit report, but not on December 2004 credit report. While living at the apartment, she had received three eviction notices for non payment of rent. She was never evicted.
n.	Flying Club bill.	\$3,204	Paid. See App Ex C.
o.	Credit card bill.	\$8,439	Unpaid.
p.	Utility bill.	\$229	Unpaid.
q.	Collection agency.	\$183	Unpaid.
	Bad Check Class C Misdemeanor		Paid. See App Ex C.
	Total debt alleged in SOR	\$39,595	

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.

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 her 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 her 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 Guideline F, Financial Considerations. A person's

relationship with his 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. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive E.2.A.6.1.1.

Applicant admits owing 13 debts totaling approximately \$35,000. Disqualifying Conditions (DC) 1 (E2.A6.1.2.1. *A history of not meeting financial obligations*) and 3 (E2.A6.1.2.3. *Inability or unwillingness to satisfy debts*) apply.

Applicant provided documentation she paid \$3,204 for a flight school debt (SOR 1.n) and made a \$1,159.92 payment to the country attorney (SOR 1.r). Three additional debts totaling approximately \$250 have been paid. The \$50 medical debt (SOR 1.d and 1.h) and a \$149 medical bill (SOR 1.k) were paid. I find for Applicant as to these debts.

The SOR alleged Applicant owed approximately \$40,000 on 18 debts. She has addressed only five of the debts. She still owes approximated \$35,000 on 13 debts. She would like to pay her debts, but is living pay check to pay check. To her credit, she is meeting her current obligations and is incurring no additional debt, but is unable to pay the 13 debts. None of the Mitigating Conditions (MC) apply in the Applicant's favor to these debts. MC 1 (E2.A6.1.2.1. *The behavior was not recent*) does not apply because the conduct is recent since the debts remain unpaid. MC 2 (E2.A6.1.2.2. *It was an isolated incident.*) does not apply because there are 13 debts. There was no showing the debts were caused by factors beyond Applicant's control. She was divorced in 1994, but that was ten years before the hearing. She has received financial counseling and she is meeting her current debts but is unable to pay the 13 debts. Therefore, her financial difficulties, which include her old debts, are not under control and MC4. (E2.A6.1.3.4. *The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*) does not apply.

For MC 6 (E2.A6.1.2.6. *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. Applicant has the desire, but not the ability because she is living pay check to pay check. Additionally, no payment has been made on the 13 debts. I find against Applicant as to the 13 debts and as to financial considerations concerns.

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.

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 Considerations: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: For 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.: Against the Applicant

Subparagraph 1.p.: Against the Applicant

Subparagraph 1.q.: Against the Applicant

Subparagraph 1.r.: For 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.