

KEYWORD: Financial

DIGEST: Applicant's financial irresponsibility is demonstrated by accounts which were placed for collection or submitted for judgment and then ignored by her despite her having the financial ability to satisfy them. Although she has now paid most of her delinquent accounts, her irresponsibility is inconsistent with the character that must be demanded from those who are entrusted with the nation's secrets. Applicant has failed to mitigate the security concerns caused by the financial considerations present in this case. Clearance is denied.

CASENO: 03-19500.h1

DATE: 01/26/2005

DATE: January 26, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-19500

**DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's financial irresponsibility is demonstrated by accounts which were placed for collection or submitted for judgment and then ignored by her despite her having the financial ability to satisfy them. Although she has now paid most of her delinquent accounts, her irresponsibility is inconsistent with the character that must be demanded from those who are entrusted with the nation's secrets. Applicant has failed to mitigate the security concerns caused by the financial considerations present in this case. Clearance is denied.

**STATEMENT OF THE CASE**

On June 30, 2004, 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. [\(1\)](#) 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 July 29, 2004, admitted all SOR allegations except subparagraph 1.b., and requested a hearing.

The case was assigned to me on September 24, 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 four documentary exhibits that were marked as Government Exhibits (GE) 1-4, and admitted into the record without objection. Applicant testified, and submitted fifteen documentary exhibits that were marked as Applicant's Exhibits (AE) 1-15, and admitted into the record without objection. The record was held open to provide Applicant the opportunity to submit additional documentation in support of her case. Seven documents were timely received, marked as AE 16-22, and admitted into the record without objection. The transcript was received by DOHA on December 13, 2004.

## **PROCEDURAL MATTERS**

Applicant sent a letter addressed to me by facsimile transmission on November 22, 2004 requesting a continuance for the reasons stated therein. Upon receipt of the letter, I immediately had a copy delivered to Department Counsel, along with a request that she arrange a conference call with Applicant. A conference call was held in which I indicated I would be inclined to grant a continuance in the event Applicant retained an attorney by November 29, 2004, and that attorney filed an appearance on her behalf. Not having received an entry of appearance by November 29, 2004, I sent an e-mail to Department Counsel requesting that she determine the status of the case. I received a response from Department Counsel in which she indicated she had spoken with Applicant, and that Applicant would not be retaining an attorney and would be prepared to proceed on the originally scheduled hearing date. Applicant's letter was marked as Appellate Exhibit I, and is included in the record.

Applicant was questioned by me at the hearing and reiterated what she had told Department Counsel, namely: she did not wish to retain the service of an attorney, and she was prepared to proceed on that day. (Tr. 16) Applicant also indicated in her letter and at the hearing that she had not received documents she wanted to present. The record was held open to allow her additional time to secure those documents, and, as previously noted, those documents were submitted after the hearing and made a part of the record.

## **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 a 38-year-old woman who has been employed by a defense contractor as a general clerk since October 2001. She graduated from high school in 1985, and was previously employed as an assistant manager in a convenience grocery store from June 1991 to May 2001, was unemployed from May 2001 to September 2001, and worked as a receptionist/clerk from September 2001 to October 2001. Applicant submitted letters of recommendations from her employers and other persons attesting to her reputation as an honest, reliable, and trustworthy individual. She is a very capable and dependable employee.

Applicant had a son out of wedlock when she was 17 years old. That child is now 20 years old. Applicant was married in March 1988 and divorced in February 1997. She has a 17-year-old son from that marriage. Applicant remarried in September 2002. Her husband has four children who reside with their mother. Applicant testified her husband is attempting to gain custody of those children.

The SOR lists four collection accounts totaling \$1,973.00, one 120 days past due account in the amount of \$185.00, and a judgment in the amount

of \$2,673.37. Each of those debts has been delinquent for at least several years. Applicant prepared a financial statement in May 2003 in which she disclosed a net remainder after payment of her monthly expenses, including a \$100.00 payment on the judgment, of \$806.00. (GE 2) She submitted another financial statement in February 2004 in which she disclosed a net remainder of \$1,233.00. (GE 3) She submitted a budget that was prepared by a financial counselor in December 2004 that discloses Applicant and her husband have extra funds available after payments of their living expenses of \$2,006.85 per month. (AE 22)

Applicant provided a statement to a Special Agent from the Defense Security Service on May 12, 2003. At that time she stated she would pay one of the debts alleged in the SOR by the end of May 2003, another by the end of June 2003, and would arrange payment plans on the remaining debts. As her May 2003 financial statement reveals, she had the ability to make the payments and payment arrangements as she stated she would. However, she did not do so.

Applicant responded to financial interrogatories on February 4, 2004. At that time she stated she would pay one of the debts alleged in the SOR by the end of arch 2004, another by the end of April 2004, attempt to pay another in full by the end of April 2004, and would make arrangements to pay two other accounts. As her February 2004 financial statement reveals, she had the ability to make the payments and payment arrangements as she stated she would. However, once again she did not do so.

Applicant submitted proof of satisfaction of four accounts listed in the SOR after the hearing. Two of the letters (AE 17 and AE 19) are dated after the hearing, one (AE 18) is dated the day before the hearing, and the release of judgment (AE 21) is dated August 31, 2004. Two accounts, which in May 2003 Applicant indicated she would set up a payment plan for, and in February 2004 indicated she would pay or attempt to pay by the end of April 2004, are still outstanding with a payment plan having finally been entered into by a letter dated December 28, 2004.

Applicant initially attributed her long history of financial problems to her being a single mother. At the hearing she acknowledged that much of her problem was procrastination. AE 22 appears to indicate that Applicant retained the assistance of a financial counselor in December 2004, at least to help in the preparation of a budget.

## **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 clearance for an applicant.<sup>(2)</sup> The government has the burden of proving controverted facts.<sup>(3)</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence<sup>(4)</sup>, although the government is required to present substantial evidence to meet its burden of proof.<sup>(5)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(6)</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>(7)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(8)</sup>

No one has a right to a security clearance<sup>(9)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(10)</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>(11)</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's has a long history of allowing debts to become delinquent and be submitted for collection or taken to judgment, and then failing to take any action to resolve them despite having the ability to do so. 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 initially blamed her financial problems on her status as a single mother. However, with the exception of four months in 2001, she has been gainfully employed since at least June 1991, and has had the added income of her husband since at least September 2002. She clearly has had the ability to deal with the indebtedness alleged in the SOR since she was first questioned about the debts in May 2003, and the ability to resolve them in the manner she stated she would then and again in February 2004. It wasn't until months after issuance of the SOR, and quite possibly as regards a couple of the debts until after the hearing, that she finally took affirmative action to satisfy the creditors. Two debts that have been delinquent since at least 2001 are still outstanding.

Applicant is entitled to some limited credit under Mitigating Conditions (MC) 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; and MC 6: The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.* However, her inexplicable willingness to ignore her financial affairs despite being made aware of the obvious security concern they caused as far back as May 2003, displays carelessness, irresponsibility, and a lack of judgment that is inconsistent with the character traits that must be expected of a person who is to be entrusted with the nation's secrets.

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, Applicant has failed to mitigate the security concern caused by her financial irresponsibility. She has failed to overcome the case against her or satisfy her ultimate burden of persuasion. Guideline F is decided against Applicant.

### **FORMAL FINDINGS**

SOR ¶ 1-Guideline F: Against Applicant

Subparagraphs a-f: Against 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 Applicant. Clearance is denied.

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. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.