

KEYWORD: Financial

DIGEST: Applicant is unable to successfully explain or mitigate the security concern stemming from her history of financial problems. Clearance is denied.

CASENO: 03-22475.h1

DATE: 03/31/2006

DATE: March 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-22475

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Nichole L. Noel, Esq, Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant is unable to successfully explain or mitigate the security concern stemming from her history of financial problems. Clearance is denied.

STATEMENT OF THE CASE

This case arose when the Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On December 21, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleged a security concern under Guideline F for financial considerations. Applicant replied to the SOR on February 17, 2005, and requested a hearing. The case was assigned to me June 27, 2005. A notice of hearing was issued scheduling the hearing for September 15, 2005. Applicant appeared without counsel and the hearing took place as scheduled. The record was kept open to allow Applicant to submit additional documentary exhibits, and those matters are admitted without objections as Exhibit E (cell phone account statement) and Exhibit F (earnings statement). DOHA received the transcript September 29, 2005.

FINDINGS OF FACT

In her Answer, Applicant admitted the allegations in subparagraphs 1.d, 1.e, 1.f, 1.g, 1.j, and 1.k, and she denied the allegations in subparagraphs 1.a, 1.b, 1.c, 1.h, and 1.i. In addition, she provided a brief explanation for each admission and denial. Applicant's admissions to the SOR allegations are incorporated herein by reference. In addition, I make the following findings of fact.

Applicant is a 46-year-old woman who is seeking to retain a security clearance for employment with a defense contractor. She has two adult children, a son age 24 and a daughter age 26. Hired by her current employer in September 1998, she works as a data communication engineer. Her current annual salary is about \$79,000.

She has been married and divorced twice. Applicant first married in July 1989. The marriage was apparently troubled from its early days and it ended in divorce in August 1991. Her second marriage took place in June 1999 and ended in divorce in March 2004.

Applicant enlisted and served on active duty with the U.S. Navy from about January 1979 to May 1988. She served as a radioman, which involved working on a ship's communications systems. She left active duty at the rank of petty officer second class (pay grade E-5). Applicant, who was a single mother, obtained a hardship discharge so she could care for her then six-year-old son who had been hit by a car resulting in the child being placed in a body cast.

Applicant has a history of financial problems. In July 1989 (the time of her first marriage), Applicant filed a Chapter 13 bankruptcy petition that listed 1) \$3,400 in total assets; 2) \$10,760 in unsecured debt; and 3) \$3,334 in secured debt. She proposed a repayment plan of \$156 per month for 36 months, and the plan was confirmed as proposed. Applicant made the monthly payments and fulfilled the requirements of the plan, and the court granted Applicant a discharge in January 1993.

She attributes the bankruptcy to out-of-pocket medical costs for her son as well as a two-month period of unemployment and a period of underemployment as a security guard.

Applicant separated from her second husband in about February 2001. As a result, she was left with additional bills and all the household expenses. Applicant and her son moved out of their townhouse in December 2001 and moved in with a cousin. Applicant now pays her cousin \$900 monthly rent. She has a monthly car payment of \$364 plus \$156 in insurance. Her cell phone bill ranges from \$75 to \$80 monthly. She tithes about \$600 monthly to her place of worship, and she gives another \$200 monthly in collection. She provides periodic financial help to her adult son and daughter. She is current with her rent and car payments. She contributes 10% of her salary to a 401(k) retirement account, which has a balance of about \$30,000. She is repaying a loan taken against her 401(k) account in the amount of \$111.74 per pay period (Exhibit F). Other than this account, she has no other financial assets or resources, and she had less than \$500 in her checking account.

A credit report (Exhibit 3), dated March 2004, revealed derogatory financial information. The SOR appears to rely, in part, on Exhibit 3 as the basis for the allegations. The table below summarizes the details about the ten accounts in the SOR, including a general description, the current status, and cites to the relevant part of the record.

<i>Debt Description</i>	<i>Current Status</i>	<i>Record</i>
¶ 1.a-Charged off credit card for \$651	Disputed and removed from credit report	Exhibit D; Tr. at 47-49
¶ 1.b-Bad debt from credit card for \$465	Paid in November 2000	Exhibit A

¶ 1.c-Bad debt from credit card for \$490	Disputed and removed from credit report	Exhibit D; Tr. at 49-50
¶ 1.d-Charged off credit card for \$3,497	Unpaid	Tr. at 50-51
¶ 1.e-Charged off government debt stemming from overpayment of state unemployment benefits for \$1,335	Unpaid	Tr. at 51
¶ 1.f-Past due medical bill for \$1,657	Unpaid	Tr. at 51
¶ 1.g-Past due medical bill for \$684	Unpaid	Tr. at 51-52
¶ 1.h-Judgment stemming from an auto loan for \$1,441	Unpaid; returned car after purchase because it broke down	Tr. at 52-53
¶ 1.i-Collection account for cell phone account for \$53	In good standing	Exhibit E; Tr. at 53-56
¶ 1.j-Charged off credit card for \$527	Unpaid	Tr. at 56

The six accounts described as unpaid are accounts that she does not dispute, and she has made no specific arrangements to pay these six accounts.

In addition to the accounts in the table, another credit report (Exhibit 4) was obtained in June 2005. It reveals three unpaid collection accounts for medical bills for \$207, \$186, and \$684, as well as an unpaid collection account for \$645. She attributes the outstanding medical bills to a surgery (Answer). Also, the report reveals another unpaid judgment for \$850.

Applicant attributes her financial problems to an accumulation of circumstances: 1) her hardship discharge from the Navy; 2) the period of unemployment and underemployment after her discharge from the Navy; 3) five months of unemployment from August to December 1993; 4) four months of unemployment from August to November 1997; 5) her two marriages that ended in divorce; and 6) the difficulty of raising two children as a single mother. Her plan or intent is to save the necessary money and then make lump-sum offers to her various creditors. She used this approach to pay the bad debt in subparagraph 1.b. She learned this approach in 2004 when she took a credit course at her place of worship.

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.

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security

clearance is not a determination of an applicant's loyalty.⁽²⁾ Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting a clearance.

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.⁽³⁾ There is no presumption in favor of granting or continuing access to classified information.⁽⁴⁾ The government has the burden of presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted.⁽⁵⁾ An applicant is responsible for presenting witnesses and other evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁽⁶⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁷⁾

As noted by the Supreme Court in *Department of Navy v. 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."⁽⁸⁾ 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, a security concern typically exists for two different types of situations--significant unpaid debts or unexplained affluence. 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. Some people encounter financial problems through no fault of their own. For others, financial problems appear to be part of a general tendency toward irresponsibility that is a security concern.

Here, based on the record evidence as a whole, the government established its case under Guideline F.⁽⁹⁾ The Chapter 13 bankruptcy case, the unpaid unemployment debt, the charged off accounts, the collections accounts, and the unpaid civil judgments demonstrate a history of not meeting financial obligations as well as inability or unwillingness to pay one's just debts.⁽¹⁰⁾ These matters, taken together, raise a security concern under the guideline.

I reviewed the mitigating conditions under the guideline and conclude Applicant receives some credit in mitigation. First, Applicant's financial problems cannot be viewed as not recent because the evidence shows her problems are current and ongoing.⁽¹¹⁾ The June 2005 credit report (Exhibit 4) is evidence on this point. Second, her financial problems cannot be viewed as an isolated incident given the multiple delinquent accounts incurred over an extended period.⁽¹²⁾ Third, it is a mitigating condition that Applicant's financial problems are not solely the result of her own making. The periods of unemployment and underemployment, her two divorces, and the other matters noted above have no doubt contributed to her financial problems.⁽¹³⁾ Fourth, Applicant also receives credit in mitigation based on her taking the credit course in 2004.⁽¹⁴⁾ But the mitigation is limited because 1) the course was a one-time event as opposed to a period of counseling with a financial professional; and 2) her financial problems are ongoing (Exhibit 4). Finally, Applicant receives credit in mitigation for her efforts to repay or otherwise resolve her debts.⁽¹⁵⁾ She paid or otherwise resolved four of the ten accounts listed in the table. She also has a plan to make lump-sum offers to settle the other debts. But the mitigation is limited because 1) it will no doubt take some time for Applicant to acquire the money to make the offers; and 2) she continues to incur more delinquent debt (Exhibit 4).

Based on the record evidence as a whole, Applicant is in a tenuous financial position. Although she earns a good salary and has a relatively low rent payment, she is essentially living paycheck-to-paycheck (for example, she has less than \$500 in her checking account). Likewise, there are not strong indicators that her financial problems are being resolved, are under control, or are unlikely to recur. The record evidence shows the opposite as evidenced by 1) the six unpaid debts in the table; and 2) the four additional collection accounts and an additional unpaid judgment listed in the June 2005 credit report (Exhibit 4). Applicant's efforts to resolve her financial problems are clearly a work in progress and time will tell if she is both willing and able to put her financial house in order. Taken together, Applicant's current financial situation is not indicative of a responsible person who can be relied upon to properly handle and safeguard classified information. Accordingly, Guideline F is decided against Applicant.

To conclude, Applicant has not met her ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I considered the evidence as a whole, both favorable and unfavorable, the whole-person concept, the clearly-consistent standard, and other appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

SOR ¶ 1-Guideline F: Against Applicant

Subparagraphs a - k: 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.

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 (Directive).
2. Executive Order 10865, § 7.
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. Directive, Enclosure 3, Item E3.1.14.
6. Directive, Enclosure 3, Item E3.1.15.
7. Directive, Enclosure 3, Item E3.1.15.
8. 484 U.S. at 528, 531 (1988).
9. Directive, Enclosure 2, Attachment 6.
10. E2.A6.1.2.1. A history of not meeting financial obligations;" and E2.A6.1.2. 3. Inability or unwillingness to satisfy debts.
11. E2.A6.1.3.1. The behavior was not recent.

12. E2.A6.1.3.2. It was an isolated incident.

13. 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).

14. 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 resolved or is under control.

15. E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.