

KEYWORD: Financial

DIGEST: Applicant has a nine year history of financial problems that has not been mitigated. She claims she paid about \$7,000.00 in restitution to creditors in the last two years, but she provided documentation showing payment of \$283.00 to only seven creditors. Though a second recent Chapter 7 bankruptcy discharge allows her a chance to establish sound financial habits, the discharge does not have the same positive, probative value as a sustained record of financial responsibility. Clearance is denied.

CASENO: 03-23502.h1

DATE: 01/17/2006

DATE: January 17, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23502

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a nine year history of financial problems that has not been mitigated. She claims she paid about \$7,000.00 in restitution to creditors in the last two years, but she provided documentation showing payment of \$283.00 to only seven creditors. Though a second recent Chapter 7 bankruptcy discharge allows her a chance to establish sound financial habits, the discharge does not have the same positive, probative value as a sustained record of financial responsibility. Clearance is denied.

STATEMENT OF CASE

On December 3, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, amended April 4, 1999, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant furnished her answer to the SOR on February 12, 2005. Applicant elected to have her case decided on a written record. The Government provided Applicant a copy of the File of Relevant Material (FORM) on September 20, 2005. Applicant received the FORM on October 5, 2005. Her response to the FORM was due by November 6, 2005. No response was received. The case was assigned to me on December 6, 2005.

On August 24, 2005, the Government moved to amend the SOR by adding the following allegation: "1.ff: You petitioned for Chapter 7 bankruptcy on about February 3, 2005 in the United States Bankruptcy Court, District of Arizona. Your dischargeable debts were discharged on or about July 2005." Pursuant to E3.1.17. of the Directive, allowing the Administrative Judge to amend the SOR so it conforms with evidence presented. See, GE 3, pp. 1, 6-16, GE 8, p. 1., the Government's Motion is granted. I interpret Applicant's Chapter 7 petition documentation listing the unsecured claims as her admission to subparagraph 1.ff.

FINDINGS OF FACT

The SOR alleges financial considerations under Guideline F. Applicant denied subparagraph 1.u., claiming she had paid the debt. She also denied subparagraph 1.z., claiming this is the same debt as alleged in subparagraph 1.r. Applicant also denied 1.aa. Applicant admitted the remaining debts. In a supplemental statement to her answer, Applicant claimed she paid \$7,000.00 in payments to collection agencies on her delinquent accounts, but these payments have not been acknowledged by DOHA. Because her payments have not been favorably considered, she decided to file Chapter 7 bankruptcy (subparagraph 1.ff.)

Applicant is 39 years old and employed as an engineer technician I by a defense contractor. She seeks a secret level clearance.

Applicant provided no reasons for her first bankruptcy (subparagraph 1.a.) in 1996 except to say she joined her former husband's Chapter 7 bankruptcy petition in September 1996; on January 29, 1997, \$15,000.00 in delinquent debts were discharged. Her former husband ⁽¹⁾ has since permanently moved to a foreign country.

The SOR lists 28 delinquent debts. The debts include medical debts, insufficient fund checks and utility accounts. Subparagraphs 1.cc. And 1.dd. reflect a total of \$24,000.00 in balances owed after resale of two of her automobiles that had been repossessed. The total past due amount listed in the SOR is \$34,746.00. The utility bill identified in subparagraph 1.b. was charged off as a bad debt in February 1998.

As a part of the security investigation, Applicant was given an opportunity (sworn statement, GE 5) on May 13, 2003 to provide details regarding some of the past due debts that are listed in the SOR. Applicant identified some creditors but was unable to recognize others. Applicant voluntarily returned a car (subparagraph 1.cc.) to the dealer because the family moved to the southwestern part of the United States for health reasons. Additionally, her husband thought the dealer breached the contract as they had promised not to require payments until 45 days after the purchase. Instead, they required payments 15 days after the purchase. Applicant claims she intended to establish a payment plan to the 1.cc. and 1.dd. creditors when she had the money. Applicant indicated an intention to pay the smaller bills by June 2003. Applicant's sworn statement (May 13, 2003) concludes with a personal financial statement (PFS) showing she was current on two creditors and had a monthly net remainder of \$3,385.00

Interrogatories (GE 9) regarding her delinquent debts were mailed to Applicant on May 5, 2004. The interrogatories identify some of the creditors listed in the SOR and request information about payment activity as well as other documentation that shows steps taken to resolve the debts. Applicant provided an explanatory statement to her answers indicating she was paying consistently on some debts. She also had been out of work for three months due to a serious illness and two surgeries; she provided a letter from her employer's human resources department explaining she would

be put on short term disability in July 2003. The letter provides procedures and regulations governing her disability but does not provide specific information about her illness and impact on her delinquent debts. She also suggested that her employer be contacted for additional information.

Applicant's response to the first creditors identified in the interrogatories (GE 9, subparagraph 1.u. of the SOR) is "The account has been turned over to a local Debt Collection Agency. Please see attached information re: consistent payments." After examining the enclosures (the enclosures are either dated April 19 and 22, 2004), there are payment ledgers that show payments of \$511.55 to an unidentified creditor, but I do not find documentary proof the 1.u. creditor was paid. In response to the interrogatory requesting information about the first repossessed car (GE 9, subparagraph 1.cc.), Applicant explained she tried to settle with the creditor, who agreed to settle for \$11,000.00 in three payments. No additional information was provided.

In response to the insufficient funds checks (subparagraphs 1.aa. and 1.bb.), Applicant stated the debts were turned over to the local collections service. She recommended review of enclosed forms supposedly showing proof of payment. The enclosed forms show Applicant was contacted on April 22, 2004 about certain debts, including 1.aa. and 1.bb. The only indicators showing the debts were paid is the handwritten letters "pd" next to the insufficient check accounts. There is no substantiating proof, e.g., a payment receipt, bank account statement, processed check, indicating the respective amounts had been withdrawn from Applicant's bank account.

Regarding Applicant's answers to the interrogatory questions (GE 9) describing the delinquent debts belonging to the collection agency and identified in subparagraphs 1.l., 1.m., 1.o., 1.q., 1.r., 1.s., and 1.t. of the SOR, Applicant provided a one page document indicating a balance of \$665.00 owed after a payment of \$283.00 on April 22, 2004. No additional information is provided.

Applicant filed a second Chapter 7 petition on February 3, 2005, and most of the SOR debts, except for the past due debts identified in subparagraphs 1.c., 1.f., 1.i., 1.j., and 1.k., were discharged in July 2005. There were 31 accounts discharged, and 16 of those were medical accounts. The total liability discharged was \$109,250.00.

POLICIES

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not

automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

Burden of Proof

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

Financial Considerations

An inability to pay bills in a timely fashion manifests poor judgment that may disqualify an applicant from security clearance access.

CONCLUSIONS

Paying debts in a timely fashion demonstrates good judgment and sound financial responsibility. However, inept financial habits or occurrences beyond the individual's control can impede or completely prevent the timely payment of debts. An example of poor financial habits is becoming financially overextended or spending more money than the person's budget allows. When spending outpaces earnings, an individual soon cannot pay her bills on time, and then develops a delinquent debt history that falls within the scope of financial considerations (FC) disqualifying condition (DC) E2.A6.1.2.1. (*a history of not meeting financial obligations*). Applicant's unexplained financial problems began before 1996, and led to a Chapter 7 discharge of \$15,000.00 in January 1997. Though Applicant stated an intention in May 2003 to pay her debts, and stated she had a net remainder of more than \$3,385.00 every month after payment of her expenses, there is no documentation of any action taken until May 2004 when Applicant supplied some payment

accounts dated April 19 and 22, 2004, that she had paid about \$794.00 on her overdue debt to some creditors while trying to settle with other creditors. The SOR reveals that as of December 2004, Applicant still had a history of not meeting financial obligations leading to the filing of Applicant's Chapter 7 petition in February 2005.

Applicant's failure to take any documented action to pay off some of the debts by June 2003 as she had promised invokes FC DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*) since there was a promise to pay without subsequent action to make good on that promise.

The FC guideline lists six mitigating conditions (MC) that may apply to mitigate the negative information under FC. Neither FC MC E2.A6.1.3.1. (*the behavior was not recent*) nor FC MC E2.A6.1.3.2. (*it was an isolated incident*) applies to the circumstances of this case as Applicant's conduct was both recent and not isolated. In February 2005, she still owed at least \$34,746.00 to 26 listed creditors.

Applicant's reference to a divorce and a three month illness in July 2003 activates FC MC E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the person's control*) because a divorce or medical problems are two conditions that can interfere with a person's bill-paying ability. The divorce has little relevance to Applicant's current financial problems because it occurred nine years ago. Applicant's three month illness, involving two surgeries, undoubtedly hampered her ability to pay her bills, and is substantiated by the fact the medical debts amounted to approximately 1/3 of the debt she discharged in bankruptcy in February 2005. Yet, Applicant was only disabled for three months. The only documentation provided by Applicant indicating payment to creditors is the \$794.00 to some creditors (\$511.00 to unidentified creditors) in April 2004, far short of the \$7,000.00 claim she made in her answer to the SOR. The mitigation Applicant receives under FC MC E2.A6.1.3.3. is limited by the absence of more documentary evidence to support her claim of having paid almost \$7,000.00 to creditors.

FC MC 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*) is inapplicable because Applicant has received no counseling and there is no indication the problem is under control. Though Applicant has provided information indicating she is not using credit cards and she is writing fewer checks, these declarations do not convince me she has her financial house in order. The fact that she has had most of her debts discharged a second time under Chapter 7 in July 2005 provides compelling evidence of ongoing financial problems that have not been resolved.

FC MCE2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is applicable when the record shows an ongoing commitment to pay overdue creditors. The law recognizes that an applicant may resolve her delinquent problems through a Chapter 7 discharge. However, even though the discharge entitles her to a fresh start in handling her finances, the discharge also means her unsecured creditors do not get repaid. In addition, Applicant's nine year period of financial difficulties requires a sustained demonstration of financial responsibility before considering a favorable change has been made in her financial habits.

Having weighed all the evidence, I find against Applicant under the FC guideline and the whole person concept. Given her 1997 bankruptcy discharge followed by subsequent financial problems leading to a second Chapter 7 discharge in February 2005, and the lack of evidence showing a dramatic change in her financial habits, her financial problems are likely to recur. Subparagraphs 1.l., 1.m., 1.q., and 1.r. are found in Applicant's favor based on the documented payment of \$283.00 made to the collection agency. The remaining subparagraphs are found against Applicant.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (Financial Considerations, Guideline F):

Subparagraph a. Against the Applicant.

Subparagraph b. Against the Applicant.

Subparagraph c. Against 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.

Subparagraph k. Against the Applicant.

Subparagraph l. For the Applicant.

Subparagraph m. For the Applicant.

Subparagraph n. Against the Applicant.

Subparagraph o. Against the Applicant.

Subparagraph p. Against the Applicant.

Subparagraph q. For the Applicant.

Subparagraph r. For the Applicant.

Subparagraph s. Against the Applicant.

Subparagraph t. Against the Applicant.

Subparagraph u. Against the Applicant.

Subparagraph v. Against the Applicant.

Subparagraph w. Against the Applicant.

Subparagraph x. Against the Applicant.

Subparagraph y. Against the Applicant.

Subparagraph z. Against the Applicant.

Subparagraph aa. Against the Applicant.

Subparagraph bb. Against the Applicant.

Subparagraph cc. Against the Applicant.

Subparagraph dd. Against the Applicant.

Subparagraph ee. Against the Applicant.

Subparagraph ff. 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 Applicant.

Paul J. Mason

Administrative Judge

1. Applicant divorced her husband in March 1996. (GE 4)