

KEYWORD: Financial

DIGEST: In September 2005, Applicant filed for Chapter 7 bankruptcy listing \$64,796 in unsecured nonpriority claims. While most of the debt was incurred in the operation of a now defunct bridal shop business, Applicant did not pay for telephone services incurred in 2002 and 2003, well after she had closed her business. With her sizable delinquent debt not resolved and evidence of recent unpaid utility debt, it is too soon to conclude that her financial problems are safely behind her. Clearance is denied.

CASENO: 03-23573.h1

DATE: 02/08/2006

DATE: February 8, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-23573

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

In September 2005, Applicant filed for Chapter 7 bankruptcy listing \$64,796 in unsecured nonpriority claims. While most of the debt was incurred in the operation of a now defunct bridal shop business, Applicant did not pay for telephone services incurred in 2002 and 2003, well after she had closed her business. With her sizable delinquent debt not resolved and evidence of recent unpaid utility debt, it is too soon to conclude that her financial problems are safely behind her. Clearance is denied.

**STATEMENT OF THE CASE**

On December 7, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons under Guideline F, financial considerations, 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 the Applicant. [\(1\)](#)

On January 25, 2005, Applicant answered the SOR and requested a hearing before a DOHA administrative judge. The case was assigned to me on July 18, 2005. On July 29, 2005, I scheduled a hearing for August 23, 2005. At the hearing, seven government exhibits and four Applicant exhibits were admitted into evidence. Applicant and her manager testified, as reflected in a transcript received on September 7, 2005.

The record was held open until September 13, 2005, for Applicant to submit documentation related to an intended bankruptcy filing. On September 8, 2005, Applicant forwarded a record of the bankruptcy court noting the filing of a

Chapter 7 voluntary petition on September 7, 2005. On September 9, 2005, Applicant forwarded a copy of her bankruptcy petition. Department Counsel having indicated on September 13, 2005, that the government had no objections, the documents were marked and entered accordingly as Applicant Exhibits E and F.

## FINDINGS OF FACT

DOHA alleged Applicant had delinquent debt totaling \$76,799. Applicant admitted the debts except for an alleged outstanding judgment of \$2,040 (SOR ¶ 1.i.). Her admissions are accepted and incorporated as findings of fact. After a thorough review and consideration of the evidence of record, I make the following additional findings:

Applicant is a 56-year-old account administrator, who has been employed by a defense contractor since April 2003. She seeks a secret-level security clearance for her duties located on a U.S. military base. She does not access classified data in her work.

Divorced from her first husband after two years of marriage, Applicant wed her second husband in January 1972. In January 1974, Applicant started a hairstyling business. Two years later, she had her first son and moved the business into her home. She and her second husband had two more sons, born in June 1979 and December 1985. Following their divorce, Applicant raised their three sons. [\(2\)](#)

By the early 1990s, Applicant's customer base had declined, so she decided to start a new venture while continuing to operate her hairstyling shop on the days that had been the busiest. In January 1992, she opened a bridal shop in a nearby town, using personal credit to purchase shop inventory. The business paid for itself for the first three years but experienced a decline once a bridal chain opened stores in her area. Eventually, brides came into her shop only for alterations on gowns purchased elsewhere. She was hopeful the business would turn around, but losses continued to accumulate until she eventually closed the business in November 2000. Several delinquent accounts incurred primarily for the business went unpaid because she lacked the income to pay them, as reflected in the following table.

Debt as listed in SOR	Delinquency history	Status as of Sep 05
\$7,431 in collection (¶ 1.a.)	On SF 86 as \$3,939 credit card debt incurred Apr 96; \$4,358 for collection Sep 00; \$7,431 balance as of Sep 04.	\$4,358 pending bankruptcy discharge
\$16,558 in collection (¶ 1.b.)	Mastercard debt \$9,752 for collection Nov 00; \$16,558 balance as of Sep 04, \$18,559 as of Jul 05.	\$12,468 pending bankruptcy discharge
\$5,070 balance past due	Account opened Jan 96, \$291 past due as of Apr 01 on \$5,070 balance.	\$5,897 pending

(¶ 1.c.)		bankruptcy discharge
\$11,615 charged off balance in collection (¶ 1.d.)	VISA card account opened Jan 85, \$11,422 bad debt transferred Mar 01; \$11,615 balance as of Sep 04.	\$11,423 pending bankruptcy discharge
\$2,544 collection debt (¶ 1.e.)	Department store charge account opened Jul 77; \$2,544 for collection Feb 01.	\$2,545 pending bankruptcy discharge
\$6,512 credit card charge off (¶ 1.f.)	Mastercard opened Mar 94, \$6,512 charged off Mar 01 when \$1,024 past due; \$7,979 collection balance as of June 05.	\$6,513 pending bankruptcy discharge
\$6,448 with collection assignee (¶ 1.g. and ¶ 1.j.) (3)	Revolving charge with bank opened May 94, \$4,576 charge off balance; \$4,817 transferred for collection Mar 01, balance \$6,448 as of Mar 05	\$3,633 pending bankruptcy discharge
\$14,005 credit card balance in collection (¶ 1.h.)	Charge card opened Dec 94. \$8,137 charged off Apr 01; Balance \$15,678 as of June 05 with collection agent.	\$8,138 pending bankruptcy discharge
\$2,040 outstanding judgment debt (¶ 1.i.)	Disputed by Applicant, judgment awarded Sep 03 reported by credit bureau Oct 04 and Jul 05.	

Shortly after Applicant closed the bridal shop, she took computer programming classes at a local community college and began working for a temporary agency providing clerical/secretarial services. For five months in 2001 she worked for an automobile body shop but left due to an unpleasant work environment. In December 2001, Applicant closed her hairstyling business. From late January 2002 to March 2003, she was employed as a patient registrar for a local cancer center. At the suggestion of her present manager, Applicant interviewed for a job with the defense contractor, and she was hired in April 2003 as an electronic technician.

Required to obtain a secret-level security clearance because of her work location on a military base, Applicant executed a security clearance application on April 1, 2003. She responded affirmatively to whether she had any debts more than 180 days delinquent in the preceding seven years, and listed the debts in ¶¶ 1.a. (\$3,939), 1.e. (\$2,544), and 1.h. (\$8,137). Applicant also reported three debts not alleged in the SOR: \$4,816 on another delinquent credit card, (4) \$2,069 in delinquent telephone charges for her former business, and \$755 for fashion inventory. In further explanation, she added that the debt was incurred in her beauty shop and bridal shop businesses.

A review of Applicant's credit on April 11, 2003, revealed Applicant had additional delinquent consumer credit card accounts with balances owed of \$11,422 (¶ 1.d.), \$6,512 (¶ 1.f.) and \$4,576 (¶¶ 1.g. and 1.j.). An automobile loan, which she had cosigned for her son, was reported as past due 30 days. She was paying her mortgage on time.

Sometime during the first half of 2003, Applicant sought legal advice concerning resolution of her debts. Advised that she would have to divest herself of her part-ownership in her mother's home and then wait one year before filing for bankruptcy, Applicant commenced the process of removing her name from the deed. Applicant also made no payments

on her delinquent debts on the advice of legal counsel.

On June 5, 2003, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about her delinquent accounts. She provided documentation showing the late auto loan payment had been made by her son, but did not otherwise dispute the indebtedness listed on her credit report. Applicant explained that the debts she disclosed on her SF 86 had been incurred through her now defunct bridal business. She admitted she had made no payments on the debts since the business closed, as she was gathering account information for a bankruptcy filing anticipated in mid to late 2003. Applicant provided the DSS agent with a personal financial statement showing an estimated \$749 remaining at the end of the month after payment of her expenses and two current credit cards.

In response to DOHA financial interrogatories, Applicant indicated on February 19, 2004, she was gathering information for her attorney to file the bankruptcy petition "within the next month or so." Subsequent checks of Applicant's credit on October 14, 2004 and July 13, 2005, revealed her delinquent debt had not been resolved. Sometime in July 2005, Applicant's name was removed from her mother's home.

On September 7, 2005, Applicant filed a consumer/non-business Chapter 7 bankruptcy listing \$64,796 in unsecured nonpriority claims. In addition to the debts in ¶¶ 1.a., 1.b. 1.c., 1.d., 1.e., 1.f., 1.g., and 1.h., Applicant sought discharge of \$756 owed for fashion inventory from the bridal business, \$1,046 in collection with an attorney assignee, \$4,817 in delinquent credit card debt, and \$2,912 in unpaid telephone charges, \$1,144 of it incurred after the bridal shop ceased operation. (5) On Schedule I, she reported monthly expenses exceeded her net monthly income by \$424.78, (6) although she also had \$1,000 in personal checking/savings funds. Applicant had reaffirmed the mortgage debt on her home and was current in her mortgage payments. She owes \$48,940 on her home which has a market value of about \$250,000.

Applicant has been a responsible and dedicated employee for the defense contractor. One of her manager's top performers, Applicant was promoted in 2005 into a supervisory role in the computer systems management department responsible for tracking all information technology equipment on the military base. Effective July 1, 2005, her annual salary was increased from \$36,319 to \$38,498.

## **POLICIES**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [her] security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Concerning the evidence as a whole, the following adjudicative guideline is most pertinent to this case:

**Financial Considerations.** An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts. (¶ E2.A6.1.1.)

## CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to Guideline F:

The security eligibility of an applicant is placed into question when the applicant is shown to have a history of excessive indebtedness, recurring financial difficulties, or a history of not meeting her financial obligations. The government must consider whether individuals granted access to classified information are, because of financial irresponsibility, in a position where they may be more susceptible to mishandling or compromising classified information. As of September 2005, Applicant owed delinquent debt in excess of \$79,000. Even if the creditors were willing to waive the interest/fee charges accumulated over years of nonpayment, the unsecured nonpriority claims against her still amount to \$64,796, a

substantial figure given her annual salary of \$38,498. DC ¶ E2.A6.1.2.1. *A history of not meeting financial obligations*, and ¶ E2.A6.1.2.3. *Inability or unwillingness to satisfy debts*, apply.

With the most notable exception being unpaid telephone charges of \$1,144, the delinquent debt was incurred in 2000 or before when Applicant was struggling to keep her bridal and beauty shops in business. The financial considerations concerns may be mitigated where the debt is the result of a business downturn. See ¶ 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)*. Applicant may reasonably have failed to anticipate the opening of two chain-store bridal shops within driving distance and the ensuing decline in her business because of the competition. While ¶ E2.A6.1.3.3. applies, Applicant exhibited financial mismanagement in taking on new credit for several years in the hope that the business would again become profitable. There is also some evidence of disregard in that she made no effort to address her indebtedness until after she gained employment with the defense contractor, when the debt could potentially cost her a clearance and her job.

Around the time of her DSS interview in June 2003, Applicant sought legal assistance with regard to resolving her debt situation. With bankruptcy her most realistic option given her age, income, and extent of her indebtedness, Applicant told the DSS agent on June 5, 2003, that she anticipated filing for Chapter 7 liquidation in mid to late 2003. She had not filed by February 2004, when she was asked to respond to DOHA interrogatories, nor by her hearing in mid-August 2005. However, the two year delay was credibly attributed to her having to remove her name from her mother's home so that her mother would not be negatively impacted by the bankruptcy, and Applicant's failure to make any payments toward her debts during this period was on advice of legal counsel.

With her Chapter 7 filing in September 2005, Applicant is seeking to discharge further responsibility for those debts alleged in the SOR. Assuming Applicant is afforded a financial fresh start in bankruptcy, it would remove the financial pressures of the substantial unresolved debt. The issue would then be whether Applicant can be counted on to timely satisfy her future financial obligations. Applicant has no demonstrated track record of effort to repay her delinquent debt. While she has paid her mortgage on time, she apparently had not paid for telephone services incurred in 2003. The absence of any new credit card delinquency is in her favor, but it is too soon to conclude that her financial problems are safely behind her. SOR ¶¶ 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., and 1.j. are found against Applicant. SOR ¶ 1.i. is concluded for her as the evidence of record is not enough to prove her liability therefor in light of her denial of any responsibility.

## FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: 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. Clearance is denied.

**Elizabeth M. Matchinski**

**Administrative Judge**

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2. Her SF 86 indicates her youngest son was born in December 1985, which would have been after she and her second husband were divorced in March 1982. (*See* Ex. 1) It is not clear whether she received any financial support for the children from her ex-husband.
3. The assignee in ¶ 1.g. was reported to be collecting on the debt in ¶ 1.j. (see Ex. 7).



4. This debt does not appear on her April 2003 credit report (Ex. 2). On her October 2004 credit report, the debt is reported as transferred or sold with a zero balance (Ex. 5). The collection agency assigned that account is not the creditor listed in SOR ¶ 1.g.
5. In several cases, the amount of unsecured debt on the bankruptcy petition does not include interest or collection fees. Accordingly, the amount sought to be discharged is less than what was alleged in the SOR.
6. At her hearing, Applicant testified conversely she has about \$439 remaining each month on monthly take home pay of \$2,156 (Tr. 54), which is \$65.78 more than what she reported on her bankruptcy petition.