

KEYWORD: Financial

DIGEST: Applicant incurred 13 delinquent debts. In the past three years she has used her savings and current income, and her husband's periodic income, to pay seven delinquent debts, and make installment payments on the remaining six debts, of which four are student loan debts. Applicant mitigated the financial consideration security concerns. Clearance is granted.

CASENO: 03-01714.h1

DATE: 07/23/2004

DATE: July 23, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-01714

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Francisco Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred 13 delinquent debts. In the past three years she has used her savings and current income, and her husband's periodic income, to pay seven delinquent debts, and make installment payments on the remaining six debts, of which four are student loan debts. Applicant mitigated the financial consideration security concerns. Clearance is granted.

STATEMENT OF THE CASE

On October 27, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to 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 Applicant, and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and notarized statement, dated November 21, 2003, Applicant responded to the SOR allegations. She requested a hearing. This case was assigned to me February 3, 2004. On February 23, 2004, a Notice of Hearing was issued setting the hearing date for March 10, 2004. On that date, I convened the hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government presented six exhibits, all of which were admitted into evidence. Applicant submitted 11 exhibits (four at the hearings, and seven subsequently to the hearing without objection by the Government), which were admitted into evidence. I received the transcript (Tr.) of the hearing on March 17, 2004.

FINDINGS OF FACT

Applicant admitted all of the SOR allegations (subparagraphs 1.a. to 1.m.). Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 35 years old. She is a mechanical engineer working for a defense contractor. She is married. Her husband has children from his prior marriage the custody of whom Applicant and her husband are attempting to obtain in a court custody action. Applicant paid \$8,500 in legal fees before the hearing to start that action. Applicant moved to her present residence three years ago after living in a more expensive eastern area of the country. In that location Applicant depended on her credit cards to make purchases. Presently, Applicant does not use credit cards and has purchased a home. (Tr. 22, 32 to 38, 52, 55, 62, 78)

Applicant is using her money from a \$ 401K account to pay her outstanding debts. She is also making monthly payments from her income on a number of her delinquent debts. Her husband's income is used to pay the student loans for which they co-signed. He also works as a security guard while going to college. Applicant's husband graduates in 2005. He has endured several periods of unemployment which prevented him from making full payments on his college loan debts. Applicant owns two cars which are paid for fully. Applicant paid off several debts and closed several accounts before the SOR was issued. (Tr. 21, 22, 37, 48 to 52, 56; Exhibit 6)

Applicant's debts and their current status are as follows:

SOR ¶	CREDITOR AND AMOUNT	CURRENT STATUS	RECORD
1.a.	Bank credit card, \$7,993, present amount is \$5,540	Judgment. Payment plan in effect of \$275 monthly over 3 years.	Exhibits A, K, 6; Tr. 16, 39, 72
1.b.	Electric Utility , \$96 disconnection fee	Paid in full March 30, 2004.	Exhibits F, I, K; Tr. 17, 18
1.c.	Cell phone company cancellation fee, \$100	Paid in full, March 30, 2004.	Exhibits G, J, and K; Tr. 17, 18, 40
1.d.	Hospital bill, \$298	Paid in full, current bill shows zero balance after payment of \$297.48 on April 26, 2004.	Exhibits H, J, and K; Tr. 17, 18, 40 to 42, 47
1.e.	Bank credit card, \$17,000	Payment plan in effect, with a proposed settlement of	Exhibits B, J, K, 6;

		\$8,644 possible.	Tr. 18, 19, 42, 64, 72
1.f.	Student loan, \$3,853	Payment plan in effect at \$100 monthly.	Exhibit K; Tr. 23, 42, 43, 61, 66
1.g.	Credit card, \$1040	Paid in full.	Exhibits J, K, 6; Tr. 18, 43, 73
1.h.	Credit card, \$169	Paid in full.	Exhibits J, K, 6; Tr. 18, 43
1.i.	Computer purchase, \$1,751	Paid in full.	Exhibits C, J, K; Tr. 26 to 28, 45, 72
1.j.	Bank loan for college, \$10,400	Paying \$85 monthly, has paid \$1000 in past year on principal.	Exhibit K; Tr. 24, 25, 45, 46, 61, 66
1.k.	Bank loan for college, \$17,600	Paying \$185 monthly.	Exhibit K; Tr. 45, 46, 61, 66
1.l.	Bank loan for college, \$19,600	Working on establishing a payment plan.	Exhibit K; Tr. 28, 65
1.m.	Credit card, \$8273	Settled for \$4408 paid April 1, 2004. Was paying \$200 monthly.	Exhibits D, E, J, and 6; Tr..28 to 30, 64, 74

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 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 judgement, 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." Exec. Or. 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.

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. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation;

(6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Guideline F: 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.

Conditions that could raise a security concern and may be disqualifying include:

- (1) A history of not meeting financial obligations.
- (3) Inability or unwillingness to satisfy debts.

Conditions that could mitigate security concerns include:

- (1) The behavior was not recent.

(6) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to the allegation set forth in the SOR:

With respect to the allegation involving Guideline F, the Government established its case. Applicant is delinquent on 13 accounts. They were incurred over several years through the use of credit cards. Three debts are student loans for her husband's education, for which Applicant co-signed on the loans. Disqualifying Conditions (DC) 1 and 3 apply.

Regarding the application of Mitigating Conditions (MC), MC 1 does not apply in this case because Applicant's failure to pay these debts was a continuing course of conduct. The directive is focused on financial condition. Applicant still has debts even though incurred some time ago. Therefore, her poor financial condition is recent.

However, Applicant paid several debts not listed in the SOR, while at the same time engaging in a plan to pay the debts listed in the SOR, all of which she admitted in her Answer. Those debts that she has not paid she has an installment payment plan in effect. All of these debts occurred over three years ago before Applicant's move to a less expensive living cost area of the country. Her husband's periodic unemployment diminished her ability to repay these debts sooner. However, the debts were incurred because Applicant relied on credit cards to finance her living standards. Applicant is withdrawing her savings from her \$401K retirement plan to pay these debts, and has done that in part to date. Mitigating Conditions (MC) 6 applies. Of the debts alleged in the SOR, Applicant paid in full or settled fully subparagraphs 1.b., 1.c., 1.d., 1.g., 1.h., 1.i., and 1.m. She has payment plans in effect for the remaining debts, including her husband's college loans (subparagraphs 1.f., 1.j., 1.k., and 1.l.). Payment plans are also in effect for two credit card debts (subparagraphs 1.a., and 1.e.). I conclude Applicant has gotten her delinquent debt problem under control and has worked diligently to resolve these debts. Therefore, considering all of the evidence, I conclude the guideline for Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: For Applicant

Subparagraph 1.l.: For Applicant

Subparagraph 1.m.: For Applicant

DECISION

In light of all the circumstances and facts presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Philip S. Howe
Administrative Judge