

KEYWORD: Financial

DIGEST: Applicant owes two debts totaling approximately \$23,000. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from these debts. Clearance is granted.

CASENO: 03-02380.h1

DATE: 08/31/2004

DATE: August 31, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-02380

**DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

Erin C. Hogan, Department Counsel

**FOR APPLICANT**

**SYNOPSIS**

Applicant owes two debts totaling approximately \$23,000. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from these debts. Clearance is granted.

**STATEMENT OF THE CASE**

On October 23, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding <sup>(1)</sup> it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On November 18, 2003, the Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing.

On February 19, 2004, the Applicant received a complete copy of the file of relevant material (FORM) dated January 23, 2004, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. The Applicant's response to the FORM was due on March 20, 2004. No response has been received. In the FORM, Department Counsel presented 7 exhibits (Items). The Applicant submitted no exhibits. I was assigned the case on arch 25, 2004.

**FINDINGS OF FACT**

The SOR alleges Financial Considerations. The Applicant admits she owes money to a creditor. That admission is incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact.

The Applicant is 50 years old, has worked for a defense contractor since May 2002, and is seeking to obtain a security

clearance. Applicant owes a bank \$6,685.00. In April 2002, the account was turned over for collection. In 2001, Applicant's vehicle was repossessed. She owed a creditor \$401, which has been paid. (Item 3)

Applicant was unemployed from June 2001 to May 2002. In July 2002, Applicant went to Consumer Credit Counseling Service (CCCS) for assistance with her debts. She was paying CCCS \$291 per month. She hopes to incorporate the bank debt into a CCCS repayment plan. As of October 2003, she was in divorce proceedings and hoped to have her husband declared responsible for the repossession debt. She asserts in January 2002, her husband took the vehicle, which was registered in her name, refused to return it to her or make the payments on the vehicle. In March or April 2002, she stopped making payments on the vehicle. The SOR listed the obligation at \$28,825, she asserts the balance due on the repossession is \$16,556.

Applicant is a single mother, attempting to rebuild her life. As of October 2002, Applicant was not experiencing any financial problems and was having no difficulty meeting her monthly obligations. Her monthly income exceeded her monthly expenses by \$600 to \$700 per month. (Item 5)

## **POLICIES**

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

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. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Financial Considerations, Guideline F, the Concern: 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. (E2.A6.1.2.1.)

3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

Conditions that could mitigate security concerns include:

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). (E2.A6.1.3.3.)

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

### **BURDEN OF PROOF**

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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 judgment, 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." Executive Order 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.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an

applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

## CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, (Financial Considerations). A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent strong evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. Under Guideline F, an Applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations.

Applicant has an unpaid bank debt and a repossession debt totaling approximately \$23,000. Disqualifying Conditions (DC) 1 (A history of not meeting financial obligations.) and DC 3 (Inability or unwillingness to satisfy debts.) apply.

There is no indication of extravagant expenditure or over-extension on consumer credit. Applicant has paid off one debt of the three debts listed in the SOR. She asserted she would include the bank debt (\$6,685) into her CCCS repayment plan. However, she provided no supporting documentation. She asserted her hoped her husband would be required, by the divorce proceedings, to assume responsibility for the repossession debt. No supporting documentation was provided.

Applicant was unemployed from June 2001 to May 2002. Additionally, Applicant and her husband separated. The repossession of the car and associated debt resulted directly from the separation. Her husband left, took the car, would not return the car, and would not make the car payments. Mitigating Condition (MC) 3 <sup>(2)</sup> requires the debt resulted from conditions beyond her control. The separation, which resulted in the repossession, was such a condition.

The two debts remain unpaid so the financial problems are recent. MC 1 (The behavior was not recent.) does not apply. Applicant has gone to CCCS, but the record fails to show the type of financial counseling, if any, Applicant has received. Even though Applicant is a single mother, attempting to rebuild her life, as of October 2002, she has sufficiently rebuilt her finances to the point she was not experiencing financial problems and was having no difficulty meeting her monthly obligations. Her monthly income exceeded her monthly expenses by \$600 to \$700 per month. This is a clear indication her financial problems are being resolved or are under control.

For MC 6 (The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good faith effort to repay. A systematic, concrete method of handling her debts is needed, which is documented here. To help her address her finances she sought the assistance of CCCS and has been making regular payments to her creditors through CCCS. (Gov Ex 7) She said she would add the bank debt to her scheduled CCCS payments. Since she has already established a repayment schedule and has shown past performance in accord with that schedule, there is no reason to believe she won't add the bank payments to the debts she is already making through CCCS.

The repossession debt is unresolved. She hopes the courts will require her husband to pay the debt. Even if this occurs, her obligation to the creditor remains unchanged. Since she is handling her other financial obligations appropriately, there is no reason to believe she would not handle this debt should it not be paid by her husband.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

### **FORMAL FINDINGS**

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

Paragraph 1 Financial.: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

**DECISION**

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

**Claude R. Heiny**

**Administrative Judge**

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. MC 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).