

KEYWORD: Financial

DIGEST: Applicant mitigated financial considerations security concerns raised by her missing one of her Chapter 13 bankruptcy payments, having a delinquent \$517 account in collection, and having greater monthly expenses than income. Clearance is granted.

CASENO: 03-14832.h1

DATE: 07/15/2005

DATE: July 15, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-14832

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin Howry, Esq., Department Counsel

**FOR APPLICANT**

Robert M. Martinez, Personal Representative

## **SYNOPSIS**

Applicant mitigated financial considerations security concerns raised by her missing one of her Chapter 13 bankruptcy payments, having a delinquent \$517 account in collection, and having greater monthly expenses than income. Clearance is granted.

## **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 7 July 2004, DOHA issued a Statement of Reasons<sup>(1)</sup> (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 19 August 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 21 arch 2005. On 16 June 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 23 June 2005.

## **FINDINGS OF FACT**

Applicant is a 51-year-old product technician for a defense contractor. She has worked for the defense contractor for over 20 years and has held a security clearance since 1990. She is divorced and has two adult children. Applicant's daughter and two children live with her and are dependent upon her for a place to live and at times for their financial livelihood as her daughter has had trouble finding and holding full-time employment. Applicant's supervisor reports she is a dedicated, trustworthy, and productive member of his staff.

Applicant's financial problems started after she was in an automobile accident in October 1998. Although she was taken to the hospital, she was not injured seriously. Her mother and grandson were also injured in the accident and Applicant had to take time off from work to care for them. Ex. 2 at 1-2. As a result of her accident, Applicant was forced to replace her vehicle. She purchased a 1984 vehicle, but it has been plagued with problems that have cost her a lot of money to fix.

In 1999, Applicant's employer sent her out of state for training for six months. She returned home every other weekend. The cost of her stay out of state and the travel back and forth to her home exceeded what she was paid by her employer by \$3,000. The extra amount was deducted from her paycheck which caused her to have difficulty paying some other bills. In 1999, Applicant sought financial counseling. She got rid of her credit cards and filed for Chapter 13 bankruptcy in 2001. Applicant has been late on her bankruptcy only once and she is now current. The bankruptcy payments should be complete in August 2006. She is now three months behind in her mortgage payments-approximately \$2,500. Tr. 24.

The SOR alleges one delinquent debt-an account for \$517 placed for collection in April 2002. Applicant claims she paid the debt. Although she was unable to provide any corroboration of that fact (Tr. 22-23), the debt no longer appears on her credit report. Ex. 5. Her latest personal financial statement, submitted at the hearing, shows her income exceeds her expenses by approximately \$100 each month. Ex. 3 at 6. She also has an unpaid cell phone bill, that was run up by her daughter, in the amount of \$2,067.

### 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 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 his 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

### CONCLUSIONS

In the SOR, DOHA alleged Applicant filed for Chapter 13 bankruptcy and she missed at least one of her payments to

the trustee (¶ 1.a); has a delinquent account that was placed for collection (¶ 1.b); and has a monthly negative income balance of over \$250 per month (¶ 1.c). In her Answer, Applicant admitted each of the allegations. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government's evidence and Applicant's admissions constitute evidence of potentially disqualifying conditions under Guideline F. Applicant has a history of not meeting her financial obligations (DC E2.A6.1.2.1) and is unable to satisfy her debts (DC E2.A6.1.2.2). However, her financial problems are, in part, the result of conditions beyond her control-her automobile accident, being off the job for a month to care for her mother and grandson, and having to purchase another vehicle that has required many costly repairs. MC E2.A6.1.3.3. After listening carefully to her testimony and observing her demeanor, I find credible her testimony that she paid the \$517 debt alleged in ¶ 1.b. Although she missed one payment on her Chapter 13 bankruptcy, she is now current and has only 13 of the 60 payments remaining.

Applicant's main problem was her negative cash flow-according to her personal financial statement, she incurred expenses totaling \$250 more than her monthly income. Ex. Ex. 3 at 6. At the hearing, Applicant reports her income now exceeds her expenses by \$100. Applicant understands she must continue to make her payments and remain solvent. She needs to get current on her mortgage and resolve her delinquent cell phone account. She recognizes that failing to do so may prevent her from continuing to hold a security clearance and may result in her reassignment or the loss of her job. She will be in somewhat better shape when she completes paying on her bankruptcy in 2006.

Security clearance decisions are not an exact science, but are predictive judgments about a applicant's security eligibility in light of her past conduct and present circumstances." ISCR Case No. 03-04927, 2005 WL 1382028 (App. Bd. Mar. 2005). Applicant has had some financial difficulties for a number of years, but these problems have involved relatively minor amounts of money. Although she has struggled at times, she has managed to stay afloat. It is clear that she is making good faith efforts to try to resolve these debts. She has held a clearance for 15 years and is a trustworthy and dependable employee. Although the previous decisions to grant her a clearance do not give her any vested interest or right in continuing to have a security clearance, her dedication and past history is certainly relevant to any decision on her current circumstances. After considering all of the evidence, the disqualifying and mitigating conditions, and the adjudicative process factors, I find for Applicant.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

**DECISION**

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

James A Young

Administrative Judge

1. As required by Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).