

KEYWORD: Financial

DIGEST: Fifty-two-year-old Applicant whose delinquent financial obligations were largely discharged under Chapter 7 bankruptcy in 1998 (she reaffirmed some debts), has again seen her financial situation deteriorate. She has four stale accounts and two new ones, all delinquent. She chose to ignore these creditors and has taken no action to resolve them because she has insufficient funds to do so. She intends to pay off the accounts in the future when she can. The absence of timely efforts to resolve her new delinquent debts, after having been discharged of the older ones, raise grave questions and doubts as to her security eligibility and suitability. Clearance is denied.

CASENO: 03-15006.h1

DATE: 01/31/2005

DATE: January 31, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-15006

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Fifty-two-year-old Applicant whose delinquent financial obligations were largely discharged under Chapter 7 bankruptcy in 1998 (she reaffirmed some debts), has again seen her financial situation deteriorate. She has four stale accounts and two new ones, all delinquent. She chose to ignore these creditors and has taken no action to resolve them because she has insufficient funds to do so. She intends to pay off the accounts in the future when she can. The absence of timely efforts to resolve her new delinquent debts, after having been discharged of the older ones, raise grave questions and doubts as to her security eligibility and suitability. Clearance is denied.

STATEMENT OF THE CASE

On February 17, 2004, and again on March 25, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to 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 identical Statements of Reasons (SOR) to Applicant. ⁽¹⁾ The SORs 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 a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated March 25, 2004, Applicant responded to the allegations in the SORs and requested a hearing. The case was assigned to me on September 20, 2004. A notice of hearing was issued that same day, and the hearing was held before me on October 5, 2004. During the hearing, five government exhibits and Applicant's testimony were received. The transcript (Tr.) was received on October 14, 2004.

FINDINGS OF FACT

Applicant has admitted all but one of the factual allegations pertaining to financial matters under Guideline F (subparagraphs 1.b. through 1.g.). Those admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is a 52-year-old employee of a defense contractor seeking to obtain a security clearance, the level of which has not been divulged.

At some point after her job-related injury in 1996,⁽²⁾ an injury about which nothing is known, Applicant's financial situation was such that she was unable to keep up with the monthly payments on her 1994 Ford Ranger truck.⁽³⁾ Faced with substantial arrears, Applicant relinquished the vehicle to the creditor under a voluntary repossession.⁽⁴⁾ A deficiency of \$4,229.00 remained after the vehicle was sold by the creditor.⁽⁵⁾ Following her mother's death in June 1998, Applicant found herself unable to pay the bills accumulated by her mother or herself.⁽⁶⁾ In July 1998, Applicant filed for bankruptcy as an individual under Chapter 7, listing \$29,984.00 total liabilities and \$953.00 total assets.⁽⁷⁾ Among the liabilities listed was the deficiency on the previously repossessed vehicle.⁽⁸⁾ Applicant chose to reaffirm her intention to keep and pay for a 1991 Pontiac Grand Am, a 1987 mobile home, two VCRs, two television sets, a dryer, and various furniture.⁽⁹⁾ Applicant's remaining stated liabilities were discharged in December 1998.⁽¹⁰⁾

Since that bankruptcy discharge, Applicant's financial situation again deteriorated to a point where there are now new delinquent accounts. When shown a copy of her credit report and interviewed by a Special Agent of the Defense Security Service (DSS) in April 2003, Applicant acknowledged nearly all of the debts reflected in her credit report, and disputed one of those debts as having been included in her bankruptcy.⁽¹¹⁾ In her monthly financial statement furnished to DSS, Applicant identified five debts and the amounts owed for each, but indicated that no payments were currently being made.⁽¹²⁾ As of April 2003, after paying her normal monthly expenses, not including any delinquent accounts, Applicant had a net remainder of \$38.00 available for discretionary spending.⁽¹³⁾

In November 2003, in response to financial interrogatories furnished by DOHA, Applicant furnished a revised monthly financial statement.⁽¹⁴⁾ The net remainder available for discretionary spending remained basically unchanged.⁽¹⁵⁾

Although she now earns approximately \$100.00 more each month, ⁽¹⁶⁾ the amount available for discretionary spending has not increased because "[t]here just always seems to be something there to take every penny to be able to have food in the house. . . ." ⁽¹⁷⁾

The SOR identifies five delinquent accounts totaling nearly \$14,000.00. Those accounts, and their current status, are described below:

SOR #	DATE OPENED	TYPE DEBT	AMOUNT	CURRENT STATUS
1.a.	1993	deficiency on repossessed truck loan (1994 Ford Ranger)	\$4,229.00 ⁽¹⁸⁾	discharged in bankruptcy ⁽¹⁹⁾
1.b.	unknown	deficiency on repossessed 1987 mobile home and automobile loan (1991 Pontiac Grand Am)	\$1,675.00	listed in bankruptcy but reaffirmed, ⁽²⁰⁾ and unpaid ⁽²¹⁾
1.c.	Mar. 2001	collection account (unpaid apartment rent)	\$864.00	unpaid ⁽²²⁾
1.d.	unknown	delinquent account charged off (unpaid electric bill)	\$274.00	unpaid ⁽²³⁾
1.e.	unknown	collection account (unpaid cell phone)	\$172.00	unpaid ⁽²⁴⁾

Applicant attributed her failure to pay the delinquent balances on the latter four accounts to disputes or misunderstandings with the creditors during a period when she relocated from one city to another, and the failure of the individual creditors to furnish her with final statements. ⁽²⁵⁾ Furthermore, despite now disputing or questioning the amounts identified, she has never informed the creditors of her complaints. ⁽²⁶⁾

In addition to those debts listed in the SOR, Applicant has a delinquent debt in the amount of \$1,600.00 for furniture; ⁽²⁷⁾ and a delinquent debt to a satellite television company in the amount of \$222.00. ⁽²⁸⁾ Applicant acknowledged she is *unable* to pay off any of the specified debts "at this time," ⁽²⁹⁾ but denied she was *unwilling* to do so. ⁽³⁰⁾ She currently drives a 2002 Chevrolet Malibu which she purchased in June 2003 ⁽³¹⁾ with an automobile loan for \$15,645.00. ⁽³²⁾ Before purchasing the vehicle, she gave no thought to clearing up any of her delinquent debts. ⁽³³⁾

Applicant has been employed as a security officer by a government contractor--she is the badge shop custodian ⁽³⁴⁾--since April 2001. The quality of her work performance has not been divulged. Her duty hours are Monday through Friday, from 8AM to 4:30PM. ⁽³⁵⁾ She has never considered taking a part-time job, ⁽³⁶⁾ largely because she does not believe it is wise to do so because she has high blood pressure. ⁽³⁷⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (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.

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, as well as those which could mitigate security concerns, are set forth and discussed in the Conclusions section below.

Since the protection of the national security is the paramount consideration, the final decision in each case must be

arrived at by applying the standard the issuance of the clearance is "clearly consistent with the interests of national security," [\(38\)](#) or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded both standards are one and the same. In reaching this Decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of the witness credibility, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The government has established its case under Guideline F. As indicated above, Applicant's financial situation deteriorated in the mid-1990s. Accounts became delinquent and were closed by creditors, charged off, or sent to collection. Instead of working with her creditors to attempt to resolve her financial difficulties, she chose to wipe the slate clean and filed for bankruptcy under Chapter 7. Except for delinquent accounts pertaining to a 1991 Pontiac Grand Am, a 1987 mobile home, two VCRs, two television sets, a dryer, and various furniture--accounts which she chose to reaffirm--all of Applicant's remaining stated liabilities were discharged in December 1998.

Starting over with a clean slate, her financial situation again deteriorated. She has four stale accounts and two new ones, all of which are delinquent. She chose to ignore these creditors and took no action to resolve her overdue financial obligations. Applicant stated she intends to pay off the accounts when she can, but from the looks of her financial situation, that promised action will not occur for some time. Her failure to satisfy her outstanding financial obligations gives rise to Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. (*history of not meeting financial obligations*); and FC DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*).

Applicant's unspecified injury and her mother's illness and death do not constitute sufficient reasons to justify the claim that her financial situation was largely beyond her control so as to bring this matter within Financial Considerations Mitigating Condition (FC MC) 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 offered no information about the extent of her injury, and other than claiming her mother's illness and death deprived her of her mother's salary, very little other information was provided.

Applicant's financial difficulties clearly arose before 1998, but the only positive action taken by her was to have her older delinquent debts discharged through Chapter 7 bankruptcy. That action does qualify as meaningful efforts to resolve outstanding financial obligations, and thus, this matter comes within FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). The subsequent delinquencies and Applicant's failure or inability over a substantial period of time to take any actions to resolve her current financial dilemma minimizes the impact of this particular FC MC.

Absent financial counseling, or something to motivate her to alter her fiscal irresponsibility, the most recent promises to resolve the debts in the future appear to be more cosmetic than meaningful and long-lasting. Under these circumstances, Applicant has failed to mitigate or overcome the government's case, for the evidence leaves me with grave questions and doubts as to Applicant's continued security eligibility and suitability. Accordingly, allegations 1.b. through 1.g. of the SOR are concluded against Applicant. Allegation 1.a. of the SOR is concluded in her favor.

For the reasons stated, I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a.: For 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

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.

Robert Robinson Gales

Chief Administrative Judge

1. The second SOR was issued because no receipt had been received by DOHA to indicate the first SOR had been received by Applicant. In reality, Applicant received both SORs. Tr., at 11-13.
2. Government Exhibit 1 (Security Clearance Application (SF 86), dated August 10, 2001), at 7.
3. Government Exhibit 2 (Statement, dated April 17, 2003), at 1.
4. *Id.*; Government Exhibit 4 (Bankruptcy File -Statement of Financial Affairs, dated July 13, 1998), at 2.
5. Government Exhibit 4 (Bankruptcy File - Schedule F - Creditors Holding Unsecured Nonpriority Claims, undated).
6. Government Exhibit 2, *supra* note 3, at 1.
7. Government Exhibit 4 (Bankruptcy File - Voluntary Petition, dated July 17, 1998, and Summary of Schedules).
8. Government Exhibit 4 (Bankruptcy File - Schedule F - Creditors Holding Unsecured Nonpriority Claims), *supra* note 5, at 1.

9. Government Exhibit 4 (Bankruptcy File - Individual Debtor's Statement of Intention, dated July 13, 1998), at 2; Government Exhibit 4 (Bankruptcy File - Reaffirmation, dated August 3, 1998).
10. Government Exhibit 5 (Equifax Report of Credit, dated August 23, 2004), at 1.
11. Government Exhibit 2, *supra* note 3, at 1-2.
12. *Id.*, at 3.
13. *Id.*
14. Government Exhibit 3 (Financial Interrogatory, dated November 13, 2004), at 7.
15. *Id.*
16. Tr., at 52.
17. Tr., at 53.
18. It is unclear how the amount alleged in the SOR (\$10,934.00) was calculated, for the amount identified in the bankruptcy list of creditors holding unsecured nonpriority claims was only \$4,229.00. Government Exhibit 4 (Bankruptcy File - Schedule F - Creditors Holding Unsecured Nonpriority Claims), *supra* note 5.
19. *Id.*
20. Government Exhibit 4 (Bankruptcy File - Individual Debtor's Statement of Intention), *supra* note 9.
21. Tr., at 29-30; Response to SOR, dated March 25, 2004), at 1; Government Exhibit 3, *supra* note 14, at 6.
22. *Id.*, Response to SOR.
23. Tr., at 33; *Id.*
24. *Id.*, Response to SOR.
25. *Id.*
26. Tr., at 27-34.
27. Tr., at 35.
28. Tr., at 36.
29. Response to SOR, *supra* note 21, at 2.
30. *Id.*
31. Tr., at 39.
32. Government Exhibit 3 (Extracts of Credit Report, dated November 10, 2003, attached to Financial Interrogatory), *supra* note 14, at 7.
33. Tr., at 52.
34. Tr., at 21-22.

35. Tr., at 53.

36. Tr., at 54.

37. Tr., at 57.

38. Exec. Or. 12,968, *Access to Classified Information*; as implemented by Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended by Change 3, dated November 8, 1995, and further modified by memorandum, dated November 10, 1998. However, the Directive, as amended by Change 4, dated April 20, 1999, uses both "clearly consistent with the national interest" (Sec. 2.3.; Sec.2.5.3.; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.; Sec. E3.1.26.; and Sec. E3.1.27.), and "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.)