

KEYWORD: Financial

DIGEST: The Statement of Reasons alleged Applicant owed seven debts totaling approximately \$15,000. She has paid two of the listed debts and disputes owing a third. She states she will start making payments on three other debts at some future date. She has not paid the largest debt (approximately \$8,000), nor arranged for its payment. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from her finances. Clearance is denied.

CASENO: 03-15509.h1

DATE: 01/19/2005

DATE: January 19, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-15509

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

The Statement of Reasons alleged Applicant owed seven debts totaling approximately \$15,000. She has paid two of the listed debts and disputes owing a third. She states she will start making payments on three other debts at some future date. She has not paid the largest debt (approximately \$8,000), nor arranged for its payment. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from her finances. Clearance is denied.

STATEMENT OF THE CASE

On March 15, 2004, 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⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On April 1, 2004, Applicant's answer to the SOR and request for a hearing was received. September 1, 2004, I was assigned the case. On September 1, 2004, a Notice of Hearing was issued scheduling the hearing which was held on September 21, 2004. The transcript (tr.) of the hearing was received on September 30, 2004.

FINDINGS OF FACT

The SOR alleges Financial Considerations. The Applicant admits four of the debts and states payment will begin in April 2004. 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 34 years old, has worked for a defense contractor since January 2002 and is seeking to obtain security

clearance. The Applicant is regarded by those who know her as dependable, reliable, honest, and trusted.

The SOR lists seven debts totaling approximately \$15,000. A summary of those debts follows:

		Creditor	Amount	Current Status
1	1.a.	Financial Co., auto loan	\$7,951	Vehicle stolen August 1997. Disputes total amount due.
2	1.b.	Nature of account uncertain	\$3,375	Current credit report lists account as "Paid Charge Off." Ex-husband opened the account the same month their divorce was final.
3	1.c.	Apartment debt	\$1,557	Intends to pay at some future date.
4	1.d.	Credit card	\$964	Intends to pay at some future date.
5	1.e.	debt	\$467	\$233 paid October 2004.
6	1.f.	Credit Union debt for non sufficient funds charge	\$386	Intends to pay at some future date.
7	1.g.	Apartment debt	\$204	Paid. App Ex B.
		Total debts listed in SOR	\$14,904	

In August 1997, Applicant's 1994 Chevrolet Cavalier was stolen. She had purchased the car in February 1997 for \$7,491. (App Ex C) Under her financing agreement, she was to pay \$220 per month for 36 months. The car was recovered six months later, in a different state, having sustained "no significant damage." Her insurance company refused to pay for the car because there was no damage and informed her she could go get the car. Applicant determined she could not afford to get the car and allowed a voluntary repossession of the vehicle. (Tr. 23) Applicant had three other vehicles also repossessed. She had a 1997 Ford Probe repossessed after a year and a half because her income was reduced when she was placed on bed rest. She owed \$10,000 on the Probe when it was repossessed. Following repossession, it was sold for \$5,000. In November 2001, she had a 1997 Mazda repossessed, because she was unable to maintain the car note and her other obligations. She incurred a \$3,000 credit union debt when a 1987 BMW was repossessed. (Tr. 29)

The voluntary repossession of her Chevrolet resulted in the \$7,951 debt listed in SOR 1.a. Applicant disputed this debt on her credit report and it was removed. She has not paid this debt, nor has the company informed her she no longer owed the debt. She acknowledged she owed some amount on this debt, but disputed the amount owed following the resale of the vehicle.

In June 1996, her ex-husband opened an account while they were separated. Applicant's divorce from her husband was also final in June 1996. She disputed this debt with the credit bureau until it was removed from her credit report.

In May 2001, Applicant entered into a \$545 per month apartment lease. Her boyfriend moved into the apartment. In February 2001, they separated and Applicant moved out of the apartment. She failed to give the landlord any notice of her leaving until after it occurred. She alleges her landlord told her to write a letter stating she intended to turn the lease over to her ex-boyfriend. (Tr. 33) The debt (SOR 1. c) is \$1,557, which she speculates represents three months of unpaid

rent. Applicant asserts she has reached an \$800 settlement with the collection agency. She intended to start making payments on this debt in October 2004. No proof of payments have been offered.

Applicant has paid an apartment debt (SOR 1.g. \$204) in full. (App Ex B) In October 2004, Applicant made a \$233 payment on the \$467 debt listed in SOR 1.e. She expected to pay the remaining balance in November 2004. (App Ex D) No proof of the November payment has been received.

Applicant's intent as to addressing her debts is to start paying on another debt after she finishes paying off one debt. In January 2005, she intends to start paying the credit union bill (SOR 1.f. \$380). The \$964 credit card debt listed in SOR 1.d has been sold to another creditor who indicates the debt is \$888. In June 2005, she intends to start making payments on this debt.

In August 2003, Applicant signed up with Consumer Credit Counseling Service (CCCS), but did not make any payments through CCCS.

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. E2.A6.1.1.

Conditions that could raise a security concern and may be disqualifying include: E2.A6.1.2.

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: E2.A6.1.3.

None Apply.

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 her 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 her 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 Financial Considerations, Guideline F. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong 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 individual is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. The Applicant's financial history provides concern. Disqualifying conditions (DC) 1. (A history of not meeting financial obligations) and 3. (Inability or unwillingness to satisfy debts.) apply.

The SOR alleges Applicant owed seven debts totaling approximately \$15,000. She has paid one debt (SOR 1.g \$204) and made a \$233 payment on a second debt (SOR 1.e \$467) and intended to pay the balance on the second debt. I find for her as to these two debts.

In June 1996, her ex-husband opened an account the same month their divorce was final. Applicant disputes she owes any of the debt (SOR 1.b). I find it unlikely Applicant would have opened a joint account the same month their divorce was final. I find for her as to this debt.

In August 1997, Applicant's 1994 Chevrolet Cavalier was stolen. It was recovered six months later in a different state having sustained no significant damage. She was told she could go and get the car, but decided to allow it to go to

voluntary repossession. This was not her only vehicle repossession. She had three additional vehicles, which were repossessed. Applicant does not dispute she owes a debt on this vehicle. She is merely disputing the amount owed. She has made no payments on this debt. Since at least September 2003, Applicant has been aware of the government's concern about this debt. None of the mitigating factors apply to this debt. I find against her as to SOR 1.a.

As of October 2004, Applicant indicated she would start making payments on the three remaining debts at some future date. She has provided no documented evidence of payments on these debts. A future intent to pay a debt is insufficient. I find against Applicant as to SOR 1.c. , 1.d, and 1.f.

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 Considerations.: AGAINST THE APPLICANT

Subparagraph 1.a. : Against the Applicant

Subparagraph 1.b. : For the Applicant

Subparagraph 1.c. : Against the Applicant

Subparagraph 1.d. : Against the Applicant

Subparagraph 1.e. : For the Applicant

Subparagraph 1.f. : Against the Applicant

Subparagraph 1.g. : For 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 the Applicant. Clearance is denied.

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.