

KEYWORD: Financial

DIGEST: Applicant has failed to document sufficient progress in repaying acknowledged delinquent debts or proving that disputed accounts opened under her name are not her legal responsibility. Clearance is denied.

CASENO: 03-16531.h1

DATE: 03/15/2005

DATE: March 15, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16531

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has failed to document sufficient progress in repaying acknowledged delinquent debts or proving that disputed accounts opened under her name are not her legal responsibility. Clearance is denied.

STATEMENT OF THE CASE

On February 19, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant which 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 the Applicant. ⁽¹⁾ DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on financial considerations (Guideline F).

On March 8, 2004, Applicant filed a response to the SOR that was considered incomplete. On April 16, 2004, Applicant submitted a new Answer in which she referenced attachments filed with her March 8, 2004 response, and she requested a hearing before a DOHA Administrative Judge. The case was assigned to me on June 8, 2004. Pursuant to formal notice of June 10, 2004, a hearing was scheduled for July 8, 2004. ⁽²⁾ At the hearing, three government exhibits and 12 Applicant exhibits were admitted into evidence. Applicant and her supervisor testified, as reflected in a transcript received July 21, 2004. The SOR was also amended to reflect sequential lettering of the subparagraphs.

The record was ordered held open until July 22, 2004, for Applicant to submit additional financial records. On July 19, 2004, Applicant timely forwarded an updated Personal Financial Statement. Department Counsel indicated on July 21, 2004, that the government did not object to its inclusion, and the financial statement was marked and entered as Exhibit M.

FINDINGS OF FACT

DOHA alleges financial considerations concerns because of eight delinquent accounts with an aggregate indebtedness of \$33,338, and an alleged monthly net financial balance of negative \$110. In her Answer, Applicant claimed her son and/or ex-husband opened the credit card accounts alleged in SOR subparagraphs 1.a., 1.b., 1.c., 1.e., and 1.g., and at no time did she herself use the accounts with the exception of that in 1.b., which she herself paid or gave her son the money to pay. Applicant acknowledged her responsibility for the debts listed in 1.d., 1.f., and 1.h., but indicated she had satisfied the debts in 1.d. and 1.f., and was making \$175 monthly payments on 1.h., a student loan. Because of an increase in income, she was no longer financially overextended as alleged in 1.i. After a complete and thorough review of the evidence, I make the following findings:

Applicant is a 56-year-old senior technical research analyst, who has worked for various contractors at a national transportation systems center since 1982. Applicant has held a security clearance for the last 20 years, and seeks continued access for her duties as a program analyst on a Department of Defense security and terrorism project.

Applicant and her spouse divorced in January 1981 after 13 ½ years of marriage and two children, sons born in February 1968 and December 1971. After a short separation, Applicant and her spouse reconciled and cohabitated until 1998. As a self-employed fisherman, her ex-husband did not have a steady income, and her income had to cover household bills and their personal expenses. Some bills went unpaid for several months when she was out of work on short-term disability in 1987/88 and again in 1990/91.

In the early 1990s, Applicant gave her younger son permission to list her as an authorized user on two credit card accounts (likely although not confirmed to be those alleged in SOR 1.b. and 1.g.)⁽³⁾ so that he would be granted credit in his name.⁽⁴⁾

After he lost his wallet, Applicant reported the cards as lost and asked the creditors to remove her name as an authorized user when they reissued the cards. She made no effort to determine whether that was done, and she became estranged from this son in about 1997 following his marriage. He became financially overextended and was granted a Chapter 7 bankruptcy discharge in July 1999.

While working full time for her employer, Applicant pursued a Master of Science degree that was awarded her in June 1994. Her education was financed in part by a student loan of \$7,500 obtained in February 1993 (SOR 1.h.).

Applicant had a modular home built in 1996. She withheld her last payment of about \$10,000 from the construction

company but she prevailed in a lawsuit brought by the builder. In December 1997, she obtained a mortgage loan of \$117,000 which was sold to another lender that same month.

While she remained current on her mortgage, other accounts became delinquent as her ex-husband was out of work due to illness and her income was insufficient to pay all of her obligations:

- In March 1997, Applicant took out an unsecured loan of \$5,400 from the credit union that was to be repaid at \$164 per month. She defaulted on that loan and the account was charged off with a past due balance of \$4,276 in June 1998 (SOR 1.d.) Applicant arranged to make reduced payments of \$50 per month on the debt.
- A revolving charge account that she had opened for department store purchases in February 1997 was closed by the creditor in October 1999 when the account became \$283 past due. As of May 2000, the outstanding balance was \$397.89. (SOR 1.f.)
- As of August 2000, Applicant's student loan account (SOR 1.h) was over \$1,000 past due, bringing the total owed with interest to more than \$10,000.

In 2001, Applicant applied to refinance her mortgage. She learned for the first time that a bankruptcy was listed on her credit report and she was being held responsible for delinquent debts that she assumed had been incurred by her son and/or ex-husband in her name, as follows:

- A \$2,400 debt had been charged off by a credit card lender as of February 2000 since there had been no activity on the account since May 1999. (SOR 1.a.)
- A Discover card account opened in November 1993 had been charged off in January 2000 and placed for collection. In May 2004, the collection agency offered to settle the debt balance of \$7,494.74 on receipt of a lump sum payment of half the balance by June 18, 2004. (SOR 1.b.)
- An individual revolving charge opened in February 1994 was charged off in September 1998 with a balance owed of about \$11,000. (SOR 1.c.)
- A credit card account, opened November 1993, on which Applicant was listed as a joint owner, was closed in September 1998 with a delinquent balance of about \$4,792. (SOR 1.g.)
- An unpaid consumer credit balance of \$3,794 was reported to be in collection. (SOR 1.e.)

By letter of November 15, 2001, Applicant asked her son's bankruptcy attorney for confirmation that accounts listed in both her and her son's names were solely her son's accounts. The attorney failed to respond to her inquiry. In March

2002, Applicant obtained a mortgage loan of \$162,000. Since she had no trouble with the refinancing, she mistakenly assumed her credit record had been corrected. [\(5\)](#)

On January 30, 2003, Applicant executed a security clearance application (SF 86) on which she listed two delinquent credit card accounts, creditors not named, on which she owed \$300 each. She added in the general remarks that she never filed for the bankruptcy that appears on her credit reports, that her son had applied for credit cards issued in her name "FOR USE ONLY--NOT as a Co-applicant," and that she was disputing those accounts with the credit reporting agencies.

On May 15, 2003, Applicant was interviewed by a special agent of the Defense Security Service about her financial indebtedness. Applicant admitted she had credit problems at times due to her being solely responsible for all household bills and expenses, her being out of work due to operations and accidents, and her ex-husband starting treatment for cancer in 1996. She acknowledged that her student loan (1.h.), with a balance reported by her to be \$20,000, had been placed for collection but she was paying \$175 per month on the debt. She indicated she was also making payments on her defaulted loan with the credit union (1.d.), and had paid off other debts, such as the department store credit card debt (1.f.), and a bank credit card (not alleged), the latter with a payment of \$2,052.60 in about February 2003. She denied any responsibility for several accounts that were opened by her younger son or her ex-husband but appeared as her debt on her credit record (1.a., 1.b., 1.c.). She denied any intent to pay debts that were not hers. Applicant provided a Personal Financial Statement reporting that her expenses and her debt payments (\$1,136 mortgage, \$175 student loan, \$100 credit union loan, and \$470 in credit card payments) exceeded her monthly income by \$110, although she claimed she had no problem meeting her financial obligations because of overtime earnings.

In Spring 2003, Applicant applied to refinance her mortgage. With the delinquencies and bankruptcy listed on her credit report, she initially had problems obtaining a new loan, even though she had been making her house payments on time. Applicant was provided documentation of her son's bankruptcy, including a certificate of service. Some of his creditors had shown up as her creditors on her credit report (SOR 1.b., 1.c., 1.g.). [\(6\)](#) Applicant notified at least two of the creditors (SOR 1.b. and 1.c.) by letter of November 29, 2003, that she never personally applied for credit and had been listed as a "User Only" on credit card applications completed by her son and/or ex-husband. In October 2003, she refinanced her loan, taking on a mortgage of \$196,000.

Effective October 25, 2003, Applicant's received a merit increase of 26.74% because of her strong technical work and increased responsibilities over the previous year, bringing her annual salary to \$75,004.80. A check of Applicant's credit on February 4, 2004, revealed that those accounts disputed by Applicant had not been removed from her record. On February 5, 2004, the agency collecting an undisputed department store debt (SOR 1.f.)--a debt Applicant claimed in May 2003 had been paid--offered to settle the \$397.89 balance for \$179.05, to be paid over two months with the first payment due February 26, 2004. Applicant paid the balance in full March 15, 2004. On February 15, 2004, Applicant made a \$175 payment on her student loan debt.

On May 19, 2004, the agency collecting the disputed DISCOVER card debt (1.b.) offered to settle the \$7,494.74 balance on receipt of a payment of \$3,747.37 by June 18, 2004. Applicant informed the collection agency by letter of June 1, 2004, that her son was solely responsible for any debt incurred on the account.

As of June 2004, Applicant had five active consumer credit card accounts, including two with an annual percentage rate of 28.99%. She owes about \$12,500 in total on the credit cards which were rated current, although over the limit fees had been assessed on one of the accounts. On July 14, 2004, Applicant provided an updated Personal Financial Statement on which she reported a net monthly remainder of \$445.14 after payment of monthly expenses and debts, including three credit card accounts on which she reported owing a total of about \$11,773.93. She reported a balance of only \$175 on her student loan debt because of payments of \$175 per month, but she provided no documentation of the payments beyond one payment in February 2004 (*see* Ex. G), or of her claimed satisfaction of the credit union debt alleged in 1.d. Some of her financial records were lost when her basement flooded in late 2002/early 2003.

As of July 2004, Applicant has had no success in getting the credit bureaus to remove from her record the debt she disputes. Applicant has spoken to an attorney ("a good friend of a friend") about the issue and plans to retain her to resolve the matter.

Applicant has been a dedicated employee on the job. A team player with excellent organizational skills, Applicant received letters of commendation for her work on the publication of a federal radio navigation plan in 2000.

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

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and adjudicative guidelines, and having assessed the credibility of those who testified, I conclude the government established its case under guideline F.

Under the financial considerations guideline, the security eligibility of an applicant is placed into question when the applicant is shown to have a history of excessive indebtedness, recurring financial difficulties, or a history of not meeting his financial obligations. The government must consider whether individuals granted access to classified information are because of financial irresponsibility in a position where they may be more susceptible to mishandling or compromising classified information. Applicant failed to make timely payments on some accounts, including an unsecured loan through a credit union (SOR 1.d.), a department store credit card (SOR 1.f.), and her student loan (SOR 1.h.).⁽⁷⁾ Also alleged as her debt but disputed by her are five delinquent consumer credit accounts with an aggregate indebtedness of almost \$29,500. Applicant has consistently maintained that she did not incur that debt, but she failed to prove conclusively that the debts are not her legal responsibility. In his letter of January 10, 2002 (Ex. B), Applicant's son indicated he had credit cards issued to her as a "User" only, not as a co-applicant. Yet, the credit report supplied by the government lists the accounts as her individual accounts, with the exception of that alleged in 1.g. which was held as a joint account.

Three of the creditors listed on Applicant's February 2004 credit report had been notified in 1999 of her son's bankruptcy filing. Yet, without the schedules listing the specific account numbers, I am unable to determine whether the accounts that were discharged in his bankruptcy are the same ones that appear on her recent credit report. Even assuming Applicant's son had but one account with each creditor and these are the same accounts listed on Applicant's credit report, the Chapter 7 bankruptcy discharged only his liability as to the debts. At least one creditor (SOR 1.b.) was continuing to pursue collection as of May 2004. As of July 2004, Applicant had not been successful in having the disputed accounts removed from her credit report. Whether or not those disputed debts are removed from her record, there is a basis to apply disqualifying conditions (DC) E2.A6.1.2.1., *A history of not meeting financial obligations*, and E2.A6.1.2.3., *Inability or unwillingness to satisfy debts*, because of the delinquencies alleged in subparagraphs 1.d., 1.f., and 1.h. of the SOR.

Applicant submits in mitigation that she has satisfied her acknowledged debt, which she attributes to insufficient income when she was out on disability and her ex-husband was ill. While the Directive provides for mitigation of debt incurred *largely beyond the person's control* (E2.A6.1.3.3.), Applicant provided no specifics as to the extent of the negative impact of her illness/accident or ex-husband's cancer treatment on her ability to make her student loan and credit union loan payments. Per her self-report, her disability (late 1980s/early 1990s) predated her student loan. With regard to the possible application of mitigating condition E2.A6.1.3.6., *The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts*, she provided no documentation of payments apart from one \$175 payment on her student loan in February 2004. Her credit report reflects a loan balance of \$10,000 as of August 2000. Assuming she made \$175 monthly payments thereafter, 48 months of payments would have reduced the balance by \$8,400, which would not be enough to pay off the debt, even if it was closer to the \$10,000 reported by the credit bureau rather than

the \$20,000 she indicated on her May 2003 Personal Financial Statement. Her credit union loan, charged off in June 1998, had a reported delinquent balance of \$4,276 as of December 2003. She presented no evidence confirming payoff of her credit union loan, despite being given two weeks after the hearing to do so. Concerning her department store debt of a relatively minor \$397.89, she maintained in May 2003 that the debt had been paid. Yet, she did not pay off the debt until March 2004, almost a year after she was placed on notice that the government was concerned about her finances. While she testified to having gone "ballistic" when she learned that her credit report (apparently an earlier version than the February 2004 report of record) listed a bankruptcy, she has not taken a sufficiently proactive approach to getting the disputed delinquencies removed from her credit record and they remain on her record as of July 2004.

Based on the record before me, I am unable to conclude that Applicant's financial difficulties are safely in the past, her increase in salary notwithstanding. Not only does her credit record reflect substantial unpaid delinquencies, but she has twice refinanced her mortgage, taking on substantially more debt each time. Her original mortgage loan of \$117,000 was refinanced in March 2002 for a loan of \$162,000. With her latest refinancing in October 2003, her mortgage balance rose to \$196,000, although it is noted she still has equity in her home with its appreciated value. She listed real estate holdings of \$285,900 in July 2004. As recently as May 2004, she was assessed a \$20.00 over the limit fee on one of her credit cards. After a payment of \$1,617.04 on the largest of her outstanding credit balances (\$6,312.65), a finance charge of \$110.97 was added to her account balance. Given the relatively minor balance of the debt alleged in 1.f., her assurance of payment (albeit very belated) is accepted despite the lack of corroboration. SOR subparagraph 1.i. is also found in her favor as she has sufficient income to meet her expenses as of July 2004. While she is making payments (sometimes the minimum due) on newly accrued debt, she has failed to prove she is not legally liable for a significant amount of delinquent debt that remains on her credit record. Concerns of financial over extension persist.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a.: Against 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.: For the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: 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 Applicant. Clearance is denied.

Elizabeth M. Matchinski

Administrative Judge

- 1.
2. A second notice was issued on June 14, 2004, correcting the number of Applicant's street address.
3. Both of these accounts were opened in November 1993. While Applicant denied at the hearing that she ever used the Discover credit card alleged in 1.b., she indicated in her Answer, "I did use a Discover card on occasion but gave my son the money to remit as payment due or I would send in the payment when he gave my son the money to remit as payment due or I would send in the payment when he received the bill." At her hearing, she testified that she used one card--believed by her to be that alleged in 1.g.--to pay for plumbing material for her home (Tr. 48). Both of these creditors were listed in her son's bankruptcy petition (*see* Ex. D).
4. On Applicant's February 2004 credit report, she is listed as a joint owner rather than authorized user of the account alleged in SOR 1.g. There is no ECOA code listed for the Discover account. Applicant's son indicates he had credit cards issued to Applicant as a user only, not as a co-applicant and that she never signed the applications (Ex. B).

However, most of the accounts on her February 2004 credit report are indicated to be individual accounts, including the accounts in SOR 1.a., 1.c., and 1.e. that are disputed by her.

5. Applicant testified she wrote to the credit bureaus disputing her liability for some accounts ("I assumed, was probably a very bad assumption, that when I wrote to the credit bureaus disputing whatever information that I had found from 2001-2002 time frame had been corrected. It wasn't until 2003 that I found out that they did absolutely nothing with the information that I gave them. . . ." Tr. 85). She was not able to document her contacts with the credit agencies as she failed to keep copies of her correspondence.

6. Applicant provided only the certificate of service that lists those creditors notified of her son's bankruptcy filing. There is no account information of record from which one could conclusively conclude that she is being held responsible for debts that were discharged in his bankruptcy.

7. The government alleged that Applicant owed only \$1,000 on her student loan while it appears she owed much more. As of May 2003, Applicant reported the balance of the loan to be \$20,000. On her credit report of February 2004, the loan was reported to have a \$10,000 balance as of October 2000, past due in the amount of \$1,000.