

KEYWORD: Financial

DIGEST: Applicant became financially overextended due to misuse of consumer credit and poor financial decisions from 1997 to 2002. While she moved back in with her parents to reduce expenses and has begun repaying her delinquent debts, she still owes about \$37,000 in old credit card debt with little prospect of settlement or satisfaction in the foreseeable future. Financial considerations concerns persist. Clearance is denied.

CASENO: 03-18355.h1

DATE: 08/26/2005

DATE: August 26, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-18355

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant became financially overextended due to misuse of consumer credit and poor financial decisions from 1997 to 2002. While she moved back in with her parents to reduce expenses and has begun repaying her delinquent debts, she still owes about \$37,000 in old credit card debt with little prospect of settlement or satisfaction in the foreseeable future. Financial considerations concerns persist. Clearance is denied.

STATEMENT OF THE CASE

On August 23, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons under Guideline F, financial considerations, 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. [\(1\)](#)

On September 21, 2004, Applicant answered the SOR and requested a hearing before a DOHA administrative judge. Pursuant to formal notice of March 18, 2005, I convened a hearing on April 11, 2005. At the hearing, seven government exhibits and seven Applicant exhibits were admitted, and Applicant testified, as reflected in a transcript received on April 22, 2005. The record was held open until May 2, 2005, for Applicant to submit financial records confirming payment of a MasterCard debt. Applicant timely submitted account statements, which were admitted as Exhibit H.

FINDINGS OF FACT

DOHA alleged four delinquent consumer credit debts with an aggregate outstanding balance of \$37,626.59 as of August 2004. In her Answer, Applicant admitted she had not satisfied the debts alleged, but she was making payments on the accounts in ¶ 1.c. and ¶ 1.d. as well as on two other debts not alleged. Applicant's admissions are incorporated as findings of fact. After a complete and thorough review of the evidence, I make the following additional findings:

Applicant is a 33-year-old engineer, who has been employed by a defense contractor since July 1997. She seeks to retain the secret-level security clearance she has held throughout her employ.

Applicant earned her bachelor of science degree in May 1997. She financed her education in part through student loans totaling about \$21,354. In college, she began to take advantage of credit offered to her. Thinking she could manage the minimum monthly payments, she charged car repairs, furniture, gas, clothing, groceries, vacations (including one that cost \$1,600), and dining out. In September 1997, she financed jointly with her boyfriend the purchase of a motorcycle for him, taking out a loan of \$21,033, to be repaid at \$422 per month.

Her reliance on credit increased after an accident in 1997 or 1998, when she totaled an automobile rented in her boyfriend's name. The car rental company obtained a judgment against her and her boyfriend in the amount of \$13,707 in early February 1999. In March 2001, the court ordered garnishment of her wages to recover \$8,255.08.⁽²⁾ With her wages attached beginning in May 2001, Applicant began to rely even more heavily on credit, borrowing on one account to pay off another. Several credit card accounts were eventually charged off and/or placed for collection, as follows:

Debt	Delinquency history	Payment status as of April 05
#1 \$16,824.59 credit card balance in collection (¶ 1.a.)	Opened Feb 00, used to pay off other credit card debt; \$16,824.59 charged off balance (\$3,401 past due) as of Oct 03.	Monthly payments of \$100 Dec 03, Mar 04, Apr 04, May 04. Creditor offered in Aug 04 to settle \$16,224.59 balance for \$12,979.67 lump sum payment. Monthly payments of \$100 continued. Balance \$15,624.59 as of Apr 05.
#2 \$7,126 credit card balance in collection (¶ 1.b.)	Opened Jun 95, no activity since Mar 01. Balance \$7,126 written off Jan 02.	No payments. Intends to start repayment in Aug 05 once debt #5 is paid off.
#3 \$5,568 MasterCard balance charged off (¶ 1.c.)	Opened May 00, \$5,579 in collection since Apr 03.	After payment of \$156 in Aug 04, arranged for automatic withdrawal from checking of \$128 monthly. After six payments, balance \$5,579.62 as of Mar 05.
#4 \$8,108 credit card balance charged off (¶ 1.d.)	Opened Sep 92, \$5,310 limit. Cancelled as of Nov 02 with balance \$5,748.	Payments of \$132 by post dated check May 04, Jun 04, July 04, balance to \$7,976.50 as of Aug 04. Balance \$8,190.44 as of Feb 05 due to interest.

#5 \$5,304 credit card balance written off (not alleged)	Opened Apr 99, \$5,304 balance charged off as of ar 02.	Arranged with collection agency to repay debt at \$127.47 monthly starting summer 02. Balance \$510 as of Feb 05. Preauthorized five payments by check to close out account in Aug 05.
#6 \$3,438 DISCOVER card balance (not alleged)	Last credit card account opened, \$3,438 delinquent balance as of Feb 03.	Monthly payments of \$143 starting in Dec 03, balance \$2,922 as of Apr 05, rated current but was 180 days or more.
#7 Student loan debt \$21,354	\$6,798 loan opened Aug 94, \$6,589 opened Jan 96, \$2,170 and \$5,797 opened Aug 96. Loans 120 days delinquent as of Nov 03.	Current since Dec 2003, \$296 monthly payments. Aggregate balance \$19,576 as of Apr 05.

In an effort to reduce expenses, Applicant moved in with her parents in June 2001. After being threatened with court action, she arranged to repay one consumer credit card debt (debt #5) of about \$5,304 at \$127.47 per month beginning in summer 2002.

In conjunction with an update of her security clearance, Applicant completed a security clearance application on April 10, 2003. She reported consumer credit card debt of \$45,000 as delinquent more than 180 days, and expressed an intent to repay her debt when financially able.

A check of Applicant's credit on April 21, 2003, revealed several creditors had closed Applicant's accounts due to lack of payment, although Applicant was timely on the motorcycle loan. Three credit card accounts (debts #2, #3, and #5) were rated as bad debts with a total balance owed of \$11,694. Another credit card (debt #1) had been cancelled by the credit grantor with a balance due of \$14,973. An unpaid utility debt of \$359 was in collection. Applicant had incurred the charges in or before June 2001, and she failed to pay her bill when she vacated the premises.

Sometime before July 2003, Applicant looked into a debt consolidation loan but did not pursue it as her payments would have been unaffordable. On July 7, 2003, Applicant was interviewed by a Defense Security Service special agent about her financial difficulties. Applicant did not dispute the delinquent accounts reflected on her credit report, which she attributed to school expenses, unemployment, the automobile accident, and to misuse of credit, including spending \$1,600 for a vacation. Applicant disclosed her student loan deferment was scheduled to end in July and she would be expected to make \$260 monthly payments. With the garnishment of her wages scheduled to end in September, she expressed an intent to contact a credit counseling agency for assistance in resolving her delinquencies. Applicant provided a personal financial statement reporting a monthly net remainder of \$29.43 after payment of expenses, the motorcycle loan, and the \$127.47 in repayment of debt #5.

After her interview, Applicant's car had mechanical difficulties to where it needed to be replaced. Even with an annual salary of about \$58,000, she was unable to obtain a loan due to her poor credit history. Her mother purchased a car for her on the condition that Applicant make the car and insurance payments totaling about \$388 monthly. On December 31, 2003, Applicant satisfied the \$359 utility services debt that had been owed since June 2001.

In response to financial interrogatories from DOHA, Applicant admitted on February 10, 2004, she had not contacted a consumer credit counseling service but had been making payments when she could afford it. She provided documentation showing she had continued to make her \$127.47

monthly payment on debt #5, had satisfied through garnishment of wages the \$13,707 judgment debt awarded in February 1999, had made a \$100 payment on debt #1 on which she owed \$16,724.59, and in December 2003 had started making monthly payments of \$143 on debt #6 and \$291.03 on her student loans (debt #7). She acknowledged she had not made any payments on two other delinquent credit cards with estimated balances of \$7,126 (debt #2) and \$4,034 (debt #3). On August 23, 2004, DOHA issued an SOR to Applicant alleging financial considerations concerns because of four unsatisfied delinquent accounts totaling \$37,626.59.

As of April 2005, Applicant's net monthly income was \$3,030. With payments totaling \$901 on debts #1, #3, #4, #5, #6, and #7, and expenses of \$2,980, including \$400 in rent paid to her parents, \$286 to store furniture and other belongings, and \$400 in unspecified miscellaneous costs, Applicant had about \$50 in monthly discretionary funds. She feels in control of her finances now and intends to satisfy her outstanding debt. Applicant has received no financial counseling.

Applicant has met or exceeded her employer's expectations, with her work performance improving as she gained experience. In September 2002, she was promoted to the position of senior engineer because of the high quality of her work and lower level of management oversight required in relation to her peers. In her first year as a senior engineer, Applicant routinely met her commitments. Over her most recent ratings period (March 2004 to March 2005), Applicant exceeded the job requirements and earned a performance award. She was considered the top performer among her peers. Throughout her tenure at the company, Applicant has actively supported and ensured compliance with company security procedures.

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.

Concerning the evidence as a whole, the following adjudicative guideline is pertinent to this case:

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. (¶ E2.A6.1.1.)

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of the Applicant, I conclude the government established its case with respect to Guideline F, as follows:

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 her 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. In college and especially after she began working for the defense contractor in July 1997, Applicant relied heavily on consumer credit. She bought furniture and took vacations on credit. In September 1997, she financed the purchase of a \$21,033 motorcycle loan with her then boyfriend. With her wages being garnished to pay a \$13,707 judgment starting in May 2001, Applicant borrowed from one creditor to pay another. In April 2003, Applicant had an estimated \$45,000 in consumer credit debt delinquent more than 180 days. Disqualifying conditions E2.A6.1.2.1. *A history of not meeting financial obligations*, and E2.A6.1.2.3. *Inability or unwillingness to satisfy debts*, apply.

Financial problems may be mitigated where they were caused by circumstances beyond a person's control (*see* 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's automobile accident and the resulting financial judgment obligation were not foreseeable, and her ability to repay her sizeable consumer credit debt was compromised by the garnishment of her wages to collect the car rental company judgment. However, MC E2.A6.1.3.3. does not apply where the consumer credit card debt was incurred due primarily to financial mismanagement. After being threatened with court action, Applicant began repaying debt #5 in 2002. With her wages subject to garnishment until September 2003, and monthly debt obligations of \$422.10 for the motorcycle and \$127.47 on debt #5, she lacked the means to address her other debts.

In her favor, Applicant has taken some steps to resolve her debts since December 2003 (*see* MC E2.A6.1.3.6. *The individual initiated a good-faith effort to repay overdue creditor or otherwise resolve debts*). She satisfied the utility debt owed since June 2001. She began making monthly payments of \$100 on debt #1, \$143 on debt #6, and \$296 on her student loan debt. In May 2004, Applicant started making \$132 payments monthly on debt #4. Since August 2004, she has made six payments on debt #3. By April 2005, she has managed to reduce the balance of debt #5 from \$5,304 to \$510, of debt #6 from \$3,438 to \$2,922 (rated current), of debt #7 (her student loans) from \$21,354 to \$19,576, of debt #1 from \$16,824.59 to \$15,624.59. Yet, she had not started paying on debt #2 and even the aforesaid payments had failed to reduce the balances of debts #3 and #4 due to interest charges.

While Applicant's demonstrated track record of monthly payments is evidence of her good faith, and she has incurred no new credit card delinquency, it is too soon to conclude that her financial problems are resolved. As of April 2005, the outstanding balances of the delinquent credit cards alone amounted to approximately \$37,000. With annual take home pay of about \$36,360, she lacks the financial means to satisfy her delinquent consumer debt in the near future. Even with rent expenses of only \$400, she has a reported margin of only \$50 each month after payment on her debts and expenses, including \$400 per month in miscellaneous costs. She deserves credit for her efforts to rectify her financial situation, but it is not enough to meet her heavy burden of overcoming the security concerns raised by her very serious financial irresponsibility. SOR

subparagraphs 1.a., 1.b., 1.c., and 1.d. are resolved against her.

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

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. Applicant told a DSS agent in July 2003 the wage garnishment started in May 2001 and was initially for \$300 to \$400. At her request, the garnishment was dropped to \$175 every two weeks. (Ex. 5) The wage execution order issued March 2001 indicates \$25 as the amount of weekly

