

KEYWORD: Financial

DIGEST: Applicant is a 31-year-old corporate real estate planner and worked for defense contractors in the past. Between 1999 and 2001, she was unemployed on three different occasions. The longest period of unemployment lasted five months; she was not eligible for unemployment benefits because she quit her job and moved to a different city so she could live rent-free with relatives. During the periods when she was unemployed, she paid for what she considered to be the basics (car, food, utilities, mortgage, and condo fees). Once she paid her basic expenses, she did not have enough income left over to pay her credit card debts. Living with relatives, she was able to eventually pay off all of her debts. Applicant has successfully mitigated the security concerns regarding Guideline F, financial considerations. Clearance is granted.

CASENO: 03-26475.h1

DATE: 01/30/2006

DATE: January 30, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-26475

**DECISION OF ADMINISTRATIVE JUDGE**

**JACQUELINE T. WILLIAMS**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 31-year-old corporate real estate planner and worked for defense contractors in the past. Between 1999 and 2001, she was unemployed on three different occasions. The longest period of unemployment lasted five months; she was not eligible for unemployment benefits because she quit her job and moved to a different city so she could live rent-free with relatives. During the periods when she was unemployed, she paid for what she considered to be the basics (car, food, utilities, mortgage, and condo fees). Once she paid her basic expenses, she did not have enough income left over to pay her credit card debts. Living with relatives, she was able to eventually pay off all of her debts. Applicant has successfully mitigated the security concerns regarding Guideline F, financial considerations. 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 under Executive Order 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 (the Directive). On March 31, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: financial considerations under Guideline F. Applicant answered the SOR on April 7, 2005 and requested a hearing before an administrative judge.

This case was assigned to me on July 7, 2005. The Notice of Hearing was issued on July 11, 2005. On July 12, 2005, Applicant signed a waiver of the 15-day notice period.<sup>(1)</sup> With the concurrence of the parties, I conducted the hearing on July 21, 2005. The government presented five exhibits (Exs. 1-5). Applicant presented two exhibits (Exs. A and B) and Applicant's testimony. DOHA received the transcript (Tr.) on August 5, 2005.

**FINDINGS OF FACT**

Applicant admitted the allegations stated in ¶¶ 1.a, and 1.c through 1.f of the SOR. She denied the factual allegations in ¶ 1.b of the SOR. Those admissions are incorporated herein. After a complete and thorough review of the record evidence as a whole, I make the following additional

findings of fact:

Applicant is a 31-year-old female who is now working in a corporate real estate office and was recently promoted to a position as a corporate real estate planner.<sup>(2)</sup> Her annual salary is about \$57,000.<sup>(3)</sup>

In February 1999, she was laid off from her job and was unemployed for about two months. Her salary at that time was \$36,000.<sup>(4)</sup> Initially, she was denied unemployment insurance. After appealing the denial, she was awarded back pay for two months.<sup>(5)</sup> She was living in a condo that she owned at the time she was unemployed. During her two-month period of unemployment, she fell behind in her bills and only paid the basic ones (i.e., car, food, utilities, mortgages, and cond fees).<sup>(6)</sup>

After nearly two months of unemployment, she was employed with a temporary agency; she was placed in a position in a bank, where she later was employed full time at a salary of \$29,000.<sup>(7)</sup> In October 2000, she was laid off again. This time, she was unemployed for a month. In September 2001, she decided she was disappointed with her financial situation and her new job; she quit her job that paid only \$24,500 and decided to move closer to relatives.

After moving, she was unemployed for five months. She moved in with her grandparents and lived rent-free for approximately two years. During this period, she became delinquent on her mortgage for the condo in another state. However, she was able to work out a payment plan with her mortgagor to get her mortgage payments back on track.<sup>(8)</sup>

She was about to lose her car because she could not afford the car payments; however, she borrowed money from her grandparents and paid off the balance of the car. She now repays her grandparents \$400 per month for the car until the balance is paid off.<sup>(9)</sup>

On July 30, 2002, Applicant signed a Security Clearance Application (SF 86). She worked for a federal contractor at the time she completed the SF 86. In the SF 86, she indicated having several outstanding debts. On November 6, 2003, Applicant was interviewed by security investigators about her financial situation.<sup>(10)</sup> She provided a sworn statement and a personal financial statement.

Six debts were listed in the SOR as delinquent. During the hearing, the government indicated that this case involves five delinquent debts totaling approximately \$18,087. The government acknowledged that allegations ¶ 1.a and 1.f are the same debt.<sup>(11)</sup> She offered evidence at the hearing that the debt in ¶ 1.a was paid on February 16, 2005.<sup>(12)</sup> The allegations in ¶ 1.b were denied because this was an error on her credit report; the evidence offered supports this contention.<sup>(13)</sup>

At the present time, the other delinquent debts listed in the SOR have been paid either in full or in settlement of the matter. Applicant has settled

other matters with creditors for a portion of what she owed; these debts were not part of the SOR and have all been paid off.<sup>(14)</sup> Applicant is current on her other bills since paying off her delinquent debts.

Since August 1997, Applicant has owned a condo in another state that has gained equity over the years.<sup>(15)</sup> In the past she received rental income on this property of about \$650 per month. At one point in time her mother and sister lived in the condo but because of their unstable finances, they lived rent-free for approximately seven months.<sup>(16)</sup> Currently, she is receiving rental income.<sup>(17)</sup> She is hopeful that this condo will eventually become her retirement home.

## **POLICIES**

Each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, and the whole-person concept, along with the factors listed in the Directive. Specifically, these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation, and (6) the probability that the circumstances or conduct will continue or recur in the future.<sup>(18)</sup> Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(19)</sup> The government has the burden of proving controverted facts.<sup>(20)</sup> The burden of proof in a security clearance case is less than a preponderance of the evidence.<sup>(21)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.<sup>(22)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(23)</sup>

No one has a right to a security clearance<sup>(24)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(25)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(26)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(27)</sup> 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.

Based upon consideration of all the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F - Financial Considerations: a security concern exists when a person has significant delinquent debts. 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 would mitigate security concerns pertaining to the adjudicative guidelines, are set forth and discussed in the conclusions below.

### CONCLUSIONS

Upon consideration of all the facts in evidence, 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.

Based on all the evidence as a whole, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*a history of not meeting financial obligations*) and FC DC E2.A6.1.3.1 (*inability or unwillingness to pay debts*) apply in this case. Applicant accumulated significant delinquent debt due to several periods of unemployment, including the time when she quit her job, moved to another state, and as a result was unemployed for approximately five months. Applicant's debts were mismanaged and out of control initially but with advice from her grandparents, she was able to get back on track and pay off her delinquent debts. Applicant settled some accounts rather than paying the balance owed. When she did settle accounts, it was at the amount directed and negotiated by the creditor. Some accounts could not be settled and she paid them in full. The bottom line here is that Applicant successfully paid off her debts and did not run away from that responsibility.

I considered all the Financial Considerations Mitigating Conditions (FC MC) and specifically considered 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)*). I conclude that it applies in this case. Applicant was unemployed at least three times between 1999 and 2001. While she was unemployed, her debts started to accumulate and became delinquent due to her lack of funds to make payments. To pay her expenses, she chose to move to another state to live with her grandparents rent-free and get on track toward financial responsibility. I conclude also that FC MC E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies in this case. In spite of the amount of debt she incurred, over \$18,000, Applicant was able to pay off her debts. She actually paid some of them before she received the SOR. Appellant was determined to get her credit back in good shape and I commend her for doing so. She also is a property owner and receives rental income. Her demeanor at the hearing indicated that she has matured since her financial downward spiral and that she is receiving good advice about budgeting and saving. She has been given a new opportunity to start over again unburdened by financial delinquencies. She is timely in making payments on her current bills.

I considered all the evidence in this case. I also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. Applicant is a mature individual who once encountered financial difficulties, including the inability to timely pay her delinquent debts. She encountered a few periods of unemployment, and with financial assistance from her grandparents, and a desire to get her finances under control, she was able to recover financially. Her grandfather appears to be mentoring her regarding her finances. She has a rental property from which she receives a monthly income. She has started to take vacations, saves money, rents her own apartment, and receives rental income from a condo she owns. With a clean financial slate since her delinquent debts are paid, she currently pays her other bills on time. I am persuaded by the totality of the evidence in this case that Applicant has mitigated the security concerns caused by her financial considerations. Accordingly, Guideline F, pertaining to financial considerations, is decided for Applicant

## **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, Financial Considerations (Guideline F): FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

## **DECISION**

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

Jacqueline T. Williams

Administrative Judge

1. Tr. 6; Ex. 5, Waiver of Notice and Agreed Upon Hearing Date, dated July 11, 2005. The waiver letter contains a typo by stating that the hearing date is March 3, 2004; the body of the waiver letter has the correct hearing date, July 21, 2005.

2. Tr. 17.
3. *Id.* at 18.
4. Ex. 2, Sworn Statement of Subject, dated November 6, 2003, at 2; Tr. 19.
5. Tr. 19.
6. Ex. 2, *supra* note 4, at 2.
7. *Id.* at 2.
8. *Id.* at 2.
9. *Id.* at 2.
10. Ex. 2, *supra* note 4.
11. Tr. 8.
12. Attachment 1a to Answer (WFNNB, receipt stating zero balance, dated March 25, 2005), at 4.
13. Attachment 1b to Answer (letter requesting that two items be deleted from the credit bureau reports, dated January 6, 2005).
14. Tr. 30-32.
15. *Id.* at 21.
16. *Id.*
17. *Id.*
18. Directive, Enclosure 2, ¶ E2.2.1.
19. ISCR Case No. 96-0277 (July 11, 1997) at 2.
20. ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
21. *Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988).
22. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
23. ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
24. *Egan*, *supra* note 21, at 531.
25. *Id.*
26. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
27. Executive Order 10865 § 7.