

KEYWORD: Financial

DIGEST: Applicant failed to present sufficient information to explain, extenuate, or mitigate the security concern arising from her history of not meeting financial obligations and inability to satisfy debts. Clearance is denied.

CASE NO: 04-03295.h1

DATE: 06/09/2006

DATE: June 9, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-03295

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL H. LEONARD**

**APPEARANCES**

**FOR GOVERNMENT**

Robert E. Coacher, Esq., Department Counsel

**FOR APPLICANT**

## **SYNOPSIS**

Applicant failed to present sufficient information to explain, extenuate, or mitigate the security concern arising from her history of not meeting financial obligations and inability to satisfy debts. Clearance is denied.

## **STATEMENT OF THE CASE**

This case arose when the Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On May 3, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleged a security concern under Guideline F for financial considerations. On July 15, 2005, DOHA received Applicant's initial reply to SOR. Because it was unresponsive to the SOR, Applicant was asked to submit another reply. DOHA received Applicant's second reply September 29, 2005, and she requested a hearing. The case was assigned to me January 23, 2006. A notice of hearing was issued scheduling the hearing for March 1, 2006. Applicant appeared with counsel and the hearing took place as scheduled. DOHA received the transcript March 7, 2006.

## **RULINGS ON PROCEDURE**

At the start of the hearing, it was discovered that some of the agency's administrative documents were mistakenly placed in the pleadings case file. Without objections from either party, the documents were collectively marked as Appellate Exhibit I and made part of the record, although the documents will not be considered on the merits of Applicant's case (R. 10-12).

Toward the end of the hearing, I questioned Applicant's counsel about the statute of limitations in that state for collection of a debt. On my own motion, I indicated I would take administrative notice of the relevant statute and neither party had any objections. After further consideration of the matter, I have decided not to do so, because it will make no

difference in deciding the case.

## FINDINGS OF FACT

In her second reply to the SOR, Applicant admitted all the factual allegations except for subparagraphs 1.z and 1.aa. Concerning 1.z, she indicated she now owed a lesser amount, and for 1.aa she indicated the debt was now paid. Her admissions and explanations are incorporated herein as findings of fact. In addition, after considering the record evidence as a whole, I make the following findings of fact.

Applicant is a 47-year-old married woman who requires a security clearance for her employment as a driver. Along with her husband, they own and operate their own semi-truck. They work as independent contractors for a transportation company, which subcontracts government loads to them. Operating as a two-person team, Applicant and her husband have been hauling such loads since about December 2000.

Applicant has a history of not meeting her financial obligations (Exhibits 4 and 5), which she does not dispute. The SOR concerns 28 delinquent accounts for a total of about \$18,000. The vast majority of the debts are medical accounts in a collection status. The other accounts appear to be: (1) a \$7,411 charged off bad debt for a trailer house (subparagraph 1.a); (2) a \$350 collection account for telephone services (subparagraph 1.n); (3) a \$3,450 past due account for telephone services that Applicant says is now paid down to \$950 (subparagraph 1.z); (4) a \$122 past due account for electrical services that Applicant says is now paid off (subparagraph 1.aa); (5) and a \$350 past due account for gas services (subparagraph 1.bb). None of the accounts in the SOR are related to consumer credit card debt, as Applicant does not have credit cards.

Applicant addressed each account during her testimony. She said many of the accounts have been paid down from a higher amount. She did not present any paperwork to document either proof-of-payment or the status of the accounts. Likewise, she did not present any paperwork to document her overall financial condition. Her intent is to pay her debts as best she can as soon as she can.

Applicant is a diabetic. As a result, she has not had health insurance and she is unable to obtain it. The lack of health insurance explains, in part, the numerous medical bills in collection. Also, her diabetes has limited her ability to work, because she must hold a commercial driver's license to drive. For example, her license was recently suspended for about three months due to an unacceptable diabetic condition.

Applicant had five children, four of whom are now adults. The fifth child passed away in 1986 shortly before his eighth birthday. This child was born premature and suffered brain damage. From his birth until his death, the care of this child generated medical expenses that Applicant and her husband were unable to pay. At one point, the government paid off a large amount of the debts.

Of her four adult children, Applicant and her husband are still supporting a 23-year-old son. He has a learning disability, and he was a special education student while in school. He has not held a job since finishing school, and that situation is unlikely to change.

Also, Applicant has provided a large amount of financial assistance to help care for a grandchild. The child's mother, Applicant's daughter, is unfit to raise the child due to her use of crystal meth. Applicant's son and daughter-in-law are raising the child, along with their own children. Applicant has provided as much as \$2,000 monthly to help with her grandchild.

Because Applicant and her husband are often on the road, they live with Applicant's mother-in-law when they are home. Applicant gives her mother-in-law about \$500 monthly for living expenses.

Applicant and her husband have finished their truck payments and now own it. They are making monthly installment payments for an engine as well as student loans. Due to her recent license suspension, she indicated that she did not have any money in the bank (R. 69).

## **POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty. <sup>(2)</sup> Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting a clearance.

## BURDEN OF PROOF

The only 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>(3)</sup> There is no presumption in favor of granting or continuing access to classified information.<sup>(4)</sup> The government has the burden of presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted.<sup>(5)</sup> An applicant is responsible for presenting witnesses and other evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>(6)</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(7)</sup>

As noted by the Supreme Court in *Department of Navy v. Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(8)</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

## CONCLUSIONS

Under Guideline F,<sup>(9)</sup> a security concern typically exists for two different types of situations--significant unpaid debts or unexplained affluence. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Some people encounter financial problems through no fault of their own. For others, financial problems appear to be part of a general tendency toward irresponsibility that is a security concern.

Here, based on the record evidence as a whole, the government established its case under Guideline F. The available information demonstrates a history of not meeting financial obligations as well as inability to pay one's just debts.<sup>(10)</sup> These matters, taken together, raise a security concern under the guideline. The nexus or connection between Applicant's financial condition and holding a security clearance is fairly obvious given the sensitive nature of the loads that Applicant is responsible for hauling and safeguarding.

I reviewed the six mitigating conditions under the guideline, and I conclude that Applicant has not made a good-faith effort<sup>(11)</sup> to repay or otherwise resolve her financial problems. To be sure Applicant has had a difficult life at times,<sup>(12)</sup>

and these matters are circumstances beyond her control. But her current situation is precarious; her financial problems are unresolved and ongoing. Further complicating matters is the lack of documentary information about her various accounts and her overall financial condition. Typically, financial transactions generate financial records. The lack of financial records here makes it quite difficult to get a true and accurate picture of Applicant's financial condition. In other words, she has failed to present sufficient information to explain, extenuate, or mitigate the security concern arising from her history of not meeting financial obligations and inability to satisfy debts. Although she appears to be a hardworking and loyal American who is trying her best under difficult circumstances, at this point it is too soon to tell if she will be able to put her financial house in order. Accordingly, Guideline F is decided against Applicant.

To conclude, Applicant has not met her ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have considered the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

SOR ¶ 1-Guideline F: Against Applicant

Subparagraphs a-bb: Against 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.

Michael H. Leonard

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Executive Order 10865, § 7.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
5. Directive, Enclosure 3, Item E3.1.14.
6. Directive, Enclosure 3, Item E3.1.15.
7. Directive, Enclosure 3, Item E3.1.15.
8. 484 U.S. at 528, 531 (1988).
9. Directive, Enclosure 2, Attachment 6.
10. E2.A6.1.2.1. A history of not meeting financial obligations; and E2.A6.1.2. 3. Inability or unwillingness to satisfy debts.
11. E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.
12. 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).