

KEYWORD: Financial

DIGEST: Applicant has delinquent accounts, including two judgments that were entered against her, and others that were submitted for collection or charged off as bad debts. She entered into a repayment program in September 2004, through a credit counseling service, to satisfy many of the accounts, and has made payments on all but one of the other accounts. Applicant has mitigated the financial considerations security concern that existed in this case. Clearance is granted.

CASENO: 04-03648.h1

DATE: 12/08/2005

DATE: December 8, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-03648

**DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has delinquent accounts, including two judgments that were entered against her, and others that were submitted for collection or charged off as bad debts. She entered into a repayment program in September 2004, through a credit counseling service, to satisfy many of the accounts, and has made payments on all but one of the other accounts. Applicant has mitigated the financial considerations security concern that existed in this case. Clearance is granted.

**STATEMENT OF THE CASE**

On April 13, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. <sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline F, financial considerations. Applicant submitted a sworn answer to the SOR, dated May 24, 2005, requested a hearing, and admitted all SOR allegations.

The case was assigned to me on July 7, 2005. A notice of hearing was issued on July 27, 2005, scheduling the hearing for August 18, 2005. The hearing was conducted as scheduled. The government submitted seven documentary exhibits that were marked as Government Exhibits (GE) 1-7, and admitted into the record without objection. Applicant testified and submitted six documentary exhibits that were marked as Applicant's Exhibits (AE) 1-6, and admitted into the record without objection. The transcript was received on August 25, 2005.

## FINDINGS OF FACT

Applicant's admissions to the allegations contained in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 34 years old, and has been working for a government contractor as a computer operator since March 2003. She graduated high school in 1989, and was employed in a grocery store from August 1989 until April 2003, (2) the last five years as a customer service manager. She has been married since August 1996, and has two daughters, ages fourteen and eight. Her husband is a factory worker. He has one child from a former relationship who lives with her mother.

The SOR lists four collection accounts, totaling about \$2,770, two judgments, totaling about \$2,590.00, one charged off account in the amount of \$1,695.00, a repossessed mobile home with a \$3,564.00 deficiency owing after resale, and delinquent state taxes for the years 2000 through 2002 in the approximate amount of \$1,690.00.

Applicant purchased the mobile home with the plan of living in it for a while and then selling it and purchasing a home. However, when she tried to sell the mobile home she discovered it had depreciated in value and decided to allow it to be repossessed by the finance company. The move from the mobile home also resulted in a judgment in the amount of \$631.00 being entered against her for the last month's rent due the mobile home park.

The second judgment entered against Applicant resulted from the purchase of an automobile. She gave the dealer a partial down payment on the car and a check for the balance due. The dealer agreed to hold the check until she received an income tax refund that she anticipated would be sufficient to cover the check. The refund was inadequate, and a judgment in the amount of \$1,962.71 was entered against her.

The collection account listed in SOR subparagraph 1.a. in the amount of \$332.00 is for a cable box that the company claims was not returned. Applicant and her mother assert the mother returned the box and obtained a receipt which she cannot find. The remaining accounts, except for the state taxes, are for non payment of credit cards, telephone bills, and medical provider co-pays.

Applicant contracted with a debt counseling service to arrange for repayment of her delinquent accounts in August 2004. She was initially making a \$225.00 per month payment to the service that was then being divided up and sent to all creditors listed in the SOR, except the state for past due taxes and the two judgment holders. Her payment to the service was scheduled to be increased in September 2005 to \$285.00 per month.

Applicant made payments on the judgment owing to the auto dealer in 2000 and 2001 that reduced the balance owing to \$1,397.00. An approximate \$700.00 federal income tax refund was applied to her delinquent state taxes, she anticipates an additional refund being applied to those taxes and then intends to arrange a repayment schedule to satisfy whatever remains owing. She has not made any payment on the judgment for the mobile home lot rental yet because of her efforts to repay the other creditors and her husband being injured at work, but she intends to do so in the near future.

Applicant attributes her financial problems to two periods of unemployment experienced by her husband around 1999 and 2000, her husband's 2004 work related injury that resulted in reduced income and some medical expenses, and the need to take her sister and nieces into her home on separate occasions around 1999 and 2000. Her current net income is between \$2,200.00 and \$2,400.00 a month, and her husband's net income is about \$750.00 every two weeks. Her estimated expenses are within a few dollars, give or take, of the family net income.

## **POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon 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. 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. Considering the evidence as a whole, Guideline

F, pertaining to financial considerations, with its respective DC and MC, is most relevant in this case.

## **BURDEN OF PROOF**

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>(3)</sup> The government has the burden of proving controverted facts.<sup>(4)</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence<sup>(5)</sup>, although the government is required to present substantial evidence to meet its burden of proof.<sup>(6)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(7)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>(8)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(9)</sup>

No one has a right to a security clearance<sup>(10)</sup> and "the clearly consistent standard indicates that

security clearance determinations should err, if they must, on the side of denials."<sup>(11)</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>(12)</sup>

## **CONCLUSIONS**

Under Guideline F, a security concern exists when a person has significant unpaid debts. 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, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

The government has established its case under Guideline F. Applicant acquired delinquent accounts that resulted in tax and repossession deficiencies, judgments being entered against her, and accounts being either charged off as bad debts or submitted for collection. Disqualifying Conditions (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts* apply.

To her credit, Applicant sought the assistance of a debt counseling service and entered into a repayment plan with every creditor the plan could deal with almost eight months before the SOR was issued. She has made consistent payments through automatic deductions from her checking account, and has reduced the amount she owes those creditors from more than \$8,000.00 to less than \$6,000.00. She has made payments to the auto dealer and reduced the amount owing on that account from \$1,962.00 to \$1,397.00. She has reduced the amount of her \$1,695.00 delinquent tax liability by \$700.00, and plans on paying the balance in due course.

Although Applicant still has one judgment that she has not done anything to satisfy, she credibly explained why she had not made any payment and averred that she would satisfy that judgment in the near future. Her efforts to deal with her delinquent accounts and put her financial affairs in order entitle her to full application of Mitigating Conditions (MC) 4: *The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*; and MC 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debt*. Additionally, Applicant's husband's periods of unemployment and his work related injury entitled her to consideration under MC 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 unquestionably made some unwise financial decisions such as allowing the mobile home to be repossessed and purchasing an automobile based upon an unwarranted expectation that adequate funds for the down payment would be forthcoming. She also allowed those and other accounts to remain delinquent for a number of years. However, within a reasonable amount of time after she acquired a higher paying job and her husband returned to full-time employment following his work injury she contracted with the debt counseling service and began to resolve the bulk of her indebtedness. Although some delinquent debts remain, Applicant has demonstrated that she is well on her way to resuming a financially responsible lifestyle.

Considering all relevant and material facts and circumstances present in this case, including the circumstances Applicant attributes as contributing to her becoming severely delinquent on various accounts, the recent actions she has taken to return her finances to order, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has mitigated this security concern. She has overcome the case against her and satisfied her ultimate burden of persuasion. Guideline F is decided for Applicant.

## **FORMAL FINDINGS**

SOR ¶ 1-Guideline F: For Applicant

Subparagraphs a-k: For Applicant

## **DECISION**

In light of all 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.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. She attempted to continue working part-time after being hired by her present employer but found she could not take care of the personal needs of her family and work two jobs.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15

10. *Egan*, 484 U.S. at 528, 531.

11. *Id* at 531.

12. *Egan*, Executive Order 10865, and the Directive.