

KEYWORD: Financial

DIGEST: Applicant mitigated security concerns arising from her failure to resolve delinquent debts by paying the majority of her debts. She has a good-faith plan to resolve the two remaining unpaid debts. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from her debts. Clearance is granted.

CASENO: 04-04475.h1

DATE: 08/29/2005

DATE: August 29, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04475

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns arising from her failure to resolve delinquent debts by paying the majority of her debts. She has a good-faith plan to resolve the two remaining unpaid debts. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from her debts. Clearance is granted.

STATEMENT OF THE CASE

On October 15, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding ⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Security concerns were raised under to Guideline F (Financial Considerations). DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On November 11, 2004, Applicant answered the SOR and requested a hearing. On January 10, 2005, I was assigned the case. On March 11, 2005, a Notice of Hearing was issued scheduling the hearing which was held on March 28, 2005. The record was kept open to allow Applicant to submit additional documents. Several documents were received and admitted into the record. On April 7, 2005, DOHA received a copy of the transcript (Tr.).

FINDINGS OF FACT

In her response to the SOR, Applicant admitted six of the debts and denied the rest. These admissions are incorporated herein as findings of fact. After a thorough review of the entire record, I make the following additional findings of fact:

Applicant is 29 years old, has worked in quality control for a defense contractor since August 2002, and is seeking a security clearance. Her supervisor and a coworker indicate Applicant is honest, loyal, reliable, and dependable. Her outstanding work has resulted in her receiving four merit pay increases.

In June 1998, Applicant was married. Shortly thereafter, her husband was unemployed for a month and a half. His previous job was a loan officer at a mortgage company making \$45,000 per year. His new job paid \$25,000. Applicant was a full-time student and had no income. However, while in college, Applicant had a trust fund which she used to pay for rent and food. They also used credit cards to pay their living expenses. No longer having the income to pay their credit card debt, they stopped making payments and let the accounts be charged off. In May 2002, she graduated from college. Three months later, in August 2002, she got her current job and began repaying some of the old debt.

Payment from the trust fund ended shortly after her graduation from college. In February 2004, Applicant stated she had anticipated within the next two months receiving a \$10,000 to \$15,000 payment from the trust fund. She intended to use the funds to pay off her debt, which she did. As of February 2004, Applicant's yearly income was \$48,600 and her husband's was \$44,400. As of November 2004, Applicant and her husband's joint net monthly income was \$5,852.90. Their net remainder, after expenses, was \$447. At the time of hearing, Applicant's yearly income was approximately \$55,000. (Tr. 34)

The SOR listed 12 past due or delinquent accounts. A summary of those accounts follows:

		Creditor	Amount	Current Status
1	a	jewelry store debt	\$1,208	Paid in July 2004. Credit report shows paid with zero balance.
2	b	collection account for a telephone debt	\$189	Applicant asserts it is not her debt.
3	c	department store debt	\$3,232	Settled for \$1,454 and paid. See App Exs J and K.
4	d	collection agency for jewelry store debt	\$1,937	Paid. Same debt as debt a.
5	e	bad debt	\$378	Paid in March 2005. See App Exs O and P.
6	f	electronics store bill	\$1,772	This was settled for \$850 and paid in June 2004.
7	g	credit card debt	\$3,293	Plans to settle in the future. This debt was transferred to a collection firm. This is same debt as debt i.
8	h	credit card debt	\$2,530	Settled and Paid in June 2004.
9	i	collection agency for a credit card debt	\$6,771	Plans to settle in the future. This is same debt as g.
10	j	collection agency	\$3,394	Same debt as h. Debt has been settled and paid.
11	k	collection agency for a credit card debt	\$11,575	Plans to settle in the future.

12	1	collection agency for a telephone company	\$746	Paid. She made a payment in September and the balance was paid in March 2005. See App Ex L.
		Total debt listed in SOR	\$37,025	

In November 2003, Applicant obtained a federal consolidation loan for her two student loans: one was for \$21,794 and the other was \$20,868. (App Ex M) Applicant asserted a \$189 collection agency debt (SOR 1.b) was not hers. She challenged the debt and it was removed from her current credit reports. (App Exs H and I)

Applicant has two unpaid debts. A \$3,293 credit card bad debt (SOR 1.g) was transferred to a collection agency (SOR 1.i). Applicant's March 2005 credit report (App Ex I) indicated the current debt is \$7,389. She has a second credit card debt (SOR 1.k) of \$11,575.

In November 2004, Applicant established bi-weekly transfers of \$150 from her checking account to her savings account. As of March 2005, she had made nine transfers (App Ex N). The balance in that account was not shown. Once her savings account is of sufficient size, she will contact her creditors to attempt to reach settlement. If settlement is reached, she will use the funds in her saving account to pay her debts. She also intends to use income tax refunds to address her past due accounts. Something she has done in the past to pay her debts. She has successfully employed this method in settling debts in the past. She indicated creditors are often willing to forgo interest, late fees, penalties and other charges in reaching settlement. (Tr. 36)

Applicant has approximately \$3,000 in savings and \$10,00 in her 401(k) retirement portfolio. Applicant has one private credit card with a \$300 limit, on which her payments are current. She also has one company credit card used for travel expenses, which is also current.

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each 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 Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guideline to be applied here is Guideline F (financial considerations).

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. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. [\(2\)](#)

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information to be resolved in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. Under Guideline F, an Applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive E.2.A.6.1.1.

The Government has satisfied its initial burden of proof under Guideline F (Financial Considerations). The SOR alleged Applicant owed 12 creditors approximately \$37,000 for bad debts or accounts placed for collection. Disqualifying

Conditions (DC) 1 (E2.A6.1.2.1. *A history of not meeting financial obligations*) and 3 (E2.A6.1.2.3. *Inability or unwillingness to satisfy debts*) apply.

Applicant has settled and paid eight of the debts addressing approximately \$15,000 of the \$37,000 in question. Applicant challenged a \$189 debt (SOR 1.b) and it has been deleted from her credit reports. I find for Applicant as to these nine debts.

Applicant's financial difficulties were contributed to by factors beyond her control. While in college, her husband was unemployed for six weeks and his new job paid substantially less than his prior job. MC3. (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)*) applies.

Applicant has two unpaid debts remaining. These debts (SOR 1.i and SOR 1.k) total approximately \$19,000. The credit card bill started as a \$3,293 bad debt. The debt is now with a credit collection agency and the amount owed has increased to \$7,389. The second debt (SOR 1.k) is a \$11,575 credit card debt. Applicant intends to pay these two debts as soon as possible. She intends to employ a method to address her remaining debts, which has been successful for her in the past. She intends to save enough money and discuss a settlement with each creditor. Starting in November 2004, Applicant established bi-weekly transfers of \$150 from her checking account to her savings account and has made nine transfers to the account.

Since she has already addressed eight of her debts totaling in excess of \$15,000, it is likely she will continue to pay her overdue obligations. Because she is making bi-weekly contributions, because this method has helped her to pay past due debts, and because of her past history of paying overdue obligations, I find this to be a good-faith effort to repay overdue creditors. Mitigating Condition (MC) 6 (E2.A6.1.3.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies to these two remaining unpaid debts. I find for Applicant as to financial considerations.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

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

Paragraph 1, Financial Considerations: 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

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: For Applicant

Subparagraph 1.l: 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.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended.

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