

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is 29 years old and has been an "office worker" for a federal contractor since 2001. Applicant has approximately \$19,000 in delinquent debt that she has been unwilling and unable to resolve. Applicant deliberately failed to list her delinquent debts and repossession on her security clearance application. Applicant failed to mitigate the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. Clearance is denied.

CASENO: 04-05084.h1

DATE: 12/30/2005

DATE: December 30, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-05084

**DECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 29 years old and has been an "office worker" for a federal contractor since 2001. Applicant has approximately \$19,000 in delinquent debt that she has been unwilling and unable to resolve. Applicant deliberately failed to list her delinquent debts and repossession on her security clearance application. Applicant failed to mitigate the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. Clearance is denied.

**STATEMENT OF CASE**

On June 24, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. <sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F, financial considerations, and Guideline E, personal conduct concerns.

In a sworn statement dated July 24, 2005, Applicant responded to the SOR allegations. In her response to the SOR allegations, Applicant admitted allegations 1.a.,1.b.,1.c., 1.e.,1.f., 1.g.,1.h. and 1.i. and denied allegations 1.d.,1.j., and 1.k. under Guideline F. She denied allegations 2.a.,2.b., and 2.c. under Guideline E. Applicant elected to have her case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on August 29, 2005. The FORM was mailed to Applicant on September 1, 2005, and received on September 8, 2005. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object nor did she file any additional evidence to be considered. The case was assigned to me on October 28, 2005.

## FINDINGS OF FACT

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

Applicant is 29 years old and has worked for a federal contractor since 2001, as an "office worker." Applicant is married and has one child.

Applicant admits to over \$18,555.00 in delinquent debts listed in SOR subparagraphs 1.a., 1.b., 1.c., 1.e., 1.f., 1.g., 1.h., and 1.i. Applicant denies the delinquent debts listed in SOR subparagraphs 1.d. (2) and i.k. Applicant stated on February 24, 2004 "I do not dispute these accounts, except for [1.d.] account." (3) She further stated "Most of these debts were accumulated when I was a full time student in school. I have not been able to pay these debts because of trying to pay all of my current debts in a timely manner. It is my intent to contact all of these listed account holders and attempt to satisfy these accounts." (4) Applicant attended college full time from August 1996 to July 1997. (5)

Applicant disputes the delinquent debt of \$108.00 listed in SOR subparagraph 1.d. Applicant claimed in June 30, 2004 that she was attempting to resolve this issue. (6) Applicant provided no other information or documentation to demonstrate she has done anything regarding this debt. Applicant owes \$342.00 for a bad debt. (7) Applicant provided no information or documentation to show she is disputing the debt with the creditor or attempting to resolve it.

Applicant has four debts (8) totaling \$2,800.00 that are in collection status. Applicant claimed in June 30, 2004 that she contacted one creditor (9) to set up a payment plan. Applicant did not provide any information or documentation to demonstrate she has done anything further to resolve this debt. She claimed she was waiting for the paperwork on her debt of \$1,418.00. (10) Applicant did not provide any information, or documentation, or any affirmative action to demonstrate she has done anything further to resolve this debt. Regarding the two other debts in collection, (11) Applicant has not provided any information about what if anything she has done to resolve these.

Applicant has three debts that have been charged off, totaling over \$4,000.00. (12) Applicant claimed in June 30, 2004 that she has not received any paper work back from the collection agency regarding her debt for \$1,840.00. (13) Applicant provided no other information about what if anything she has done since then to resolve this debt or the other two charged off debts.

Applicant owes \$11, 719.00 on a car that she admits was voluntarily repossessed. She claimed she returned the car because it was worth less than the loan she owed on it and she could not "trade it off."<sup>(14)</sup> Applicant provided no information that she is attempting to resolve this delinquent debt.

Applicant filled out her security clearance application (SCA) and answered "No" to Question 35 (*Your Financial Record-Repossessions-In the last 7 years, have you had any property repossessed for any reason?*). Applicant voluntarily had her car repossessed and failed to list it on her SCA.

Applicant answered "No" to Question 38 (*Your Financial Delinquencies-180 Days-In the last 7 years, have you been over 180 days delinquent on any debt(s)*) and Question 39 (*Your Financial Delinquencies-90 Days-Are you currently over 90 days delinquent on any debt(s)?*) Applicant had numerous debts delinquent over 90 and 180 days and failed to list them on her SCA.

Applicant's net monthly income in June 2004 was \$823.00 and her expenses were \$1,162.00.00.<sup>(15)</sup> Applicant is operating at a net loss each month. Applicant did not list any of her delinquent debts in the financial obligations section of her financial statement.<sup>(16)</sup>

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline F, pertaining to financial considerations, and Guideline E, person conduct, with their respective DC and MC, apply in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, 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. 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 determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(17)</sup> The government has the burden of proving controverted

facts.<sup>(18)</sup> The burden of proof is something less than a preponderance of evidence.<sup>(19)</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>(20)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(21)</sup>

No one has a right to a security clearance<sup>(22)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(23)</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>(24)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(25)</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 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.

Guideline E-Personal Conduct is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

## **CONCLUSIONS**

I have carefully considered all the facts in evidence and the legal standards. The government has established a prima facie case for disqualification under Guideline F and Guideline E.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*), apply in this case. Applicant has approximately \$19,000.00 of delinquent debt. Applicant claimed she got behind in her bills when she was attending school full time for a period of one year in 1996-1997. In 2004 Applicant asserted that she would resolve her delinquent debts. Applicant made comments that she was waiting on paperwork or was setting up a payment plan.

I considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC C 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)*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant has not paid her delinquent debts so they are all recent. FC MC E2.A6.1.3.1 does not apply. Applicant claims she got behind financially when she went to school full time. Applicant went to school in 1996-1997 for 12 months. It has been eight years since her schooling ended. Applicant has had sufficient time to resolve some of her debts, but has not. FC MC E2.A6.1.3.3 does not apply. Applicant made comments about contacting a collection agency and waiting for paperwork so she could pay her debts. She failed to show she has done anything more than comment. Applicant merely denies SOR debts 1.d. and 1.k., but provides no information to show she has done anything to contact the creditors and dispute the claims. FC MC E2.A6.1.3.6 does not apply. SOR debts 1.d. and 1.j. are duplicates and therefore I resolved the redundancy in Applicant's favor in SOR 1.j. I find that Applicant's disregard for paying any of her delinquent debts or negotiating payment plans shows she is also unwilling to resolve her debts. Applicant's negative cash flow in her financial statement also makes it unlikely she is able to pay her past debts. I find Applicant has failed to mitigate the security concern regarding Guideline F, financial considerations.

Based on all the evidence, Personal Conduct Disqualifying Condition (PE DC) E2.A5.1.2.2 (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*), and PE DC E2.A5.1.2.4 (*Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*) apply in this case. Applicant falsely answered "No" to questions 35, 38 and 39 on her SCA. Applicant knew her answers were false when she filled out her SCA. She was fully aware that her car had been repossessed and that she had delinquent debts. Applicant's omissions were deliberate. She provided no explanation for her falsification.

I have considered all the mitigating conditions and especially considered Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.2 (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*), PC MC E2.A5.1.3.3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), and PC MC E2.A5.1.3.5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*). Applicant did not provide any information that she voluntarily divulged the above mentioned information. Although she denies she intentionally falsified the information, she failed to provide any explanation as to the reason she gave false statements.

Applicant was fully aware of her debts, because her excuse for not paying was she was in school full time and got behind. Applicant did not provide any information that she has taken any positive steps to eliminate her vulnerability to coercion, exploitation, or duress. I find PC MC E2.A5.1.3.2, PC MC E2.A5.1.3.3, and PC MC E2.A5.1.3.5 do not apply.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I find Applicant has failed to mitigate the security concerns raised by the financial considerations and personal conduct concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F and Guideline E are decided against 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) 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

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. Against the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. For the Applicant

Subparagraph 1.k. Against the Applicant

Paragraph 2 Personal Conduct (Guideline E) AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Subparagraph 2.c. 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.

Carol. G. Ricciardello

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. FORM at *note 2*. SOR subparagraphs 1.d. and 1.j. are the same underlying debt of \$108 and will be considered only under 1.d.
3. Item 4 at 1.
4. *Id.*
5. Item 3 (Security Clearance Application dated August 1, 2002) at Question 5.
6. Item 5.
7. SOR 1.k.
8. SOR 1.f., 1.g., 1.h., 1.i.
9. Item 5; SOR 1.i.
10. *Id.*
11. SOR 1.g. and 1.h.
12. SOR 1.a., 1.b., 1.e.
13. Item 5.
14. *Id.*
15. Item 5 at 4.
16. *Id.*
17. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
18. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
19. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
20. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, ¶ E3.1.15.
21. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15
22. *Egan*, 484 U.S. at 531.
23. *Id.*
24. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
25. Executive Order 10865 § 7.