

KEYWORD: Financial

DIGEST: Applicant owed eight debts totaling approximately \$20,000. She has paid six of the debts and is making monthly payments on the other two. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from Applicant's past finances. Clearance is granted.

CASENO: 04-05275.h1

DATE: 04/07/2005

DATE: April 7, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-05275

**DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

James Norman, Department Counsel

**FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

Applicant owed eight debts totaling approximately \$20,000. She has paid six of the debts and is making monthly payments on the other two. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from Applicant's past finances. Clearance is granted.

## **STATEMENT OF THE CASE**

On September 8, 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 [\(U\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On September 22, 2004, Applicant answered the SOR and requested a hearing. On November 1, 2004, I was assigned the case. On March 14, 2005, I convened a hearing in this matter. On March 22, 2005, DOHA received the transcript (tr.) of the hearing.

The record was kept open to allow Applicant to submit additional documents, which were sent on March 17, 2005. Department Counsel having no objection, the documents were admitted into evidence.

## **FINDINGS OF FACT**

The SOR alleges security significant financial considerations. The Applicant admits she had been indebted on the eight debts. That admission is incorporated herein as findings of fact. After a thorough review of the entire record, I make the following additional findings of fact:

The Applicant is 42 years old, has worked for a defense contractor since January 1989 before being laid off because she did not have a clearance. She is seeking to obtain a security clearance.

Applicant's January 2004 (Gov Ex 3) and September 2004 (Gov Ex 5) credit reports indicate Applicant owed eight debts totaling approximately \$20,000. A summary of those debts follows:

		Creditor	Amount	Current Status
1	a	Car debt	\$ 4,815	Paid. See App Ex D.
2	b	Credit Service related to auto loan	\$ 260	Paid.
3	c	Student loan	\$ 706	Arrangement with creditor paying \$191 per month. Current on payments. See App Ex F.
4	d	Credit card	\$ 463	Paid. See Answer to SOR.
5	e	Lawn mower	\$ 1,604	Arrangement with creditor paying \$50 per month. Current on payments. See App Ex G.
6	f	Medical co payment debt	\$ 145	Paid. Settled for \$94.25. See App Ex I.
7	g	Communication debt	\$ 38	Paid. See App Ex B.
8	h	Involuntary repossession	\$12,000	Paid. Car was redeemed. \$5,028 paid in January 2005. See App Ex C
			\$20,031	Total debt alleged in SOR

Applicant worked for a defense contractor for 15½ years before being laid off because she did not have a clearance. Her yearly income was approximately \$50,000. Applicant's husband has worked for the DoD since 1984 and his yearly income is approximately \$54,000. They purchased their home in 1993. The home is valued at \$265,000 and has a mortgage of \$150,000. Applicant has sought financial counseling and debt consolidation. (App Ex E) Applicant's has had family issues. Her husband is an alcoholic who has recently come to terms with his problem. Her son was an abuser of PCP, who was hospitalized for four days.

Applicant had gotten financially overextended. She indicates she was young, careless, and irresponsible. She had purchased a car for her son and then one for herself. When her husband was not paying his share of the mortgage, Applicant had to choose between making her car payments and paying the mortgage. She chose the mortgage and her car was repossessed. She has since redeemed the repossession and the car is now paid for in full.

Applicant has learned not to over indulge in purchases. She understands the importance of having a good financial status. She understands the impact of debts on her employment.

## **POLICIES**

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they 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. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

### **BURDEN OF PROOF**

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." As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

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, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. 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. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive

Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

## CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, (Financial Considerations). A person's relationship with his 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 Applicant admitted owing eight debts totaling approximately \$20,000. 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 paid six debts. She is current on her \$191 monthly payments on her student loan (SOR 1.c) and current on her \$50 monthly payments for her lawnmower debt (SOR 1.e). Mitigating Conditions (MC) 6 (E2.A6.1.3.6 *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*) applies. Applicant has received financial counseling and her financial problems are under control. MC4. (E2.A6.1.3.4 *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.*) She has more than \$100,000 equity in her home. I find for Applicant as to financial considerations.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the 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 THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the 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 the Applicant. Clearance is granted.

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**Claude R. Heiny**

**Administrative Judge**

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.