

KEYWORD: Financial

DIGEST: Applicant accrued over \$28,000 in delinquent debts in 1996 and 1997 due to overspending and her husband's unexpected unemployment for 11 months in 1997. She and her husband initially tried to resolve their debts through a Chapter 13 bankruptcy petition in December 1997, but the petition was dismissed for non-payment less than one year later. Despite resolving some of her smaller delinquencies, Applicant still owes about \$23,000 and has no plan for paying or otherwise resolving her debts despite now having the financial means to do so. She failed to mitigate the resulting security concerns under Guideline F (financial considerations), and her request for a security clearance is denied.

CASENO: 04-05399.h1

DATE: 11/08/2005

DATE: November 8, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05399

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant accrued over \$28,000 in delinquent debts in 1996 and 1997 due to overspending and her husband's unexpected unemployment for 11 months in 1997. She and her husband initially tried to resolve their debts through a Chapter 13 bankruptcy petition in December 1997, but the petition was dismissed for non-payment less than one year later. Despite resolving some of her smaller delinquencies, Applicant still owes about \$23,000 and has no plan for paying or otherwise resolving her debts despite now having the financial means to do so. She failed to mitigate the resulting security concerns under Guideline F (financial considerations), and her request for a security clearance is denied.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to give Applicant a security clearance. On September 8, 2004, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline F (financial considerations). Applicant timely answered the SOR (Answer), admitted with explanation seven of the 15 allegations therein, and requested a hearing.

The case was assigned to me on July 7, 2005, and I convened a hearing on August 4, 2005. The parties appeared as scheduled and the government presented eight exhibits (GE 1 through 8), which were admitted without objection. Applicant testified in her own behalf and presented the testimony of one witness. I left the record open after the hearing to allow Applicant additional time to submit relevant information in support of her case. Applicant timely submitted a four-page exhibit entered into the record without objection as Applicant's Exhibit (AE) A. DOHA received the transcript (Tr) on August 17, 2005.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 33 years old and employed by a defense contractor in a position for which she needs a security clearance. On August 19, 2003, she submitted a security clearance application (SF 86) to initiate the background investigation needed to assess her suitability for access to classified information. In the SF 86, Applicant disclosed she had various debts greater than 180 days past due, a wage garnishment, a car repossession, and a bankruptcy petition. The ensuing investigation by the Defense Security Service (DSS) produced a credit bureau report in August 2003 that showed Applicant had accrued, since 1993, nearly \$29,000 in unpaid or overdue debts.

Applicant and her husband were married in 1995. They now have three children under 10 years of age. At the time of their marriage, both Applicant and her husband were gainfully employed. They bought a house and began to furnish it; however, they apparently did not stay within their financial means, and they obtained a home equity loan to help pay their credit card bills and other obligations.

In late 1996, Applicant's husband found himself out of work for nearly 11 months. Applicant's \$18,000 annual salary was not sufficient to support the family and meet their mounting credit obligations. As alleged in SOR ¶ 1.a, the couple filed for Chapter 13 bankruptcy protection in December 1997 and began to pay \$700 each month to a wage earners' plan that would resolve their debts in 42 months. Their attorney had recommended they file for Chapter 7 liquidation so they would not have to actually pay the debts. In December 1998, Applicant's bankruptcy petition was dismissed for failure to make payments. Applicant determined from talking with friends and others that she had made a mistake by filing, and that she and her husband could have resolved their debts themselves. She was also concerned the payments were much higher than her attorney had predicted. She decided to stop paying into the plan and pay the debts directly.

Applicant's Chapter 13 bankruptcy action included a motion to abandon their mortgage payments and the house was foreclosed, but the equity line remains an active debt. As alleged in SOR ¶ 1.g, Applicant still owes about \$3,800 on this debt, but has made no payments since ending her bankruptcy action as she thought this second mortgage was resolved when she filed her motion to abandon. Additionally, while Applicant was in bankruptcy protection, her monthly car payments were paid through the bankruptcy trustee. When the Chapter 13 plan ceased, the creditor demanded more in back payments than Applicant could afford and the car was repossessed. As alleged SOR ¶ 1.b, Applicant still owes a \$10,000 deficiency after re-sale.

Applicant then bought a used car for about \$5,000, which was financed through the car dealer. It immediately developed major mechanical problems, which forced Applicant to pay for car repairs rather than making the monthly payments on the car loan. Applicant eventually approached the dealer about resolving the matter, and thought she had reached an agreement whereby the dealer would take back the car and not seek further payment. However, as alleged in SOR ¶ 1.c, the car was involuntarily repossessed and Applicant still owes an unpaid deficiency after re-sale of about \$3,880.

At or about the time the Chapter 13 action was dismissed, in late 1998 or early 1999, Applicant contacted by telephone the creditors that were included in the wage earners' plan to arrange payment. However, the creditors told her they had already charged off the debts as business losses and could not accept payment. In September 2003, Applicant finished paying off a delinquent debt (SOR ¶ 1.f) for the furniture she purchased when she and her husband were first married. After she was interviewed by a Defense Security Service (DSS) agent in January 2004 as part of her background investigation, Applicant paid a utility bill (SOR ¶ 1.d) she was previously unaware of, and a medical bill (SOR ¶ 1.i). Two county property tax bills (SOR ¶¶ 1.j and 1.k) Applicant and her husband did not pay while he was unemployed were satisfied through garnishment of Applicant's wages as a county employee. These paid debts total nearly \$1,700.

Applicant denies she owes the Internal Revenue Service (IRS) \$700 as alleged in SOR ¶ 1.m. It appears the source of this allegation is in GE 4, which includes a list of debts to be included in Applicant's Chapter 13 wage earner plan. However, that does not prove Applicant owed a delinquent debt to the IRS. Three credit reports on Applicant were admitted into evidence and none shows the IRS debt, while all three show the other debts listed in the bankruptcy plan. Applicant does not owe this debt.

Since January 2004, Applicant has taken no other action to pay or otherwise resolve her past delinquencies. Her current financial status appears sound, she and her husband appear to have no problems with paying their current obligations. Based on questioning at hearing about Applicant's current income versus expenses, it appears she now has more than the \$626 left over each month after paying expenses as alleged in SOR ¶ 1.o); however, that figure still does not reflect any payments to the remaining debts listed in the SOR. Applicant recently received a BS in psychology and will begin repaying about \$5,500 in student loans at the end of 2005.

POLICIES AND BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽²⁾ for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for the Applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of

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persuasion. 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 as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽⁴⁾

To that end, the Directive sets forth adjudicative guidelines⁽⁵⁾ for consideration when evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guideline to be applied here is Guideline F (financial considerations).

CONCLUSIONS

The government alleged the Applicant has accrued since 1995 over \$28,000 in delinquent debts (SOR ¶¶ 1.b through 1.n), that she filed for Chapter 13 bankruptcy protection in 1997, but failed to complete the required repayment plan (SOR ¶ 1.a), and that she and her husband have at least \$600 remaining each month after paying their expenses (rent, utilities, etc.), a figure that does not reflect any repayment of her delinquent debts (SOR ¶ 1.o). With exception of SOR ¶ 1.m, the government presented sufficient admissible evidence to support the SOR allegations. These facts raise security concerns addressed in the Directive under Guideline F. Specifically, an applicant who is financially overextended through delinquent debt and poor personal financial management may be at risk of engaging in illegal acts to generate funds to resolve their fiscal difficulties. Failure to reasonably attend to personal finances may also indicate poor judgment and reliability in other facets of one's conduct.⁽⁶⁾

The available information here supports application of Guideline F disqualifying condition (DC) 1⁽⁷⁾ and DC 3.⁽⁸⁾ By virtue of the fact Applicant's debts have gone unpaid for up to 10 years, Applicant has a history of not meeting her obligations. As to DC 3, Applicant appears to have the resources to make some payments to her past creditors. Filing Chapter 13 bankruptcy was a legal, constructive way to deal with her debts, and it might be viewed as admirable that she decided to end the repayment plan and try to repay her debts on her own. However, she did not do that. After being told initially her creditors could not accept repayment because of the short-lived bankruptcy action, it is not unreasonable to conclude Applicant should have sought other professional advice about how to resolve her obligations. At the very least, she still had the option of converting her Chapter 13 to a Chapter 7 liquidation, a course of action her attorney advised at the outset.

Having reviewed the Guideline F mitigating conditions, I conclude only MC 3⁽⁹⁾ might be applicable here. Applicant and her husband found themselves on hard times when he was unemployed for 11 months. However, the benefit of this

MC is attenuated by the fact Applicant and her husband had already overextended themselves financially through personal credit accounts, thus leaving little room for unexpected events. Further, nearly seven years has elapsed since Applicant's bankruptcy petition was dismissed, and Applicant still has no tangible plan to satisfy her delinquencies. Despite her repayment of several smaller debts (SOR ¶¶ 1.d, 1.f, and 1.i), and the resolution of two others through wage garnishment (SOR ¶¶ 1.j and 1.k), Applicant still has a daunting task ahead in view of the more than \$26,000 in remaining debts. On balance, I conclude Guideline F against the Applicant.

I have carefully weighed all of the available evidence, and I have applied the appropriate disqualifying and mitigating conditions. Further, I have tried to make a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. Reasonable doubts persist, based on information about Applicant's financial problems, about her ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Absent substantial information to mitigate these doubts, which Applicant has failed to provide, I cannot conclude she has overcome the government's case.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For 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: For the Applicant

Subparagraph 1.j: For the Applicant

Subparagraph 1.k: For the Applicant

Subparagraph 1.l: For the Applicant

Subparagraph 1.m: For the Applicant

Subparagraph 1.n: Against the Applicant

Subparagraph 1.o: 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 the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
3. *See Egan*, 484 U.S. at 528, 531.
4. *See Egan*; Directive E2.2.2.
5. Directive, Enclosure 2.
6. Directive, E2.A6.1.1.
7. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;
8. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
9. Directive, 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);