

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant's past financial problems raise security concerns because of her delay in resolving her debts. While she has now demonstrated she has made a good-faith effort to resolve several of her long-standing debts, even more debts remain outstanding. She presented no plan as to when she might address them even though she has sufficient income. She never sought counseling to resolve the debts though she promised to do so in 2004. Thus, she has failed to demonstrated that she has sufficiently reformed her financial practices. However, she mitigated security concerns over her personal conduct because she had special circumstances and had no intent to falsify. Clearance is denied.

CASENO: 04-06360.h1

DATE: 03/20/2006

DATE: March 20, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06360

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Sabrina Redd, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's past financial problems raise security concerns because of her delay in resolving her debts. While she has now demonstrated she has made a good-faith effort to resolve several of her long-standing debts, even more debts remain outstanding. She presented no plan as to when she might address them even though she has sufficient income. She never sought counseling to resolve the debts though she promised to do so in 2004. Thus, she has failed to demonstrate that she has sufficiently reformed her financial practices. However, she mitigated security concerns over her personal conduct because she had special circumstances and had no intent to falsify. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on March 21, 2005. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. ⁽¹⁾ The SOR alleges specific concerns over finances (Guideline F) and personal conduct (Guideline E). Applicant responded to these SOR allegations in an Answer notarized on May 13, 2005, and requested a hearing. She denied subparagraph 1.a., 1.b., 1.c., 1.f., 1.g., 1.l., 1.m., 1.n., 1.s., 2.a., and 2.b.

After Department Counsel stated the case was ready to proceed on July 27, 2005, the case was assigned to me on August 1, 2005. On August 2, 2005, DOHA issued a Notice of Hearing and set this case to be heard on September 9, 2005, in a city near where Applicant lives and works.

At the hearing the government offered eight exhibits (Exhibits 1-8) which were admitted into evidence without objection. Applicant testified and offered one exhibit (Exhibit A) which was admitted into evidence without objection.

As Department Counsel did not object, I granted her two weeks until September 23, 2005, to submit additional evidence and the government until September 30, 2005, to respond. (TR 24-25, 83) On September 26, 2005, Applicant submitted Exhibit B; as Department Counsel did not object, Exhibit B was admitted into evidence. The transcript (TR) was received on September 21, 2005.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following findings of fact:

Applicant, 27 years old, has been employed by Defense Contractor #1 as an administrative assistant since June 2003. When she completed her Security Clearance Application (SF 86) in January 2003, she was working for Contractor #2. Applicant does not believe she needs a security clearance for her current job, but her company still has an active request for a security clearance for her; however, she did not complete a new ⁽²⁾ SF 86. (Exhibit 1; TR 48, 67-74)

Applicant received her college degree in December 2001. (Exhibit 1; TR 46) Applicant initially lived with her fiancée in May 2002; she married him in May 2003 and took her current name. She has a child born in November 2002. (Exhibit 2)

Personal Conduct

When her employer gave her the SF 86 to complete, she was told she had to return it within 24 hours so she did not research her credit problems. (TR 44-45) In response to Question 38 on financial delinquencies over 180 days, Applicant acknowledged only one student loan debt of \$5,500 from 1997. She answered "No" to Question 39 on debts 90 days delinquent. She denies she had any intent to falsify by these answers. (Answer; Exhibit 1) She explained at the time she completed her SF 86 she had just moved and her son was only two months old. She failed to take the time to clarify her debts, but had no intent to falsify. (TR 28-29)

Finances

Initially, Applicant explained that the majority of the debts were incurred when she was in college on limited income. (Exhibits 2, 3; TR 26) She was making \$40,000 per year in June 2003 and had limited money to resolve her debts except for her student loans. (TR 48-49) When interviewed by the Defense Security Service (DSS) in March 2004, Applicant explained that she had defaulted on one student loan as she left school in 1998; when she failed to file for a deferment, it went into default in fall 1999. She was making \$200 monthly payments with that lender. When questioned about accounts on her credit report, she explained that she would contact her creditors and set up payment plans. She stated she was not aware of certain debts, but said she would contact those creditors and clarify their status. She thought her father had paid her medical expenses when she was a student, but in 1998 her father stopped providing any funds to her. She wanted to resolve her debts, so that she and her husband could purchase a home. (Exhibit 2) In August 2004 she again stated she was then "able to pay off bad debt and correct those financial mistakes of my past." (Exhibit 3) Applicant did not take any significant steps to do so even though she and her husband had monthly take-home pay of \$6,568; they had expenses which totaled \$3,120, and debts or loan payments totaling \$1,210 with a net monthly remainder of \$2,238 to resolve her debts. (Exhibit 2)

In 2005 Applicant made \$52,000 per year. (TR 27, 59) Her September 2005 budget reflected Applicant and her husband had monthly take-home pay of \$6,402, expenses included a mortgage payment of \$3,500 and other expenses which left a net monthly remainder of \$902 to resolve her debts. Her current budget includes no documented plans to make debt payments or otherwise resolve the remaining debts. (Exhibit B) She explained the following concerning that status of her past debts:

SOR 1.a. Applicant denied a \$922 debt to Creditor #1 and was investigating it. However, she has not disputed the debt on her credit report. (Answer; Exhibits 5, 6; Exhibit A; TR 30-31)

SOR 1.b. Applicant denied the debt to Creditor #2 for \$732 and contacted the creditor six months ago. However, she has not disputed the debt on her credit report. (Answer; Exhibit 6; Exhibit A, TR 31-32, 34)

SOR 1.c. Applicant denied the debt to Creditor #3 for \$700 for an account placed for collection in 1998. However, she has not disputed the debt on her credit report. (Answer; Exhibit 6; Exhibit A; 33-34)

SOR 1.d. Applicant paid the debt to Creditor #4 for \$52 in August 2005 after she re-financed her house. (Answer; Exhibit ; TR 34)

SOR 1.e. Applicant explained the debt to Creditor #5 for \$8,034 for a 1997 student loan which was placed for collection in June 2000. She received \$4,000 and forfeited the remaining \$4,000 when she did not return to school. She learned of this debt when she purchased her home in November 2004 and looked at her credit report. However, she has not contacted the university to clarify the status of the loan or resolve it. (Answer; Exhibit A; TR 35-36, 58)

SOR 1.f. Applicant denied a debt to Creditor #6 for \$8,353 for an account charged off in April 2002. She had made double payments and an employee did not process them correctly in February 2003, so the loan went into default after she got two months behind in making her interest payments. She paid off one of the student loans but is not sure which one. (Answer; Exhibits 3, 6, 8; Exhibits A, B; TR 36-39)

SOR 1.g. Applicant denied a debt to Creditor #6 for \$9,391 for an account charged off in April 2002. She had made double payments and an employee did not process them correctly in February 2003, so the loan went into default after she got two months behind in making her interest payments. She paid off one of the student loans, but is not sure which one. (Answer; Exhibits 3, 6; Exhibits A, B; TR 36-37)

SOR 1.h. Applicant admits her debt to Creditor #7 for \$1, 670 for an account placed for collection in October 2000 which was still outstanding at the time of the hearing; she hoped to negotiate a settlement amount but had no timetable to do so. (Answer; Exhibit A; TR 40-41)

SOR 1.i. Applicant admits her debt to Creditor #8 for \$490 for an account placed for collection in 2001. She will not pay this collection agency as she believes they are improperly charging her interest. (Answer; Exhibit A; TR 41)

SOR 1.j. Applicant admits the debt to Creditor #9 for \$242 placed for collection in March 2002, which she paid in September 2005. (Answer; Exhibits A, B; TR 41-42)

SOR 1.k. Applicant admits the debt to Creditor #10 for \$605 placed for collection in May 2002, but the debt remains unresolved. (Answer; Exhibit A; TR 42)

SOR 1.l.. Applicant denied a \$40 debt to Creditor #11 for an account placed for collection in July 2002. At the hearing she said she was willing to pay the bill, but had no plan to do so. (Answer; Exhibits 6, 8; Exhibit A; TR 43)

SOR 1.m. Applicant denied the debt to Creditor #12 for \$174 for an account placed for collection in July 2002. She believed her father should have paid for this MRI but is now willing to resolve it and did so in September 2005. (Answer; Exhibits 6, 8; Exhibits A, B; TR 50-51)

SOR 1.n. Applicant denied the debt to Creditor #13 for \$445 for an account charged off as a bad debt prior to January 2003. However, she has not disputed the debt on her credit report. (Answer; Exhibit 4; Exhibit A; TR 50-51)

SOR 1.o. Applicant admitted the debt to Creditor #14 for \$1,000 for an account charged off as a bad debt prior to January 2003. She is negotiating with the creditor who is now demanding \$3,000 with interest, so the debt is unresolved. (Answer; Exhibit A; TR 51-52)

SOR 1.p. Applicant admitted her debt to Creditor #15 for \$199 for leased furniture for an account charged off as a bad debt prior to January 2003. At the time of the hearing it was unresolved, but she intended to pay it and did so in September 2005. (Answer; Exhibit A, B; TR 52-53)

SOR 1.q. Applicant admitted her debt to Creditor #16 for \$547 for an account placed for collection in 2003 which she has paid. (Answer; Exhibits A, B, page 4; TR 53)

SOR 1.r. Applicant admits the debt to Creditor #17 for \$143 for an account past due since January 2003, which she paid in August 2005. (Answer; Exhibits A, page 5, B; TR 20, 53-54)

SOR 1.s. Applicant denies the debt to Creditor #18 for \$623, a medical bill, that she believed was her parents' responsibility. However, she has not disputed the debt on her credit report. It was placed for collection in July 2003 and remains unresolved. (Answer; Exhibits 6, 8; Exhibit A; TR 22, 54-55)

SOR 1.t.. Applicant denied a \$445 debt to Creditor #19 for an account placed for collection prior to November 2003. I accept her position that it is the same debt as allegation 1.n. (Answer; Exhibit A; TR 55)

SOR 1.u. Applicant admitted the debt to Creditor #20 for \$785 for an account charged off prior to November 2003. She is investigating which collection agency has the debt which remains unpaid. (Answer; Exhibits 2, 3; Exhibit A; TR 55-56)

SOR 1.v. While her August 2004 Personal Financial Statement showed she had the means to pay on her debts, Applicant made only a minimal effort to resolve her debts. Subsequently, she purchased a home which "delayed" her

ability to make restitution as her husband also had debts. Instead, they chose to purchase a second car with a \$350 payment. (Answer; Exhibits 2, 3; TR 56-67)

Applicant explained that she now pays her bills on time, including her house payment. She just re-financed her house and has paid off two cars. She received approximately \$14,000 when she re-financed her house, but did not detail a plan to use any of those proceeds to resolve her debts. (Exhibit 8; TR 23-24, 27)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below:

Guideline F - Financial Considerations

***The Concern:* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.**

Guideline E - Personal Conduct

***The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.**

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue applicant's access to classified information. Then the applicant

presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Financial Considerations

The Government established disqualifying conditions that could raise a security concern and may be disqualifying including Applicant's (1) history of financial problems and her (3) inability or unwillingness to satisfy all of her debts. Even after her college debts, she developed additional debts that remain largely unresolved. While Applicant had some challenging circumstances, she did not demonstrate that the conditions that resulted in the behavior were largely beyond her control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation). While she promised in her 2004 DSS interview and again in response to interrogatories that she would investigate and resolve her debts, she took no action until after the SOR was issued. Even then she resolved only some of the debts and showed no willingness to develop a plan to resolve the remaining debts.

While she was able to purchase a house and re-financed it recently, she used the proceeds to resolve only one of her student loan debts and other small debts. While she disputed several debts that were on her credit report, she took no action to investigate them or dispute them with the credit reporting agencies. She has had several substantial raises; however Applicant failed to develop a plan to resolve all her debts. Thus despite some efforts, she has failed to mitigate (3) a significant portion of these financial concerns as too many of the debts remain unresolved. Thus, Applicant has still failed to demonstrate sufficiently that she is financially responsible as she submitted no plan to resolve the remaining debts. Further, Applicant did not show that she has received or is receiving counseling for the problem. While she now has developed a budget, there are not yet clear indications that her financial problems are being resolved or are under control. In sum, Applicant initiated a good-faith effort to repay only a portion of her overdue debts.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant under subparagraphs 1.d., 1.f., 1.j., 1.m., 1.p., 1.q., 1.r., 1.t., but against her under SOR Paragraph 1 as she failed to mitigate the allegations in SOR subparagraphs 1.a., 1.b., 1.c., 1.e., 1.g., 1.h., 1.i., 1.k., 1.l., 1.n., 1.o., 1.s., 1.u., and 1.v.

Personal Conduct

The government established its Personal Conduct concerns under Guideline E under Disqualifying Condition 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.

Applicant failed to disclose all of her debts on her SF 86 even though she had a duty to do so.

On the other hand, the record evidence as a whole must be considered to determine whether Applicant's overall conduct can be mitigated. Thus, I have evaluated her conduct and conclude that she had no intent to falsify. She was under pressure to complete the form quickly and failed to take the time to list all of her debts. In addition, I have considered the following factors:

E.2.21.1. The nature, extent, and seriousness of the conduct; E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E2.2.1.3. The frequency and recency of the conduct; E2.2.1.4. The individual's age and maturity at the time of the conduct; E2.2.1.5. The voluntariness of the participation; E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E2.2.1.7. The motivation for the conduct; E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E2.2.1.9. The likelihood of continuation or recurrence. (E.2.2. Adjudication Process)

Thus, Applicant has demonstrated she was under pressures as a new, single mother and credibly established she did not intend to falsify her security form. Thus she has mitigated the security concern under Personal Conduct. After looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 2.a. and 2.b. under SOR Paragraph 2.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: For Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: Against Applicant

Subparagraph 1.p.: For Applicant

Subparagraph 1.q.: For Applicant

Subparagraph 1.r.: For Applicant

Subparagraph 1.s.: Against Applicant

Subparagraph 1.t.: For Applicant

Subparagraph 1.u.: Against Applicant

Subparagraph 1.v.: Against Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For 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.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. Department Counsel's request to investigate whether there was an additional SF 86 submitted was granted; however, she subsequently advised there was no additional documentation. (TR 68-69, 80, 82)
3. **Conditions that could mitigate security concerns include:** 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); E2.A6.1.3. 4. . . . there are clear indications that the problem is being resolved or is under control; and E2.A6.1.3. 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.