

KEYWORD: Financial

DIGEST: Applicant incurred significant debt, far in excess of her income. She has been unable to repay this debt as she lacks the financial resources to comply with a repayment plan. Applicant has not mitigated the security concerns arising from her financial difficulties. Clearance is denied.

CASENO: 04-06393.h1

DATE: 08/31/2005

DATE: August 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06393

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred significant debt, far in excess of her income. She has been unable to repay this debt as she lacks the financial resources to comply with a repayment plan. Applicant has not mitigated the security concerns arising from her financial difficulties. Clearance is denied.

STATEMENT OF THE CASE

On March 28, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR details reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Specifically, the SOR set forth security concerns arising under Guideline F, Financial Considerations, of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Within 30 days of the issuance of the SOR, Applicant submitted a notarized response to the allegations. She elected to have her case decided on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy on June 16, 2005. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She did not submit additional evidence. This case was assigned to me on August 4, 2005.

FINDINGS OF FACT

Applicant admits the allegations in subparagraphs 1.a through 1.j of the SOR. ⁽¹⁾ Those admissions are incorporated here as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 37-year-old administrative assistant for a defense contractor, a position she has held for almost four years. ⁽²⁾ Applicant is separated from her husband and has three children. ⁽³⁾ Applicant completed a security clearance application (SF 86) in March 2003. ⁽⁴⁾

Applicant incurred a significant level of debt, which has not been paid. ⁽⁵⁾ Applicant's financial problems are the result of underemployment, her February 2001 separation from her husband, and her assumption of primary responsibility for three children. ⁽⁶⁾ Her outstanding debts, many which are several years old, are as follows:

SOR	Account	Status	Evidence
a.	Collection \$ 680.00	unpaid	Item 3, Response SOR
b.	Bank collection \$ 676.00	unpaid	Item 3, Response SOR
c.	Department store \$ 892.00	unpaid	Item 3, Response SOR
d.	Electric bill \$ 264.00	unpaid	Item 3, Response SOR
e.	Telephone bill \$ 429.00	unpaid	Item 3, Response SOR
f.	Apartment rent \$ 915.00	unpaid	Item 3, Response SOR
g.	cable bill \$ 87.00	unpaid	Item 3, Response SOR
h.	Cable bill site 2 \$ 109.00	unpaid	Item 3, Response SOR
I.	Bank credit card bill \$ 116.00	unpaid	Item 3, Response SOR
j.	balance on auto loan \$4,209.00	unpaid	Item 3, Response SOR

In addition to the above identified debt, in her Supplemental Statement dated January 14, 2004, Applicant acknowledged that she owed the additional debt identified in her May 2003 credit report.⁽⁷⁾ Her March 2005 credit report fails to list these debts as still outstanding.⁽⁸⁾ I, therefore, find that her other identified debts have been resolved, and will not be a factor in this decision.

As of January 2004, Applicant earned \$1,754 a month before deductions and \$1,300 net income.⁽⁹⁾ She also received \$513 a month in child support for a total net monthly income of \$1,813.⁽¹⁰⁾ Her monthly expenses totaled \$1,801, including \$80 a month for food for a family of four, leaving her with a remainder of \$12 each month.⁽¹¹⁾ Applicant's remaining income is insufficient to pay her debt. She has not provided any documentation which shows that she has taken steps to resolve her identified indebtedness. She has not filed for bankruptcy or entered into any payment plans with her creditors, although she has promised to pay her debts. She has not explained how she will resolve this debt on her current income level.

POLICIES

Enclosure 2 of the Directive sets forth adjudication guidelines which must be considered in the evaluation of security suitability. An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the adjudicative process provision in Paragraph E2.2, Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. In addition, each security clearance decision must be 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, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. 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
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grant or continue a security clearance for an applicant. The government has the burden of proving controverted facts.⁽¹³⁾ The burden of proof is something less than a preponderance of the evidence.⁽¹⁴⁾ Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.⁽¹⁵⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁶⁾

No one has a right to a security clearance⁽¹⁷⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁸⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹⁹⁾ Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.⁽²⁰⁾ 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 a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Financial Considerations - Guideline F: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

The government established its case under Guideline F. Financial Considerations Disqualifying Conditions E2.A6.1.2.1 (*A history of not meeting financial obligations*), and E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*) apply in this case. Applicant has significant debt which she has not paid and currently cannot pay. Much of her debt is several years old. Applicant's income and expense sheet reflects that she lacks the ability to pay these debts.

I considered all the Financial Considerations Mitigating Conditions and conclude that 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 in this case. Applicant's financial problems arose from underemployment and her separation from her husband. The separation is an event beyond her control. The loss of a second income in the family seriously impacts its financial well-being.

Although the above mitigating condition applies, it alone is insufficient to overcome the security concerns raised. Applicant has failed to provide sufficient evidence to rebut the government's case. While underemployment resulted in lower monthly income for her, Applicant knew her income level, but continued to spend money in excess of her income. Her monthly child support combined with her salary will not allow her to begin repaying her substantial outstanding debt. As recently as a year ago, she failed to pay her cable bill, an indication that she is still accruing debt she cannot pay. She has not developed a plan for managing her debt nor has she sought credit counseling.

Finally, I have considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am not persuaded by the totality of the evidence that Applicant has shown a significant change in her financial management as she has not taken any steps to resolve her debt issues and has no plans to do so anytime soon. I conclude that Applicant has not mitigated and overcome the government's case under Guideline F. Accordingly, I find it is not clearly consistent with the national interest to grant a security clearance to 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, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant a security clearance for Applicant. Clearance is denied.

Mary E. Henry

Administrative Judge

1. Item 3 (Applicant's Response to SOR, undated) at 2-3.
2. Item 4 (Security Clearance Application, dated March 6, 2003) at 2.
3. *Id.* at 3; Item 5 (Applicant's Supplemental Statement, dated January 14, 2004) at 1.
 4. Item 4, *supra* note 2, at 1.
 5. Item 5, *supra* note 3, at 1-2; Item 6 (credit report, dated March 16, 2005).
 6. Item 5, *supra* note 3, at 1.
 7. *Id.* at 1-2.
 8. *Id.*
 9. Item 5, *supra* note 3, at 3.
 10. Item 6, *supra* note 5.
 11. *Id.*

12. ISCR Case No. 96-0277 (July 11, 1997) at 2.
13. ISCR Case No. 97-0016 (App. Bd., December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
 14. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
15. ISCR Case No. 94-1075 (App. Bd., August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
16. ISCR Case No. 93-1390 (App. Bd. Decision and Reversal Order, January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
 17. *Egan*, 484 U.S. at 531.
 18. *Id.*
 19. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
 20. Executive Order No. 10865 § 7.