

KEYWORD: Financial

DIGEST: Applicant has a history of financial irresponsibility. In July 1998, she filed for Chapter 7 bankruptcy. After the bankruptcy discharge, Applicant continued to incur delinquent debt. Her background investigation revealed 11 delinquent debts totaling approximately \$33,442.00. Although her financial situation worsened as a result of being laid off in July 2002, she obtained suitable employment in August 2003. She has not demonstrated that she made a good-faith effort to pay her debts before filing for bankruptcy a second time in May 2005. She has failed to mitigate the security concerns related to her financial history. Clearance is denied.

CASENO: 04-08809.h1

DATE: 02/28/2006

DATE: February 28, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-08809

**DECISION OF ADMINISTRATIVE JUDGE**

**ERIN C. HOGAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of financial irresponsibility. In July 1998, she filed for Chapter 7 bankruptcy. After the bankruptcy discharge, Applicant continued to incur delinquent debt. Her background investigation revealed 11 delinquent debts totaling approximately \$33,442.00. Although her financial situation worsened as a result of being laid off in July 2002, she obtained suitable employment in August 2003. She has not demonstrated that she made a good-faith effort to pay her debts before filing for bankruptcy a second time in May 2005. She has failed to mitigate the security concerns related to her financial history. Clearance is denied.

**STATEMENT OF THE CASE**

On June 20, 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. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F, Financial Considerations.

In a sworn, written statement received on July 14, 2005, Applicant responded to the SOR allegations and elected to have her case decided on the written record, in lieu of a hearing. Department Counsel submitted the government's file of relevant material (FORM) on September 12, 2005. The FORM was mailed to Applicant on September 22, 2005, and received on September 30, 2005. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded on November 30, 2005, and submitted an additional response with attachments. The case was assigned to me on December 19, 2005.

## FINDINGS OF FACT

Applicant admits to all the factual allegations pertaining financial considerations under Guideline F. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 44-year-old employee of a defense contractor seeking to obtain a security clearance at the SECRET level. (2) She has been divorced since 1985 and has two children, ages 24 and 22. (3)

Applicant struggled financially as a single mother raising two children. She did not receive support from her ex-husband. (4) On July 1, 1998, Applicant filed for Chapter 7 bankruptcy. (5) She listed \$63,147.00 in liabilities. In November 1998, her debts were discharged. (6)

From 1988 to 2000, Applicant held an active security clearance with no security violations. (7)

In February 2000, she changed jobs and was not required to hold a security clearance. In July 2002, her employer filed for bankruptcy and thousands were laid off including Applicant. (8) She was unable to find a job and collected unemployment benefits for nine months. In June 2003, she found work as a banquet server at a hotel. She did not have guaranteed hours on a weekly basis. The lack of steady income caused her to get behind financially. (9)

In the Spring 2003, Applicant sought consumer credit counseling. She did not enroll in the program because the agency only dealt with individuals who have credit card debt. The bulk of her debt was her mobile home payment and her car. Unable to keep up with payments on her mobile home, she voluntarily surrendered it in May 2003. Her car was stolen in late May/early June. Applicant claims the car was recovered three months later and returned to the bank. (10)

In August 2003, she was hired as a software analyst with a Department of Defense contractor. On September 8, 2003, she submitted a security clearance application. (11) Her background investigation revealed 12 delinquent accounts,

totaling \$33,442.00.<sup>(12)</sup> The debts include SOR subparagraph 1.b, \$1,975.00 deficiency judgment from an automobile repossession; SOR subparagraph 1.c, \$3,452.00 account turned over for collection in November 1999; SOR subparagraph 1.d, \$73.67 account turned over for collection in July 2000; SOR subparagraph 1.e, \$503.00 account turned over for collection in September 2002; SOR subparagraph 1.f, \$197.00 account charged off in December 2002; SOR subparagraph 1.g, \$823.00 department store credit card account charged off in September 2002; SOR subparagraph 1.h, \$143.00 television services account turned over for collection in September 2003; SOR subparagraph 1.i, \$2,691.00 credit card account charged off in July 1999; SOR subparagraph 1.j, \$603.00 account turned over for collection; SOR subparagraph 1.k, \$2,630.00 account turned over for collection; subparagraph 1.l, \$20,127.00 collection account related to her mobile home loan; and subparagraph 1.m, \$225.00 for a past due account.

On June 3, 2004, Applicant provided a signed, sworn statement to a special agent of the Defense Security Service.<sup>(13)</sup> She admits all of the debts but disputes the debt alleged in SOR subparagraph 1.d because she believes her insurance company should have paid this bill. It was a medical bill related to treatment her son received. She indicated that she did not intend to make payments towards the debts alleged in subparagraphs 1.f, 1.g and 1.h since they were charged off.<sup>(14)</sup>

She intends to pay her bills off one at a time.<sup>(15)</sup> She provided a financial worksheet which indicates that she has \$390.00 left over each month after expenses.<sup>(16)</sup>

In her answer to the SOR dated July 14, 2005, Applicant states that she was unable to make payments toward her delinquent debts due to the uncertainty of her job since her job is contingent on her having a security clearance. She indicated that she filed for Chapter 7 bankruptcy on May 5, 2005.<sup>(17)</sup> She anticipates that her debts will be discharged in December 2005. She states she paid the debt alleged in subparagraph 1.m but provided no documentation verifying payment. She claims all of her other debts are included in her bankruptcy. She did not provide a complete copy of her bankruptcy paperwork.

Applicant provided over 40 favorable character letters from friends and co-workers. Her reference letters describe her as a hard-worker who has a lot of integrity.<sup>(18)</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, personal conduct, with their respective DCs and MCs, apply in this case. Additionally, each security clearance decision must be a fair and impartial common sense 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>(19)</sup> The government has the burden of proving controverted facts.<sup>(20)</sup> The burden of proof is something less than a preponderance of evidence.<sup>(21)</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>(22)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(23)</sup>

The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.<sup>(24)</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting such classified information.<sup>(25)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(26)</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: An individual who is financially over-extended 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.**

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.

Applicant had financial difficulties in the mid-1990s which resulted in a bankruptcy filing in 1998. She continued to have financial difficulties partially related to a job lay off in July 2002. Her actions indicate that she is either unable or unwilling to pay her accounts and give rise to Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1: (*A history of not meeting financial obligations*); and FC DC E2.A6.1.2.3: (*Inability or unwillingness to satisfy debts*).

Several conditions could mitigate the security concerns raised by Applicant's financial delinquencies. Neither Financial Considerations Mitigating Conditions (FC MC) E2.A6.1.3.1: (*The behavior was not recent*); or FC MC E2.A6.1.3.2: (*It was an isolated incident*) applies. Applicant has had a history of financial difficulties since the mid - 1990s. She continues to struggle with her finances which resulted in her filing for bankruptcy a second time.

FC MC 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 part, due to the fact that she was laid off in July 2002 and was not able to find suitable employment for about a year. However, once she found suitable employment in August 2003, she did not take proactive steps to resolve her delinquent debts even though she indicated she intended to do so in her sworn statement provided to the Defense Security Service in June 2004. As such, I give this mitigating condition little weight.

FC MC 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*) does not apply. Although Applicant sought financial counseling, she did not enroll in the program. It is too soon to conclude Applicant's financial problems will be under control since there is no record evidence Applicant received a bankruptcy discharge. Even if the debts were discharged, considering Applicant's past financial history, it is too soon to conclude Applicant will remain financially solvent in the future.

Although bankruptcy is a legitimate way of resolving delinquent debts, I cannot apply FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) since Applicant did not make a good-faith effort towards paying her delinquent debts before resorting to bankruptcy. Applicant was on notice that her financial problems would be a concern when she was interviewed on June 3, 2004, during her background investigation. She had close to a year to attempt to resolve her debts. In response to the FORM, she claims she was unable to make payments on any of her delinquent accounts due to the uncertainty of her job situation because her employment was affected by her ability to obtain a security clearance. This is not a sufficient justification for not attempting to pay her delinquent accounts. Her financial statement indicates she had close to \$400.00 left over each month which she could have applied towards these delinquent debts.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, common sense 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. Although Applicant has numerous friends and co-workers supporting her, I find Applicant has failed to mitigate the security concerns raised by the financial considerations concern. 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 is 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, Guideline F 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

Subparagraph 1.k. Against Applicant

Subparagraph 1.l. Against 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.

Erin C. Hogan

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 (Directive).
2. Item 5, Security Clearance Application, SF 86, dated August 22, 2003.
3. *Id.*
4. Item 3, Applicant's Answer to SOR.
5. Item 3; Item 5, question 33; Item 6, p. 8; Item 7, p.8.
6. *Id.*
7. Applicant's Response to FORM.
8. Item 3.
9. *Id.*
10. Applicant's Response to FORM.
11. Items 4 and 5.
12. Items 6, 7, 8 and 9.
13. Item 10.
14. *Id.*



15. *Id.*
16. Item 10, p.3.
17. Item 3, Letter for Bankruptcy Attorney, dated July 7, 2005; Response to FORM, Attachment 3.
18. Response to FORM, dated November 30, 2005, attachment 6, Character References.
19. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
20. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
21. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
22. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, ¶ E3.1.15.
23. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15
24. *Egan*, 484 U.S. at 531.
25. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
26. Executive Order 10865 § 7.