

KEYWORD: Financial

DIGEST: Applicant owes more than \$18,000 in delinquent debts. She has neither initiated a good-faith effort to repay her delinquent debts, nor otherwise resolve the debt. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from her delinquent debts. Clearance is denied.

CASENO: 04-12693.h1

DATE: 03/27/2006

DATE: March 27, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12693

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Fahryn E. Hoffman, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes more than \$18,000 in delinquent debts. She has neither initiated a good-faith effort to repay her delinquent debts, nor otherwise resolve the debt. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from her delinquent debts. Clearance is denied.

STATEMENT OF THE CASE

On September 8, 2005, 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 ⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On September 24, 2005, Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing.

On December 12, 2005, Applicant received a complete copy of the government's file of relevant material (FORM) dated November 21, 2005. Applicant was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. On January 3, 2006, Applicant responded to the FORM. On January 23, 2006, I was assigned the case.

FINDINGS OF FACT

The SOR alleges security concerns under the Guideline for Financial Considerations. Applicant admits to the following: filing for Chapter 7 bankruptcy protection in 1998, filing for Chapter 13 bankruptcy protection in 1999, cosigning with her ex-husband on a \$4,000 debt at a federal credit union, cosigning on a \$2,500 obligation, cosigning on a car loan on

which \$7,500 is delinquent, and cosigning on a past due account of \$4,000. Those admissions are incorporated herein as findings of fact. After thorough review of the whole record, I make the following additional findings of fact:

Applicant is 50 years old, has worked as a visitor control clerk for a defense contractor since June 1992, and is seeking to maintain a secret security clearance.

In 1999, Applicant filed for Chapter 13, Wage Earner's Plan, bankruptcy protection. Applicant's and her husband's combined monthly income was \$3,500. They had assets of \$155,000 and liabilities of \$174,600. Assets included their home (\$104,000) and vehicle (\$45,000). In 1999, Applicant's and her husband's gross income was \$28,000, in 1998 \$45,000, and in 1997 \$49,000 (Item 8). The plan required Applicant and her husband to pay \$393 per month beginning August 1999. The federal credit union listed in SOR 1.d (\$4,386) was listed among the creditors.

The bankruptcy included their vehicle. The creditor was granted relief from the automatic stay of the bankruptcy. Approximately \$45,600 was owed on the vehicle which had an estimated value of \$48,000. Applicant and her husband were required to make monthly payments of \$661 on the vehicle debt. The vehicle was later repossessed and a \$7,512 delinquent debt (SOR 1.g) incurred.

In January 2000, there was a final accounting of the Chapter 13 case and the case was converted to a Chapter 7 case. In September 2000, Applicant's Chapter 7 bankruptcy case was dismissed for failure to maintain adequate business and financial records, failure to comply with requests for information from the bankruptcy Trustee, and failure to properly and timely account for assets of the estate. In April 2001, the bankruptcy Trustee was discharged. The file does not contain a discharge of creditors. In March 2005, Applicant completed written interrogatories concerning her finances. She stated a number of her debts were written off due to her bankruptcy.

Applicant's ex-husband is or was incarcerated. The record fails to reflect the reasons for this incarceration and the length of time of the incarceration. Applicant remarried three and a half years ago. Since her remarriage, she has not incurred any additional debts nor been late on payments to her current creditors (App Ex A). She submitted a December 2005 credit report indicating she had no delinquencies. However, the credit report lists two \$100 accounts as seriously past due or assigned to collection, another debt listed as bad debt and placed for collection and skip, and a fourth debt listed as payment after charge off/collection.

The SOR asserts Applicant has nine delinquent accounts totaling approximately \$19,500. In her September 2005 response to the SOR, Applicant asserts that five debts listed in the SOR totaling \$659 have been paid. Applicant provided no documentation supporting her assertion as to payment of these debts. In the same September 2005 response, Applicant stated she had contacted an attorney to resolve four delinquent debts on which she cosigned with her ex-

husband. Those debts, totaling \$18,763, are: a \$4,386 credit union debt (SOR 1.d), a \$2,490 debt (SOR 1.f), the \$7,512 obligation that resulted following the repossession (SOR 1.g), and a \$4,375 debt (SOR 1.1). Applicant states she would have to wait until her ex-husband is no longer incarcerated before establishing a repayment plan for these four debts. In her January 2006 letter of response to the FORM, Applicant states she will contact three of her creditors and establish payments plans or resolve the debts as soon as possible.

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines 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. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guideline to be applied here is Guideline F, Financial Considerations.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of an applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. 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. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate government's case. An applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. ⁽²⁾

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." 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. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information to be resolved in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

A person's relationship with her 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. 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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Applicant owed nine delinquent debts totaling more than \$19,000. Disqualifying Conditions (DC) 1 (*A history of not meeting financial obligations*) and DC 3 (E2.A6.1.2.3 *Inability or unwillingness to satisfy debts*) apply.

Prior to 1999, Applicant experienced financial problems. The nature of the problems is not revealed in the FORM, but the problems were sufficient for Applicant to file for bankruptcy protection under Chapter 13, the Wage Earner's Plan. In 2000, the Chapter 13 was converted to a Chapter 7. In her response to written interrogatories, Applicant indicates a number of debts were resolved through bankruptcy. However, the Chapter 7 was dismissed and there is no showing the creditor's claims were ever discharged. Merely starting a bankruptcy is insufficient to discharge debts. The case was dismissed because Applicant failed to maintain records, comply with requests from the bankruptcy Trustee, and failed to properly account for assets of the estate.

The bankruptcy included a rather expensive vehicle. Even though the couple's gross income for the three years prior to the bankruptcy ranged between \$28,000 and \$49,000, they had purchased a vehicle listed in the bankruptcy as valued at \$48,000 on which more than \$45,500 was owed.

Bankruptcy protection did not solve Applicant's financial problems. She subsequently owed more than \$19,000 on delinquent accounts. Applicant states five of the debts totaling \$659 have been paid. Applicant has fail to provide any

documents supporting her assertion. The five debts range from \$35 to \$324. The five debts do not appear on her December 2005 credit report, but two accounts on that report list debts of \$100 each which are reflected as seriously past due or assigned to collection and another account listed as a bad debt. Even if accepted as paid, she has four delinquent debts totaling more than \$18,000 upon which she has made no payments.

Applicant has known of the government's concern about her delinquent accounts as of at least March 2005 when she answered the written interrogatories. Since that time, none of the delinquent accounts listed in the SOR have been paid. In September 2005, she said she would address four of the bills after her ex-husband was released from incarceration. In January 2006, she said she would contact three of the creditors and set up repayment plans. An intent to pay delinquent debts at some unspecified, future date does not resolve or mitigate the financial concerns.

None of the Mitigating Conditions (MC) apply in the Applicant's favor. MC 1 (*The behavior was not recent*) does not apply because the conduct is recent since the delinquent debts remain unpaid. It is commendable that since her remarriage she has incurred no new debt and has not been late on payments to her current creditors. However, since the delinquent debts remain unpaid, they are recent.

MC 2 (*It was an isolated incident*) does not apply because there are nine debts. There was no showing the debts were caused by factors beyond Applicant's control. Therefore, MC 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)*) does not apply. Applicant has been divorced and her ex-husband has been incarcerated, but Applicant failed to establish how these events impacted on her finances. There has been no showing Applicant has received financial counseling nor is there any indication her financial difficulties are under control. Therefore, MC 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. Affluence not being an issue, MC 5 (*The affluence resulted from a legal source*) is inapplicable.

For MC 6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good-faith effort to repay. A systematic, concrete method of handling her debts is needed, which is not present here. MC 6 does not apply. Because she has failed to pay her delinquent debts or establish a repayment agreement, I find against Applicant on financial considerations.

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

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.
2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15