

KEYWORD: Financial

DIGEST: Applicant incurred significant debt as a result of unemployment, health issues, landlord/tenant issues, and divorce. More recently, her salary and available income have improved. She has always timely paid her mortgage, rent, car payments, and utilities. She is current on her new credit card debts, and has retained a debt management company to assist with resolving her past outstanding financial obligations. She, however, has not made any payments on her old debt. She has not mitigated or overcome the government's concerns regarding her security eligibility and suitability based on financial considerations. Clearance is denied.

CASENO: 05-01785.h1

DATE: 03/21/2006

DATE: March 21, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-01785

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred significant debt as a result of unemployment, health issues, landlord/tenant issues, and divorce. More recently, her salary and available income have improved. She has always timely paid her mortgage, rent, car payments, and utilities. She is current on her new credit card debts, and has retained a debt management company to assist with resolving her past outstanding financial obligations. She, however, has not made any payments on her old debt. She has not mitigated or overcome the government's concerns regarding her security eligibility and suitability based on financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On August 23, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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 detailed 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. On September 26, 2005, Applicant submitted a notarized response to the allegations, and 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 November 23, 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 a response or additional evidence. The case was assigned to me on February 17, 2006.

FINDINGS OF FACT

Applicant admitted, with explanation, the allegations in subparagraphs 1.a., and 1.c. through 1.k. of the SOR.⁽¹⁾ Those admissions are incorporated here as findings of fact. She denied the remaining allegation. 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 51-year-old executive secretary for a defense contractor.⁽²⁾ She has worked for this contractor for more than 33 years.⁽³⁾ She completed a security clearance application (SF 86) in August 2003.⁽⁴⁾

Applicant married in 1976.⁽⁵⁾ She and her husband had three children, now ages 29, 23, and 21.⁽⁶⁾ In 1995, she and her husband filed for bankruptcy, and their debts were discharged.⁽⁷⁾ At this time, she was unemployed and her husband had retired on medical disability.⁽⁸⁾ She and her husband separated this same year.⁽⁹⁾ They divorced in 2002.⁽¹⁰⁾

When Applicant and her husband separated, he moved out and transferred his interest in the marital home to her.⁽¹¹⁾ Because her new employment required her to move to another location, she rented the house.⁽¹²⁾ In April 1997, she suffered an aneurysm and a stroke.⁽¹³⁾ After one year on long-term disability, she returned to work in March 1998.⁽¹⁴⁾ In 1999, her tenants stopped paying her rent.⁽¹⁵⁾ With the assistance of legal counsel, she evicted them a year later.⁽¹⁶⁾ She then sold the house for \$90,000.00 less than market value.⁽¹⁷⁾ During this time, she paid the house mortgage, and the rent and utilities on her residence.⁽¹⁸⁾ She encountered difficulties paying her credit cards.⁽¹⁹⁾

In 2001 or 2002, Applicant retained legal counsel to again file for bankruptcy.⁽²⁰⁾ Upon advise of counsel, she stopped paying on her credit card bills.⁽²¹⁾ In January 2003, she decided not to proceed with bankruptcy.⁽²²⁾ Throughout this period of time, she paid her mortgage, rent, car payments and utilities.⁽²³⁾ Her outstanding debts are as follows:

| SOR ¶ | TYPE OF DEBT | AMOUNT | CURRENT STATUS |
|-------|--------------------------------------|-----------------------------|-------------------------|
| 1.b. | store credit account ⁽²⁴⁾ | \$ 1,520.00 ⁽²⁵⁾ | Unknown ⁽²⁶⁾ |
| 1.c. | credit card ⁽²⁷⁾ | \$ 6,653.00 ⁽²⁸⁾ | Unpaid ⁽²⁹⁾ |
| 1.d. | credit card ⁽³⁰⁾ | \$ 2,874.00 ⁽³¹⁾ | Unpaid ⁽³²⁾ |
| 1.e. | credit card ⁽³³⁾ | \$ 1,147.00 ⁽³⁴⁾ | Unpaid ⁽³⁵⁾ |
| 1.f. | credit card ⁽³⁶⁾ | \$11,612.00 ⁽³⁷⁾ | Unpaid ⁽³⁸⁾ |
| | | | |

| | | | |
|------|-------------------------------------|----------------------------------|-----------------------------|
| 1.g. | mailing credit (39) | \$ 1,626.00 (40) | Unpaid (41) |
| 1.h. | credit card (42) | \$ 4,045.00 (43) | Unpaid (44) |
| 1.i. | credit card (45) | \$ 621.00 (46) | Unpaid (47) |
| 1.j. | credit card (48) | \$ 613.00 (49) | Unpaid (50) |
| 1.k. | medical bill (51) | \$ 118.00 (52) | Unpaid (53) |

In 2004, Applicant obtained three credit cards, which she currently pays. [\(54\)](#) She pays her current bills on time. [\(55\)](#) Her income has increased in the last 10 years. [\(56\)](#) Her current gross income is approximately \$4,100 a month. [\(57\)](#) Her net income is approximately \$2,868 per month. [\(58\)](#) Her monthly expenses total \$2,525 per month leaving an excess balance of \$343 a month. [\(59\)](#) Applicant previously contacted a debt management company, but did not retain its services because it would not account for how her money would be spent. [\(60\)](#) In August or September 2005, she did retain the services of a debt management company and is working with this company to resolve her debts through monthly payments. [\(61\)](#) She, however, has not submitted a plan for resolving her outstanding debt nor has she submitted any documentation which reflects that she has begun paying this debt. Her children now live independently. [\(62\)](#) She recently moved, although she has not provided information on her current rent and utilities. [\(63\)](#)

In her answers to the interrogatories sent to by the Defense Office of Hearings and Appeals, Applicant acknowledged owing \$1,520.00 to the creditor listed in allegation 1.b. of the SOR. [\(64\)](#) In her response to the SOR, she denied owing this debt, indicating that it had been discharged in her 1995 bankruptcy. [\(65\)](#) The credit reports do not show a debt of \$1520.00 to this creditor, although the reports do reflect a debt of \$39.00 to this creditor. [\(66\)](#)

The evidence of record regarding debts alleged in the SOR is conflicting and garbled. Notwithstanding, Applicant has admitted all the debts, alleged except for one. [\(67\)](#)

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 grant or continue a security clearance for an applicant.⁽⁶⁸⁾ The government has the burden of proving controverted facts.⁽⁶⁹⁾ The burden of proof is something less than a preponderance of the evidence.⁽⁷⁰⁾ 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.⁽⁷¹⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁷²⁾

No one has a right to a security clearance⁽⁷³⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁷⁴⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽⁷⁵⁾ 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.⁽⁷⁶⁾ 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. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

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:

Applicant has significant credit card debt that has remained unpaid for some time. She has been unable to pay this debt because of income and health issues. Under Guideline F, Financial Considerations Disqualifying Conditions (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*) apply as to allegations 1.a., 1.c. through a.k.

Applicant initially admitted owing the creditor identified in allegation 1.b. of the SOR, but later denied owing this debt. None of the credit reports in the record reflect a debt of \$1,520.00 to this creditor. The reports do show a \$39.00 debt to this creditor. Thus, this allegation is found in favor of the Applicant.

In 1995, Applicant and her husband separated. She was unemployed. She relocated for work and rented her home to pay the mortgage. Two years later, she suffered an aneurysm and a stroke which required her to remain off work on disability income for nearly a year. Her resources were strained as a result. In 1999, her renters stopped paying the rent on her house, forcing her to hire and pay lawyers to evict them and to pay the mortgage. Her finances were again strained. Once her renters were evicted in 2000, she wisely decided not to continue as a landlord and sold her house. She received less than market value for it, leaving her with no excess funds to pay her credit cards. She considered filing bankruptcy in 2002, and upon the advice of counsel stopped paying her credit cards. She reconsidered this decision in early 2003, and decided to pay her debts, which were further behind. She has not provided evidence indicating that she began paying on her old debt in 2003. Although she is now working with a debt management company to pay her debts, she has not provided any documentation outlining her repayment plan or evidence that she has started paying her old debts. While she has consistently paid her rent, mortgage, utilities, and car payments and she keeps current on her new credit card debt, she has done nothing in the in the last five years to resolve any of her old debt. She has not mitigated the government's security concerns.

Finally, I have considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. She still owes significant money on old credit card debt. During a five year period of time, a number of events occurred that caused her debt problems. These events were beyond her control. She prioritized the bills to be paid and paid them. In the last five years, her financial circumstances have slowly improved with the departure of her children from home and an increase in her income. She, however, has not made any effort to pay even the smallest of her outstanding bills, despite resources to do so. Accordingly, for the reasons stated, I find that 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: For 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

DECISION

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

Mary E. Henry

Administrative Judge

1. Item 3 (Response to SOR, dated March 5, 2005) at 1-2.

2. Item 4 (Applicant's security clearance application, dated August 8, 2003) at 1-2.

3. *Id.* at 2.

4. *Id.* at 1.

5. *Id.* at 3.

6. *Id.* at 3-4.

7. Item 3, *supra* note 1, at 1.

8. *Id.*

9. *Id.*

10. Item 4, *supra* note 2, at 3.

11. Item 3, *supra* note 1, at 1.

12. *Id.*

13. *Id.*

14. Item 4, *supra* note 2, at 8.

15. Item 3, *supra* note 1, at 1; Item 5 (Applicant's signed statement, dated February 14, 2004).

16. *Id.*

17. *Id.*

18. Item 3, *supra* note 1, at 1. For a period of time, Applicant lived with someone who failed to pay half of the rent and utility costs as agreed. *Id.*

19. *Id.*

20. Item 5, *supra* note 15, at 1; Item 6 (Applicant's answers to interrogatories, dated April 25, 2005) at 5.

21. *Id.*

22. *Id.*

23. Item 7 (Credit report, dated November 14, 2005) at 2-3; Item 8 (Credit report, dated July 19, 2005) at 3-4; Item 9 (Credit report, dated January 7, 2005) at 6-9.

24. Item 6, *supra* note 20, at 3.

25. *Id.*

26. None of the credit reports reflect a debt to this store in this amount, but do show a debt of \$39.00. *See* Item 7, *supra*

note 23; Item 8, *supra* note 23; Item 9, *supra* note 23; Item 3, *supra* note 1, at 1.

27. Item 6, *supra* note 20, at 3.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. Item 6, *supra* note 20, at 4-5.

55. Item 9, *supra* note 23, at 5, 7.
56. Item 6, *supra* note 20, at 6.
57. *Id.* at 4.
58. *Id.* Her monthly car payment is deducted from her paycheck. *Id.*
59. *Id.*
60. *Id.* at 5.
61. Item 3, *supra* note 1, at 3.
62. *Id.* at 1.
63. *Id.* at 1, 3; Item 6, *supra* note 20, at 1.
64. Item 6, *supra* note 20, at 3.
65. Item 3, *supra* note 1, at 1.
66. Item 7, *supra* note 23; Item 8, *supra* note 23; Item 9, *supra* note 23.
67. Item 3, *supra* note 1, at 1.
68. ISCR Case No. 96-0277 (July 11, 1997) at 2.
69. ISCR Case No. 97-0016 (App. Bd., December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
70. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
71. ISCR Case No. 94-1075 (App. Bd., August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
72. ISCR Case No. 93-1390 (App. Bd. Decision and Reversal Order, January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
73. *Egan*, 484 U.S. at 531.
74. *Id.*
75. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
76. Executive Order No. 10865 § 7.