

DATE: January 31, 2007

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 05-02484

**ECISION OF ADMINISTRATIVE JUDGE**

**MARC E. CURRY**

**APPEARANCES**

**FOR GOVERNMENT**

D. Michael Lyles, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's accrual of approximately \$10,200 of delinquent debt from 2001 to 2005 generates a security concern which she failed to mitigate. Clearance is denied.

**STATEMENT OF THE CASE**

On September 26, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find it clearly consistent with the national interest to grant or continue a security clearance. (1) The SOR alleged facts which raise a security concern under Guideline F (financial considerations). Applicant answered the SOR on October 31, 2005, and requested a hearing. The case was assigned to me on September 26, 2006. DOHA issued a notice of hearing on October 19, 2006, scheduling it for November 16, 2006.

The hearing was held as scheduled. During the hearing, I received nine government exhibits, 22 Applicant exhibits, (2) and the testimony of Applicant. DOHA received the transcript on December 5, 2006.

**FINDINGS OF FACT**

I have incorporated Applicant's admissions into the findings of fact. In addition, I make the following findings of fact.

Applicant is a 51-year-old, divorced woman with two adult children, ages 27 and 31. She works as a budget analyst and earns \$60,000 per year. (3) Excluding a seven-month period of unemployment, as referenced below, her salary has ranged between \$53,000 and \$63,000 since 2001. (4) She has a high school diploma, in addition to 18 hours of college credits earned in 1987.

Applicant is an exemplary employee who frequently sacrifices her off-duty time to ensure that her tasks are completed "with the utmost accuracy." (5) Since 2003, she has received several certificates for outstanding service. (6)

From January 2002 through July 2002, Applicant was unemployed. Unable to pay her bills during this period, she began to accrue delinquencies. By August 2005, she was delinquent on six accounts totaling approximately \$10,200.

Subparagraph 1.a references a debt owed to a phone company. Subparagraph 1.b references a debt owed to an insurance company. By November 2005, Applicant had satisfied both. [\(7\)](#)

Subparagraph 1.c remains outstanding. She initially denied it in May 2003 after discovering it on her credit report. [\(8\)](#) Later, in July 2003, she learned that the creditor was a collection agent for the apartment complex where she lived while unemployed in 2002, and that the amount due represented approximately five months of delinquent rent. [\(9\)](#) She then promised to contact the creditor to make payment arrangements.

Rather than keeping her promise, Applicant again denied responsibility for it, two years later, in response to the SOR. [\(10\)](#) At the hearing, she acknowledged it was her debt, but stated she had been unable to contact the creditor. [\(11\)](#)

Subparagraph 1.d is a delinquent credit card account. At the hearing, Applicant submitted Exhibit J in support of her contention that it has been paid. It does not support her contention. I find subparagraph 1.d is still outstanding.

The debt listed in subparagraph 1.e preceded the 2002 unemployment. It was satisfied in December 2000. [\(12\)](#)

Subparagraph 1.f is a delinquent credit card account. At the hearing, Applicant alleged it was satisfied, but provided no documentary evidence supporting her contention. [\(13\)](#) I find it is still outstanding.

Subparagraph 1.g references a delinquent car note. Applicant alleges she has been making payments toward its satisfaction since October 2005. [\(14\)](#) The documentary evidence she provided indicated that she only made, at most, two payments during the month of April 2006. [\(15\)](#)

In late 2005, Applicant borrowed \$5,000 from her 401(k) retirement savings account to purchase Christmas gifts and satisfy two "payday" loans she had executed to assist her two children. [\(16\)](#) The record does not contain any evidence documenting the balance of the retirement account before she borrowed the money from it.

Applicant entered a credit counseling program in April 2006. [\(17\)](#) The only debt listed in the SOR that is included in the credit counselor's payment plan is the car note, as alleged in subparagraph 1.g. The evidence is inconclusive with respect to whether Applicant has made any payments toward the satisfaction of the plan since April 2006.

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (mitigating conditions).

An administrative judge need not view the adjudicative guidelines as inflexible 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 Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. 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.

The following adjudicative guideline is raised:

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

Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the conclusions below.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest." [\(18\)](#) In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

The Government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the Government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Applicant's loyalty is not at issue in these proceedings. 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."

## CONCLUSIONS

### **Financial Considerations**

Applicant's accrual of financial delinquencies in excess of \$10,000 between 2001 and 2005 triggers the application of Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and FC DC E2.A5.1.2.3 (*Inability or unwillingness to satisfy debts*). Nearly all of the debt accrued as the result of an extended period of unemployment. Financial Considerations Mitigating Condition (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.

Although Applicant presented documentary evidence in support of the application of 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*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), it was scant and inconclusive. Moreover, her most significant delinquency is still outstanding, and she has yet to contact the creditor despite promising to do so more than three years ago. I conclude that neither mitigating condition applies.

### **Whole Person Concept**

Absent any persuasive supporting documentary evidence, Applicant's case is primarily dependent upon the credibility of her assertion that the remaining unpaid debts have either been satisfied or are in the process of being satisfied. Her

credibility, however, was irrevocably damaged by the manner in which she addressed the \$5,500 debt for delinquent rental payments. Balancing the disqualifying and mitigating conditions of the financial considerations guideline, in conjunction with the precepts of the whole person concept, particularly the absence of rehabilitation,<sup>(19)</sup> and the likelihood of continuation,<sup>(20)</sup> I conclude she has not mitigated the security concern.

### **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: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: 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.

Marc E. Curry

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 and modified (Directive).
2. While in the process of identifying Exhibit V for the record, I noted that it was two pages in length (Tr. 78). The copy in the file only contains one page. I contacted both parties separately after the hearing. Both told me that Exhibit V was only one page, and that my copy of Exhibit V matched their respective copies. My earlier identification of this exhibit as two pages long was a misstatement.
3. Tr. 53.
4. *See* Exhibit 3, Signed, Sworn Statement, dated July 23, 2003, at 4, and Tr. 53.
5. Exhibit P, Reference Letter , dated September 1, 2004.
6. Exhibit O, Performance Plus Award, dated April 21, 2006, Exhibit Q, Performance Plus Award, dated September 1, 2004, Exhibit R, Certificate of Excellent Service, granted August 27, 2003, and Exhibit S, Certificate of Appreciation, undated.
7. Exhibit A, Receipt of Payment to Creditor Listed in Subparagraph 1.a, dated October 29, 2005. Exhibit B, Letter from Creditor Listed in 1.b to Applicant, dated August 2, 2005.

8. Exhibit C, Letter from Applicant to Credit Report Bureau, dated May 5, 2003.
9. Exhibit 3, Signed, Sworn Statement, dated July 23, 2003, at 2.
10. Answer, dated October 31, 2005 at 1.
11. Tr. 27, 39.
12. Exhibit F, Letter from Creditor to Applicant Verifying Satisfaction of Delinquency, dated December 29, 2000.
13. Tr. 28.
14. Tr. 32, 84.
15. Exhibit V, Letter from Credit Counseling Agency to Applicant, dated May 2, 2006.
16. Tr. 69.
17. *Id.*
18. *See generally*, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.
19. Directive ¶E2.2.1.6.
20. Directive ¶E2.2.1.9.