

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant encountered financial problems after separating from active duty military service. She incurred approximately \$16,000 in delinquent debt. In 2000, she entered into a repayment plan but was unable to complete the plan as a result of having to take unpaid leave due to a difficult pregnancy. She has paid off some medical bills but the majority of the delinquent debt remains unresolved. Since mid 2002, she has not contacted any of the creditors to resolve the debts. She has not made a good faith effort to resolve these debts. Her failure to list her delinquent debt on her security clearance application was not deliberate. The personal conduct concern is mitigated. However, she failed to mitigate the security concern arising from her financial situation. Clearance is denied.

CASENO: 05-02645.h1

DATE: 05/17/2006

DATE: May 17, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-02645

**DECISION OF ADMINISTRATIVE JUDGE**

**ERIN C. HOGAN**

**APPEARANCES**

**FOR GOVERNMENT**

Nichole Noel, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant encountered financial problems after separating from active duty military service. She incurred approximately \$16,000 in delinquent debt. In 2000, she entered into a repayment plan but was unable to complete the plan as a result of having to take unpaid leave due to a difficult pregnancy. She has paid off some medical bills but the majority of the delinquent debt remains unresolved. Since mid 2002, she has not contacted any of the creditors to resolve the debts. She has not made a good faith effort to resolve these debts. Her failure to list her delinquent debt on her security clearance application was not deliberate. The personal conduct concern is mitigated. However, she failed to mitigate the security concern arising from her financial situation. Clearance is denied.

**STATEMENT OF THE CASE**

On August 8, 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. <sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct.

Applicant answered the SOR in writing on August 27, 2005. She admits to all the allegations under Guideline F but denies all the allegations under Guideline E. She elected to have a hearing. This case was assigned to me on November 29, 2005. On February 16, 2006, DOHA issued a Notice of Hearing scheduling the hearing on March 29, 2006. The hearing was held as scheduled. At the hearing, the Government offered four exhibits which were admitted without objection as Government Exhibits (Gov. Ex.) 1 through 4. Applicant testified and submitted two exhibits which were admitted without objection as Applicant Exhibits (AE) 1 and 2. In addition, SOR ¶¶ 2.a and 2.b were amended by striking "1.b" from each allegation without objection. DOHA received the transcript on April 21, 2006.

## FINDINGS OF FACT

Applicant's admissions in her answer to the SOR and at the hearing are incorporated into my 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 33-year-old employee of a defense contractor seeking to obtain a security clearance at the SECRET level. (2) She is an electronics technician. (3) She has lived with her husband since July 1998. (4) They got married on June 4, 2004. (5) She has two daughters, ages 6 and 4. (6)

From August 14, 1990, to March 1, 2000, Applicant served on active duty in the United States Air Force. She held the rank of Staff Sergeant. (7) She was an avionics technician. (8) In April 1999, her first daughter was born four months premature. The baby stayed in the hospital until she was strong enough to bring home in July 1999. She continued to have complications, including an incident in August 1999 where she stopped breathing. Applicant decided she could not meet the needs of the Air Force and care for her daughter at the same time so she applied for a hardship discharge. (9)

Upon separating from the military, Applicant moved to the town where she currently resides. She owned a home near the military base where she was stationed which she sold at a loss. She opened a line of credit to pay off the loss (§ 1.a). (10) Applicant was unemployed for six months after separating from the Air Force. She lived off unemployment benefits and the wages her now husband made working construction. Their household income was reduced by half. (11) She had no health insurance. (12) She began to use her credit cards for daily living expenses. (13)

Applicant started working full-time in September 2000. (14) At that time she enrolled in a repayment plan with a credit counseling service because she did not want to ruin her credit. She agreed to pay \$279 a month until all of her debts were paid. She made payments until the middle of 2002. She encountered financial difficulties during her second pregnancy. Her doctor ordered her on bed rest for two to three weeks early in her pregnancy. Towards the end of her pregnancy she was placed on bed rest for a month. She received no pay while she was on bed rest. (15) She also took six weeks maternity leave after the baby was born in January 2002. (16) Her husband was not working when she was placed on bed rest towards the end of her pregnancy. He is a construction worker and the work is sporadic based on the weather. In March 2002, Applicant went back to work and has worked consistently since then. (17)

On July 12, 2002, Applicant submitted a security clearance application. (18) In response to question "38. Your Financial Delinquencies - 180 Days. In the last 7 years, have you been over 180 day(s) delinquent on any debt(s)?" and question "39. Your Financial Delinquencies - 90 Days. Are you currently over 90 days delinquent on any debt(s)?", she answered

"No." [\(19\)](#)

Her security background investigation revealed Applicant had seven delinquent debts with a total approximate balance of \$16,608. [\(20\)](#) The debts consisted of a \$4,122 charged-off account for a line of credit (§ 1.a), a \$7,559 collection account for a credit card (§ 1.b); a \$2,075 collection account for a credit card (§ 1.c); a \$2,082 charged off credit card account (§ 1.d); a \$339 charged off account for credit card used to buy a computer (§ 1.c); a \$31 unpaid telephone bill (§ 1.f) and three medical-related collection accounts totaling \$400 (§ 1.g).

The medical accounts listed in SOR § 1.g have been paid. [\(21\)](#) All of the other debts remain unpaid. Applicant has not contacted any of these creditors since she stopped using the credit counseling service in the middle of 2002. She claims she does not have enough money to pay all the bills. [\(22\)](#)

Applicant's current monthly income is \$2,000. Her husband's monthly income is \$1,600. Their monthly expenses are \$2,216. They have approximately \$1,387 left over each month after expenses. [\(23\)](#) However, she states the amount left over varies due to the sporadic nature of her husband's employment. She estimates that her husband is unemployed for three to four months out of the year. [\(24\)](#)

Applicant did not list her delinquent debts on her security clearance application because she did not think any of her delinquent debts were over 180 days old. She admits that some of the debts were over 90 days delinquent but did not think she needed to list them since she was making payments towards them on the credit counseling plan. [\(25\)](#)

Applicant's last performance report indicated that her performance was exceptional. She was rated at the highest level. [\(26\)](#)

## POLICIES

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." [\(27\)](#) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline F, Financial Considerations: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. [\(28\)](#)

Guideline E, Personal Conduct: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. [\(29\)](#)

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

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." [\(30\)](#) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. [\(31\)](#) An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent 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. [\(32\)](#)

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. [\(33\)](#) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision. [\(34\)](#) "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." [\(35\)](#)

A person granted access to classified information enters into a special relationship with the government. 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. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## CONCLUSIONS

### Guideline F- Financial Considerations

With respect to Guideline F, the government established its case. Applicant encountered financial difficulties in 2000 after separating from the military. As a result, she incurred approximately \$16,000 in delinquent debt. Her actions indicate that she is either unable or unwilling to pay these accounts. As such, 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*) apply.

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 early 2000. She has paid off some medical bills but the majority of the debt remains unpaid.

Applicant encountered financial difficulties upon separating from the military. She was unemployed for six months and had an ill premature infant and no health insurance. 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 to her situation with respect to her oldest daughter's medical expenses incurred while she was an infant. She also encountered financial difficulties when she was ordered on bed rest during her second pregnancy which caused her to default on her Ameridebt repayment plan. However, her youngest daughter is now four years old, and Applicant has worked continuously since her daughter's birth. Aside from the debt in SOR ¶ 1.g, she has not attempted to contact any of her delinquent creditors since mid 2002. Her inaction towards resolving her delinquent debt gives less weight to this mitigating condition.

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 since she has taken no action towards resolving the majority of her delinquent debts. It is unlikely her financial problems will be resolved in the near future.

Although Applicant enrolled in a debt repayment program in September 2000 and was able to make payments until the middle of 2002, she was unable to keep up with the payment program due to a loss of income while ordered to bed rest during a difficult pregnancy. However, she has worked continuously after returning from maternity leave. She and her husband have approximately \$1,300 left over each month after expenses. While she claims that her husband is unemployed around three to four months of the year due to the sporadic nature of the construction industry, this factor can be figured into the household budget. Based on the figures provided at hearing, there would still be money left over

that could be applied towards the delinquent debt. She has made no attempt to contact any of the creditors in SOR ¶¶ 1.a - 1.f since the middle of 2002. For these reasons, 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 she has not demonstrated that she has made a good-faith effort to resolve these debts. She has failed to mitigate the security concerns raised under Guideline F. Guideline F is decided against Applicant.

### **Guideline E, Personal Conduct**

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully.

In this case, the record evidence fails to establish Applicant deliberately omitted or concealed information about her delinquent debts. Although her answers to questions 38 and 39 were incorrect, Applicant successfully rebutted the allegations that she deliberately provided a false answer. I find credible her explanation that she did not believe any of her debts were over 180 days old when she filled out her security clearance application. At hearing, she admitted that she was aware that she had debts that were over 90 days delinquent. However, she thought they were no longer delinquent since she was paying these debts off through her credit counseling plan. She was still making payments on the plan at the time she filled out her security clearance application. I find that she did not intend to falsify her security clearance application. Guideline E is decided for Applicant.

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. I find Applicant failed to mitigate the security concerns raised by the financial considerations. 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.

### **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: For Applicant

Paragraph 2., Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For 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 and modified (Directive).
2. Tr. at 4-5.
3. Tr. at 36.
4. Gov. Ex. 2 at 2.
5. Tr. at 4.
6. Tr. at 14.
7. Tr. at 15.
8. Tr. at 39.
9. Answer to SOR.
10. *Id.*
11. Tr. at 16 - 17.
12. Tr. at 17.
13. Tr. at 18.
14. Tr. at 22, Gov. Ex. 1, question 6.
15. Tr. at 22-23.
16. Tr. at 23.
17. Tr. at 24.
18. Gov. Ex. 1.
19. *Id.*
20. Gov. Ex. 3 and 4.
21. AE A.
22. Tr. at 24-25.
23. Tr. at 25-28.
24. Tr. at 28-29.
25. Tr. at 31-33.
26. AE B.

27. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

28. Directive, ¶ E2.A6.1.1.

29. Directive, ¶ E2.A5.1.1.

30. Directive, ¶ E2.2.1.

31. *Id.*

32. *Id.*

33. Directive, ¶ E3.1.14.

34. Directive, ¶ E3.1.15.

35. Directive, ¶ E.2.2.2.