

DATE: August 30, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-02873

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant accrued nearly \$10,000 in delinquent or past due debts due to his irresponsible use of easily-obtained credit cards while in college from 1999 to 2003. While unemployed or under employed for the ensuing 16 months, he was unable to meet his credit card obligations. He is now employed full time and paying his debts, albeit at a pace that will not resolve his obligations for another three years. Nonetheless, he has mitigated the security concerns about his finances because available information shows he is managing his money responsibly and is not likely to make similar financial mistakes in the future. Clearance is granted.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, Defense Office of Hearings and Appeals (DOHA) adjudicators were unable to make a preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to give Applicant a security clearance. On August 2, 2005, DOHA issued a Statement of Reasons (SOR) to Applicant alleging facts in his background that raise security concerns addressed in the Directive under Guideline F (financial considerations).

Specifically, the government alleged Applicant had generated about \$9,998 in delinquent or overdue debts in the form of six personal credit accounts either charged off or placed for collection (SOR ¶¶ 1.a - 1.f). Applicant answered the SOR on August 18, 2005, denied with explanation the allegation in SOR ¶ 1.b, admitted with explanation the remaining allegations, and requested a hearing.

The case was assigned to a DOHA administrative judge on January 3, 2006, but transferred to me on February 15, 2006 due to workload considerations. I convened a hearing on March 21, 2006, at which the government presented six exhibits (G1 through G5). Applicant testified, and presented one witness and 10 exhibits (AX A through J). DOHA received the transcript (Tr) on March 31, 2006.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 25 years old and employed since September 2004 as an engineer with a defense contractor. He attended a private university from 1999 until graduating in May 2003 with a bachelor of science degree in electrical engineering. Between graduation from college and the beginning of his current job, Applicant was either unemployed or under-employed in jobs outside his field of expertise. While he was in school, he held several part-time jobs. His employer is very pleased with Applicant's performance so far, characterizing him as an "exceptional" employee.

While in school, Applicant relied on student loans to offset what his parents were able to pay in tuition. He was left to his own devices to pay for additional needs, such as books, rent, clothing, and food. Because he was enrolled full time and did not make much money at his part-time jobs, Applicant accepted various unsolicited offers from various credit card companies to open accounts. However, Applicant failed to pay these accounts as required because he did not make enough money from his part-time jobs, and he did not receive bills or delinquency notices when he moved at the end of each semester.

Applicant submitted a security clearance application (SF 86)⁽²⁾ in September 2004 after he was hired by his current employer. In response to questions about his finances, he disclosed he had two outstanding credit card debts. During the ensuing background investigation, two credit bureau reports⁽³⁾ and Applicant's own statements⁽⁴⁾ showed he was delinquent on at least six accounts: a women's clothing store account for \$135 opened in January 2000, but charged off as a business loss in August 2004 (SOR ¶ 1.a); a credit card account for \$1,446 opened in July 1999, but charged off as business loss in May 2003 (SOR ¶ 1.b); a credit card account for \$1,078 placed for collection in April 2001 (SOR ¶ 1.c), a credit card account for \$1,938 placed for collection in September 2002 (SOR ¶ 1.d), a credit card account for \$3,574 opened in June 2000, but charged off as a business loss in January 2003 (SOR ¶ 1.e), and a credit card for \$1,817 opened in March 2000, but charged off as a business loss in July 2004 (SOR ¶ 1.f).

Of these debts, Applicant has paid SOR ¶ 1.a,⁽⁵⁾ SOR ¶ 1.c is now reduced to about \$210,⁽⁶⁾ and he has reduced SOR ¶ 1.f to about \$684.⁽⁷⁾ He began paying some of his debts through a debt consolidation service plan established by his older sister for his benefit after she had used the service to pay her own debts.⁽⁸⁾ However, on August 22, 2005, Applicant enrolled in his own credit repayment plan with a different company.⁽⁹⁾ He is paying through this plan SOR ¶¶ 1.d, 1.e, and 1.f. The current repayment plan will take 36 months. Applicant did not include SOR ¶ 1.b in the plan as he does not remember opening an account with that card company and is still trying to determine if it is an accurate entry on his credit report.

After Applicant submitted a signed, sworn statement when DSS interviewed him in December 2004, he retained the services of a law firm specializing in credit repair. Applicant paid this firm \$40 each month to research the entries in his credit reports and to facilitate correction of errors therein. Applicant thought when he signed up for their services that they would also negotiate agreements with his creditors for settlements and repayment plans. It was not until after Applicant responded to pre-SOR interrogatories from DOHA adjudicators in May 2005 that he realized this was not the case. At that time, he began using his older sister's debt repayment service and started looking for other ways to resolve his debts.⁽¹⁰⁾ Although the law firm he used did not actually help him pay any debts, he was able to get an accurate picture of what he owed and to whom as some of his accounts had been transferred among different creditors and collection agencies.

In addition to using the repayment plans described above, Applicant is saving money to use as a lump sum with which to negotiate more favorable terms as he approaches each creditor individually. As of the hearing, a separate savings account he opened for that purpose held about \$1,000. He also had savings of about \$2,500 set aside for contingencies. Occasionally, Applicant works a second job preparing high school students for the Scholastic Aptitude Test (SAT).

A personal financial statement given along with his December 2004 statement showed he had about \$760 remaining after expenses each month without paying any of the debts discussed above. Applicant has incurred no new delinquencies since 2004. He has been current on his student loan payments since graduation, and lives within his

means. He now makes about \$50,000 annually after receiving a \$5,000 raise in October 2005 on the strength of his excellent work record. [\(11\)](#)

POLICIES AND BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest [\(12\)](#) for an applicant to receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The applicant must then produce information sufficient to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the applicant bears a heavy burden of persuasion. [\(13\)](#) 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 as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. [\(14\)](#)

The Directive sets forth adjudicative guidelines [\(15\)](#) for consideration when evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section E2.2.1 of the Directive. [\(16\)](#) The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Given the record evidence as a whole, the relevant adjudicative guideline to be applied here is Guideline F (financial considerations).

CONCLUSIONS

The government has presented sufficient information to support the facts alleged and security concern stated in the SOR. An applicant who is financially overextended through delinquent debt and poor personal financial management may be at risk of engaging in illegal acts to generate funds to resolve their fiscal difficulties. [\(17\)](#) The government's exhibits show Applicant accrued six delinquent debts due to mismanagement of his personal credit while in college. Available information further shows only one of the debts has been paid off, and three of the remaining five debts are being paid through a debt consolidation and repayment service. Accordingly, Guideline F disqualifying condition (DC) 1 [\(18\)](#) and DC 3 [\(19\)](#) apply.

Decisions in financial cases such as this do not depend solely on whether all of an applicant's debts are repaid; nor should they be based on the total amount of remaining debt a person owes. Even much smaller amounts than those at issue here may pose a security concern depending on the surrounding circumstances. In most cases, a key issue is the manner in which the applicant's debts and overall finances are being addressed currently, and whether the financial considerations raised through available investigative information will continue to be a security concern or recur in the future. In light of all available information bearing on these issues, and for the following reasons, I conclude Applicant has mitigated the government's concerns in this regard.

The government is properly concerned about Applicant's suitability for access to classified information, especially in light of an apparent failure to act in a more timely manner. However, his obligations went unpaid due, in part, to a period of unemployment and under employment from May 2003 until September 2004. After being interviewed by a government investigator in December 2004, and with a steady income available to him, Applicant retained the services of a law firm specializing in credit repair. He reasonably thought the firm's services included not only research into his credit history and correction of discrepancies, but negotiation of payment with his creditors as well. It was not until about May 2005, after he responded to DOHA interrogatories, that he realized no payment plan was being worked out by the law firm. At that time, he was able to make some payments on some of his debts through a debt consolidation and

repayment service his older sister had used for her own debts. In August 2005, Applicant enrolled in his own such service and embarked on a 36-month repayment plan. Based on the foregoing, I conclude Guideline F mitigating condition (MC) 6⁽²⁰⁾ applies as Applicant's efforts, while initially ineffective, were undertaken in good faith as a means to resolve his debts.

Additionally, Applicant is saving money separately to use as a ready source of cash with which to negotiate settlements with his creditors so he might resolve one or more of them earlier than his repayment plan calls for. He also has a positive net cash flow each month and prudently saves what he can for contingencies. He has paid one debt off entirely and has been current on his student loan throughout its repayment period. Despite the misunderstanding about what the law firm would do for him, he remained active in repaying his debts first through his sister, then through his own repayment plan. Further, Applicant is living within his means and has not incurred any new delinquencies since graduating from college. His earning ability is solid insofar as his employer thinks enough of his performance to give him a \$5,000 raise after a year with the company. In light of all available information, I conclude Guideline F MC 4⁽²¹⁾ also applies.

In general, I conclude Applicant has mitigated the government's security concerns about his finances. I have carefully weighed all of the available evidence, and I have applied the appropriate disqualifying and mitigating conditions. Further, I have tried to make a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. Specifically, I conclude Applicant's age and relative lack of financial experience helped cause his financial problems in the first place.⁽²²⁾ However, at the hearing I was personally able to assess Applicant's sincerity and comprehension of the seriousness of these issues. He has the requisite insight into the government's concerns and the need to manage his personal affairs prudently. He also presented reliable information showing he is making progress, albeit slowly, in resolving his debts and conducts his financial affairs in a way that will likely preclude recurrence of such problems in the future.⁽²³⁾ Based on all available information about Applicant's finances, I conclude any reasonable doubts arising from the results of his background investigation have been satisfactorily addressed and he has overcome the government's case.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial): FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: For the Applicant

Subparagraph 1.f: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Clearance is granted.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

2. G1.
3. G5, G6.
4. G2, G3, G4.
5. AX F
6. Tr., 48 - 49.
7. Tr., 48.
8. AX B.
9. AX G.
10. Tr., 96.
11. Tr., 114.
12. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
13. *See Egan*, 484 U.S. at 528, 531.
14. *See Egan*; Directive E2.2.2.
15. Directive, Enclosure 2.
16. Commonly referred to as the "whole person" concept, these factor are as follows:
 - E2.2.1.1. The nature, extent, and seriousness of the conduct;
 - E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation;
 - E2.2.1.3. The frequency and recency of the conduct;
 - E2.2.1.4. The individual's age and maturity at the time of the conduct;
 - E2.2.1.5. The voluntariness of participation;
 - E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes;
 - E2.2.1.7. The motivation for the conduct;
 - E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and
 - E2.2.1.9. The likelihood of continuation or recurrence.
17. Directive, E2.A6.1.1.
18. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;
19. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
20. E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.
21. 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.
22. E2.2.1.4. The individual's age and maturity at the time of the conduct.
23. E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes. E2.2.1.9. The likelihood of continuation or recurrence.

