

KEYWORD: Financial

DIGEST: Applicant has a short history of financial delinquencies. Her financial problems were, to a large extent, the result of changing jobs, the financial difficulties of her husband's business, and three months of little or no earnings due to maternity leave. Applicant mitigated the financial considerations security concerns by taking control of her finances and initiating good-faith efforts to repay creditors or otherwise resolve her debts. Clearance is granted.

CASENO: 05-03642

DATE: 03/20/2006

DATE: March 20, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-03642

**DECISION OF ADMINISTRATIVE JUDGE**

**JUAN J. RIVERA**

**APPEARANCES**

**FOR GOVERNMENT**

Eric Borgstrom, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

Applicant has a short history of financial delinquencies. Her financial problems were, to a large extent, the result of changing jobs, the financial difficulties of her husband's business, and three months of little or no earnings due to maternity leave. Applicant mitigated the financial considerations security concerns by taking control of her finances and initiating good-faith efforts to repay creditors or otherwise resolve her debts. Clearance is granted.

## **STATEMENT OF THE CASE**

On September 13, 2005 the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline F (Financial Considerations). The SOR informed Applicant that, based on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant her access to classified information. <sup>(1)</sup>

On October 3, 2005, Applicant answered the SOR (Answer). She admitted (with explanations) the allegations in subparagraphs 1.a, 1.b, 1.c, 1.d, 1.e, 1.f, 1.g, 1.h, 1.j, and 1.k. She denied the allegation in subparagraph 1.i, and requested a hearing. The case was assigned to me on January 3, 2006. On January 24, 2006, I convened a hearing at which the government presented four exhibits, marked GE 1-4, to support the SOR. <sup>(2)</sup> Applicant testified and presented 28 exhibits that were admitted without objection and marked AE 1-28. <sup>(3)</sup> DOHA received the transcript (Tr.) on February 1, 2006.

## **PROCEDURAL MATTER**

Based on the government's motion, and with Applicant's consent, the SOR was amended by adding Subparagraph "1.1: *You are indebted to Sun Trust FSB on an account that was past due in the approximate amount of \$5,688. As of January 24, 2006, this debt has not been satisfied.*" Applicant admitted SOR allegation 1.1, and requested no additional time for preparation. The amendment was granted to conform the SOR to the evidence submitted. [\(4\)](#)

## **FINDINGS OF FACT**

Applicant's admissions are incorporated herein as findings of facts. After a thorough review of the pleadings, transcript, and exhibits, I make the following additional findings of facts:

Applicant is 39 years old and has completed approximately one year of college. She is a senior plumbing designer and has worked for a defense contractor for approximately three years. She has been married three times and divorced twice. She has a 17-year-old son from her first marriage for whom she is required to provide support. Applicant divorced her second husband in 1997 and supported herself as a single mother through 2003. There is no evidence she had financial problems during that period of time.

From March 1993 through April 2001, Applicant worked for company "A" as a plumbing designer, and supplemented her income by doing freelance work (plumbing designs) and menial jobs. From April 2001 through November 2002, she quit her job with company "A" and went to work for her current spouse's company ("B"). In doing so, she took a cut in pay and stopped working two jobs. After September 11, 2001, company "B" struggled obtaining contracts. As a result, Applicant was not paid a steady income and sometimes would not get paid at all. She began to fall behind on her financial obligations. To remedy the situation, in November 2002, she quit her job with company "B" and obtained employment at company "C," where she has been working since.

In July 2004, Applicant delivered a baby and was out of work on maternity leave for approximately three months. During the first month of maternity leave, her employer paid her a portion of her salary as short-term disability. She had no income during the remaining two months of maternity leave. Although Applicant's pregnancy had been planned, her spouse's financial contribution to the household was small. Her three months maternity leave, earning little or no income, precipitated her delinquencies. Applicant's testimony is corroborated by GE 4, her Equifax credit report, dated May 2004. The report shows that as of May 2004, she had 26 financial accounts with only one account 30 days past due. Further, GE 2 (Applicant's Equifax credit report, dated July 2005), depicts her 24 month payment history. It shows that prior to July 2004, she had a relatively good track record of financial responsibility with only some few accounts out of 34 being sporadically delinquent.

After she returned to work, Applicant began making efforts to repay her creditors or otherwise resolve her delinquent

debts. She supplemented her income by doing freelance plumbing design work. Her efforts were initially hampered by being the main household provider due to her husband's company poor financial situation. Her income, however, was not sufficient to cover her household living expenses and pay their debts. As such, she continued to get behind on her debts. Applicant testified, however, that lately her husband's company has been landing frequent contracts and it is doing well financially. Her husband provides full financial support to the household, giving her his earnings and allowing her full control of the household finances.

Both, Applicant and her husband take home approximately \$2,900 a month.<sup>(5)</sup> Applicant's 2004 U.S. Individual Income Tax Return (joint filing) shows a combined adjusted gross income of \$79,479. She testified her mother-in-law passed away recently and left her husband approximately \$8,000, which they intend using to get back in their feet financially.

In 2005, Applicant gave her 17-year-old son her 1989 Toyota Forerunner. Her spouse had bought a 1999 Ford Expedition in 2002, and gave it to the Applicant in 2005. Applicant's spouse drives a 2005 pickup truck purchased by his company. Additionally, in 2002 Applicant and her spouse bought a \$14,000 boat. The boat and the Forerunner were purchased using her home equity loan. The Expedition was purchased using her line of credit.

At the hearing, Applicant demonstrated having a good grasp of her financial situation. She was organized and presented realistic budget/payment plans and seems to be adhering to them. Applicant expressed embarrassment and remorse for falling behind on her finances and not being able to resolve her delinquent accounts earlier. Applicant testified she has never had financial problems before, and has been doing the best she can under the circumstances to resolve her financial situation. Applicant plans to have all her accounts (except the mortgage and second mortgage) paid by the fall of 2006.

Concerning the 12 SOR allegations, I find that:

1.a. The debt is current based on Applicant's January 2006, account statement.<sup>(6)</sup>

1.b. Prior to July 2005 (before receipt of the SOR), Applicant made arrangements with the creditor to make partial payments.<sup>(7)</sup> Based on AE 14, she is current on her payments.

1.c. The account is current as of January 2006.<sup>(8)</sup>

1.d. This judgment collection was paid in December 2005.<sup>(9)</sup> Applicant had been making payments since July 2005.

1.e. In January 2006, Applicant made a \$269.79 payment. The account statement indicates she had a "0" balance, and that she closed the account. At the hearing, Applicant clarified that she is current on this account, but owes \$269.76. [\(10\)](#)

1.f. Applicant made a \$613.68 payment in January 2006. The account is current. [\(11\)](#)

1.g. Applicant made a partial payment of \$83 in February 2006. [\(12\)](#)

1.h. Paid in full in August 2005. [\(13\)](#)

1.i. Paid in full in July 2005. [\(14\)](#)

1.j. Applicant is current. Cancelled checks show she has paid \$1,400 since October 2005. [\(15\)](#)

1.k. Considering Applicant's earnings, her supplemental freelance work income, and her husband's income, Applicant's monthly expenses and minimum debt payment do not exceed the household's monthly income.

1.l. [\(16\)](#) This is a line of credit loan that Applicant opened when she bought her home around 1998. After falling behind in July 2004, Applicant negotiated a payment plan, and has been making monthly payments of \$300. [\(17\)](#) At the time of the hearing, she was considering a counterproposal to her creditor's settlement offer of \$4,600. [\(18\)](#)

Applicant presented several reference letters that characterized her a diligent and hard-working professional with an excellent reputation as a plumbing designer. Her performance reviews showed she has been consistently rated as an above average to excellent plumbing designer.

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's suitability for access to classified information. The administrative judge must take into account both disqualifying and mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive, <sup>(19)</sup> and the whole person concept. <sup>(20)</sup> 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 granting or denial of access to classified information. Having considered the record evidence as a whole, I conclude Guideline F (Financial Considerations) is the applicable relevant adjudicative guideline.

## BURDEN OF PROOF

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest <sup>(21)</sup> for an applicant to either receive or continue to have access to classified information. The government has the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. To meet its burden, the government must establish a prima facie case that it is not clearly consistent with the national interest for the applicant to have access to classified information. The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries a heavy burden of persuasion. <sup>(22)</sup> 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 to ensure 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 to classified information in favor of protecting national security. <sup>(23)</sup>

## CONCLUSIONS

Guideline F (Financial Considerations). A security concern exists when a person has significant unpaid debts. An individual who is financially overextended may be tempted to engage in illegal or unethical acts to generate funds to meet financial obligations. <sup>(24)</sup> Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life can often indicate how a person may behave in other aspects of life.

Beginning in the Summer of 2004, and continuing until the hearing date, Applicant experienced financial setbacks that caused her to be financially overextended and became delinquent on numerous debts. The government established that Disqualifying Conditions (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts*, apply.

There is no evidence Applicant had financial problems prior to the Summer of 2004. To the contrary, Applicant's payment history shows that prior to July 2004, she had a relatively good track record of financial responsibility. To a great extent, her financial difficulties are tied to her changing jobs, being three months out of work in maternity leave, and her husband's struggling business. As such, Applicant's setbacks may be attributed to circumstances beyond her control.

Applicant initiated good-faith efforts to repay overdue creditors or otherwise resolve her delinquencies prior to receiving the SOR. She has taken control of the household finances, satisfied most of her creditors, and made payment arrangements with others. Applicant is not debt free, nor has she paid all her creditors. Notwithstanding, considering all the facts and circumstances of her case, Applicant has demonstrated an improved level of financial responsibility. Her current financial situation seems good in light of her husband's business improvement, which provides for a substantial combine income. I believe she has learned from her mistakes and it is not likely to engage again in financial irresponsibility. Mitigating Conditions (MC) 3: *The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business turndown, unexpected medical emergency, or a death, divorce, or separation)*; <sup>(25)</sup> and C 6: *The individual initiated a good-faith effort to repay creditors or otherwise resolve debts*, <sup>(26)</sup> apply.

Considering all relevant and material facts and circumstances present in this case, including Applicant's testimony, the circumstances that caused her to become delinquent, the actions she took to rectify her financial situation, the whole person concept, the adjudicative factors listed in the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has mitigated this security concern. Guideline F is decided for the Applicant.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

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

Subparagraphs 1.a - 1.1 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.

Juan J. Rivera

Administrative Judge

1. Required by Executive Order 10865, Safeguarding Classified Information Within Industry (Feb. 20, 1960, as amended, and Department of Defense Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (Jan. 2, 1992) (Directive), as amended.
2. I marked the government's exhibit list as GE 5 for Identification (Id).
3. AE 1-13 were admitted at the hearing, and AE 14-28 were submitted after the hearing. The government's response to Applicant's post-hearing submission was marked Appellate Exhibit 1.
4. DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), Additional Procedural Guidance E3.1.17.
5. AE 3, 26-27.
6. AE 16.
7. GE 2, Equifax Credit Report, dated July 2005.
8. AE 17.
9. AE 2 and 18.
10. AE 19.
11. AE 20.
12. AE 21.
13. AE 12.
14. See documents attached to Applicant's answer to the SOR.
15. AE 22.



16. Subparagraph 1.1, was added on Government's motion to amend the SOR to conform it with the evidence presented. See "Procedural Matters," above.

17. AE 23.

18. AE 23.

19. Directive, Section 6.3. Each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate: the nature and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the age of the applicant; the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation; and the probability that the circumstances or conduct will continue or recur in the future.

20. Directive, E2.2.1.

21. See Department of the Navy v. Egan, 484 U.S. 518 (1988).

22. *Id.*, at 528, 531.

23. See Egan; Directive E2.2.2.

24. Directive, E2.A6.1.1.

25. Directive, E2.A6.1.3.3.

26. Directive, E2.A6.1.3.6.