

KEYWORD: Financial

DIGEST: Applicant's history of financial difficulties makes her unsuitable for a security clearance. Although her pending chapter 7 bankruptcy will discharge the debts alleged in the SOR, it is too early to tell if she will be able to avoid financial problems in the future. Clearance denied.

CASE NO: 05-10995

DATE:06/20/2006

DATE: June 20, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-10995

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's history of financial difficulties makes her unsuitable for a security clearance. Although her pending chapter 7 bankruptcy will discharge the debts alleged in the SOR, it is too early to tell if she will be able to avoid financial problems in the future. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 30 December 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of her clearance because of financial considerations. ⁽¹⁾ Applicant answered the SOR on 26 January 2005 and requested a hearing. DOHA assigned the case to me 2 March 2006 and I convened a hearing 7 April 2006. DOHA received the transcript 21 April 2006.

FINDINGS OF FACT

Applicant admitted 17 debts totaling nearly \$30,000, falling past due between 1999 and 2005. ⁽²⁾ Of the 17 debts, nearly \$22,000 are for two automobile repossessions--one voluntary, one involuntary--in mid 2001. Three of the debts are less than \$100; another five are less than \$200. Most of the debts are for routine living expenses, including telephone service, electric service, minor medical, and satellite television service. The debts were all included in her March 2006 chapter 7 bankruptcy petition, which was still pending at the time of the hearing.

Applicant is a 34-year-old single mother of two, seeking her industrial clearance. She previously held a clearance while on active-duty in the U.S. Army from 1991-2000.

Applicant has a history of tight finances and financial difficulties dating back to at least 1990. In December 1990, when she was 18, she had her first child, a daughter. The father of the child has provided very little child support over the years, but Applicant has not actively pursued child support. In March 1991, she enlisted in the U.S. Army as a single mother. Applicant's parents cared for Applicant's daughter so Applicant would be operationally deployable. In November 1993, she had her second child, a son. On her 22nd birthday in April 1994, she married the father of this child, but the marriage was short-lived. Applicant deployed overseas in June 1995, but came back on emergency leave in September 1995 when her mother was diagnosed with terminal cancer. She died the day before Applicant reached home.

During her emergency leave, Applicant discovered that her husband had left her and was seeing another woman. Unable to obtain a compassionate transfer back to the U.S., Applicant returned to her overseas duty station. Her son remained with his father. Applicant's daughter moved in with her aunt. When Applicant returned to the U.S. in June 1996, she discovered that her husband was expecting a child with his girlfriend. They formally separated and were divorced in December 1997. Applicant obtained custody of their son, and although there apparently was a court-order for child support, her ex-husband paid no child support from approximately November 1999 to December 2003.

Applicant was honorably discharged from the Army in June 2000 because her parental responsibilities (she now had custody of her daughter as well) prevented her from being fully deployable. Around the same time, her father was diagnosed with terminal cancer, and Applicant put off looking for employment to care for him in his final illness. Applicant was unemployed from June 2000 to September 2001 (16 months). Her father died in November 2000.

To keep her expenses down, Applicant moved in with her sister. She also applied for state unemployment benefits, which she received from July 2000 to January 2001. In August 2001, she moved in with a woman friend in another state. She obtained a \$38,000 per year job in September 2001 that she held until July 2002, when she obtained a \$50,000 per year job with a federal contractor. Unfortunately for Applicant, the contract apparently ended in November 2002, and Applicant was again unemployed until June 2003 (8 months), during which time she collected unemployment benefits.⁽³⁾ She was also unemployed for a brief period from June to July 2004 before obtaining her current employment.

When Applicant was interviewed by the Defense Security Service in January 2005, she stated her intent to file a Chapter 7 bankruptcy petition to resolve her debts. Yet, in late November 2005 when she answered DOHA financial interrogatories, she had still not filed her bankruptcy petition because she had not been able to come up with the \$800 up-front attorneys fees. She had not come up with the money when the SOR was issued in late December 2005. In mid-January 2006, she consulted a consumer counseling agency and came up with a repayment plan for her creditors. However, the counselors encouraged her to consult an attorney about filing bankruptcy, because of the lengthy period of time it would take her repayment plan to repay her creditors. On 21 January 2006, she consulted a different attorney than she had consulted in 2005, paid a deposit of \$1,274 on her attorneys fees, with the \$500 balance to be paid by 21 February 2006. Her attorney filed the petition in March 2006, and Applicant completed the credit counseling course now required of bankruptcy filers. In late March 2006, she enrolled in the required personal financial management

course that she must complete by 30 May 2006 in order to receive her Chapter 7 discharge.

Applicant's current expenses leave her with a positive cash flow of approximately \$100 per pay day (bi-weekly). Those monthly expenses include both cell phone service and a combined telephone-internet-cable television with premium channels. Applicant's supervisor, a 21-year veteran of the Air Force, considers her one of the best employees he has ever had.

POLICIES AND BURDEN OF PROOF

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative 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. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then 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.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their 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. [\(4\)](#)

CONCLUSIONS

The government established a Guideline F case, and Applicant has not mitigated the security concerns. Although Applicant attributes her financial difficulties to her parents' illnesses and deaths, her divorce, and her three periods of unemployment after getting out of the Army in 2000, the seeds of her financial problems were sown earlier in the 1990s. That said, the debts alleged in the SOR all fell past due between 1999 and 2005. Most fell past due in 2001. Disqualifying Factors 1 and 3 apply. [\(5\)](#)

Applicant meets some of the mitigating factors for financial considerations, but not sufficiently to overcome the security concerns. Her financial difficulties are both recent and not isolated. On balance, they were due to circumstances beyond her control. But lingering concerns remain. Some of her financial difficulties were due to untimely or incomplete pursuit of child support from the fathers of her two children. Applicant's finances also appear to have always been somewhat tight, yet she has incurred debt for satellite television service (and has current expenses for cable television with premium channels). Her budget has been so tight that she has been unable to pay off any of the relatively small debts dating back to 2001, and had two debts of less than \$100 go to judgment in 2004 and 2005. Nor she could come up with the attorneys fees for her bankruptcy filing from January 2005 to January 2006. Under her financial circumstances, resorting to bankruptcy was a reasonable and prudent choice, one that will provide her a new start. Applicant's difficulty is that she has not demonstrated an ability to prudently manage her finances in the past, and has not yet had the opportunity to demonstrate that her financial difficulties will not recur after her clean start. She has received credit counseling, and assuming she completes the personal financial management course, she will obtain her bankruptcy discharge. But that discharge does not mean that the problem is being resolved or is under control. I conclude Guideline F against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against Applicant

Subparagraph e: Against Applicant

Subparagraph f: Against Applicant

Subparagraph g: Against Applicant

Subparagraph h: Against Applicant

Subparagraph i: Against Applicant

Subparagraph j: Against Applicant

Subparagraph k: Against Applicant

Subparagraph l: Against Applicant

Subparagraph m: Against Applicant

Subparagraph n: For Applicant

Subparagraph o: Against Applicant

Subparagraph p: Against Applicant

Subparagraph q: Against Applicant

Subparagraph r: 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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. The record shows that the debts at SOR 1.k. and 1.n. are the same debt. Accordingly, I find 1.n. for Applicant in order to reflect the correct number of creditors and the correct amounts owed.
3. There are discrepancies between government exhibits and Applicant's exhibits. Applicant's unemployment records (A.E. H) show she received benefits from November 2002 to June 2003. However, her clearance application (G.E. 1) showed the period of unemployment as January 2003 to September 2003, the same eight months, but a different length of employment in the previous job. I have used the dates from the unemployment records as likely to be the most accurate, both because they originated from the state benefits agency and because they are consistent with what probably happened to Applicant's contract: not being renewed at the end of the fiscal year in September 2002.
4. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
5. E2.A6.1.2.1 A history of not meeting financial obligations; E2.A6.1.2.3 Inability or unwillingness to satisfy debts;