

KEYWORD: Financial

DIGEST: Applicant presented sufficient evidence to explain, extenuate, and mitigate the security concern arising from her history of not meeting financial obligations. Clearance is granted.

CASE NO: 05-11361.h1

DATE: 06/23/2006

DATE: June 23, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-11361

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant presented sufficient evidence to explain, extenuate, and mitigate the security concern arising from her history of not meeting financial obligations. Clearance is granted.

STATEMENT OF THE CASE

Applicant is challenging the Defense Department's intention to deny or revoke her security clearance. Acting under the relevant Executive Order and DoD Directive, [\(1\)](#) on December 15, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a written statement of reasons (SOR) to Applicant. The SOR--which is in essence the administrative complaint--alleges a security concern under Guideline F for financial considerations. Applicant replied to the SOR on January 23, 2006, and requested a hearing. The case was assigned to me April 5, 2006. A notice of hearing was issued scheduling the hearing for May 23, 2006. Applicant appeared without counsel and the hearing took place as scheduled. DOHA received the transcript June 5, 2006.

FINDINGS OF FACT

In her reply to the SOR, Applicant admitted the allegations in subparagraphs 1.a, 1.c, and 1.d. She denied subparagraph 1.b explaining that she had settled this delinquent debt. Applicant's admissions are incorporated herein as findings of fact. After considering the record evidence as a whole, I make the following findings of fact.

Applicant testified during the hearing and was subject to cross-examination by Department Counsel and my own questions. I find her testimony was credible.

Applicant is a 40-year-old woman who is seeking to obtain a security clearance for her employment with a defense contractor. She married in 1984 and divorced in 1990. She is the mother of four children, ages 24, 21, 20, and 7. The two youngest children live with Applicant in a mobile home that she owns outright.

She started her current employment in September 2003. She works as a security officer or guard earning \$9.92 per hour. Last year she earned a gross income of about \$18,000. She anticipates a gross income of about \$21,000 this year. She receives about \$360 monthly in child support for her youngest child.

Applicant has a history of not meeting her financial obligations, which she does not dispute. The SOR concerns a Chapter 7 bankruptcy case in 1997 and three postbankruptcy delinquent debts for a total of about \$6,771. None of the accounts are student loans, tax debts to federal or state governments, or child-support obligations. These four matters are summarized below.

First, SOR subparagraph 1.a concerns the Chapter 7 bankruptcy case. She attributes the bankruptcy to a job layoff in 1992 followed by a period of on-again, off-again employment in 1993.⁽²⁾ The result was she accumulated more debt than she could handle. After falling further and further behind, she decided that bankruptcy was a way to resolve her indebtedness. She filed her Chapter 7 petition in December 1996, and the bankruptcy court granted her a discharge of about \$36,000 in debt in April 1997.

Second, SOR subparagraph 1.b concerns a charged-off credit-card account with a major bank for \$2,373. Applicant settled this account and another account with this bank by January 2006.⁽³⁾

Third, SOR subparagraph 1.c concerns a delinquent credit-card account for \$2,871, which is being handled by a collection agency. Applicant settled this account in February 2006.⁽⁴⁾

And fourth, SOR subparagraph 1.d concerns a delinquent medical account for \$1,527, which is being handled by a collection agency. She incurred this debt when she obtained medical care without health insurance. She is making \$50 monthly payments to the collection agency. Since July 2005, she has made 10 monthly payments for a total of \$500.⁽⁵⁾

Concerning her overall financial situation, she closely manages her money, is careful not to overspend, and has a small, positive cash flow each month. Her federal and state income tax obligations are in good standing.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.⁽⁶⁾ Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting a clearance.

BURDEN OF PROOF

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁷⁾ There is no presumption in favor of granting or continuing access to classified information.⁽⁸⁾ The government has the burden of presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted.⁽⁹⁾ An applicant is responsible for presenting witnesses and other evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁽¹⁰⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹¹⁾

As noted by the Supreme Court in *Department of Navy v. Egan*,⁽¹²⁾ "it should be obvious that no one has a 'right' to a security clearance,"⁽¹³⁾ and "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."⁽¹⁴⁾ Under *Egan*, the Executive Order, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

Under Guideline F, ⁽¹⁵⁾ a security concern typically exists for two different types of situations--significant unpaid debts or unexplained affluence. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Some people encounter financial problems through no fault of their own. For others, financial problems appear to be part of a general tendency toward irresponsibility that is a security concern.

Here, based on the record evidence as a whole, the government established its case under Guideline F. Applicant's Chapter 7 bankruptcy case and the three postbankruptcy delinquent debts demonstrate a history of not meeting financial obligations as well as inability or unwillingness to pay one's just debts. ⁽¹⁶⁾ These matters, taken together, raise a security concern under the guideline.

I reviewed the mitigating conditions under the guideline and conclude Applicant has mitigated the security concern. Applicant has been a single parent since 1990, a situation that presents many challenges, including financial. Given her circumstances, she has handled her personal finances as well as she was able. She has paid off her mobile home while at the same time raising and supporting her children. Her 1997 Chapter 7 bankruptcy is extenuated by the unemployment she experienced during 1992-1993. Concerning the three delinquent debts she incurred after her bankruptcy, she presented documentary proof that she settled two accounts and is making monthly payments on the third. Given these circumstances, Applicant receives credit in mitigation because: (1) her unemployment that contributed to the bankruptcy was a condition largely beyond her control; ⁽¹⁷⁾ and (2) she has made a good-faith effort to repay the three postbankruptcy delinquent debts. ⁽¹⁸⁾

Applicant does not appear to be living a financially-irresponsible lifestyle. And she has put her financial house in order as evidenced by: (1) she has a firm grasp on her overall financial situation; (2) she settled two of the three delinquent debts in the SOR; and (3) she is making monthly payments on the third delinquent debt in the SOR. She accomplished this as a single parent without the advantage of a high income. Based on the record evidence as a whole, Applicant presented sufficient evidence to explain, extenuate, and mitigate the security concern arising from her history of not meeting financial obligations. Accordingly, Guideline F is decided for Applicant.

To conclude, Applicant has met her ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have considered the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

SOR ¶ 1-Guideline F: For Applicant

Subparagraphs a-d: For 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 Applicant. Clearance is granted.

Michael H. Leonard

Administrative Judge

1. Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive).
2. R. 37.
3. Exhibits A and B.
4. Exhibit D.
5. Exhibits C and E.
6. Executive Order 10865, § 7.
7. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
8. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
9. Directive, Enclosure 3, Item E3.1.14.
10. Directive, Enclosure 3, Item E3.1.15.
11. Directive, Enclosure 3, Item E3.1.15.
12. 484 U.S. 518 (1988).
13. 484 U.S. at 528.
14. 484 U.S. at 531.
15. Directive, Enclosure 2, Attachment 6.
16. E2.A6.1.2.1. A history of not meeting financial obligations; and E2.A6.1.2. 3. Inability or unwillingness to satisfy debts.
17. 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).
18. E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.