

KEYWORD: Financial

DIGEST: Applicant incurred significant unpaid debt, and some of his creditors obtained judgments against him. While he has paid two judgments, paid two debts and is making payments on one debt, he has not paid four judgments and five debts. He has not established a payment plan for these debts even though he has sufficient income to repay his indebtedness. He has not mitigated the Government's security concerns under Guideline F. Clearance is denied.

CASENO: 06-24165.h1

DATE: 06/30/2007

DATE: June 30, 2007

In Re:)	
)	
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SSN: -----)	ISCR Case No. 06-24165
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
MARY E. HENRY**

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred significant unpaid debt, and some of his creditors obtained judgments against him. While he has paid two judgments, paid two debts and is making payments on one debt, he has not paid four judgments and five debts. He has not established a payment plan for these debts even though he has sufficient income to repay his indebtedness. He has not mitigated the Government's security concerns under Guideline F. Clearance is denied.

STATEMENT OF THE CASE

On March 15, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Specifically, the SOR sets forth security concerns arising under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005 and implemented by the Department of Defense, effective September 1, 2006. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. On April 15, 2007, Applicant submitted a notarized response to the allegations. He elected to have his case decided on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy on April 26, 2007. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response or additional evidence. This case was assigned to me on June 28, 2007.

FINDINGS OF FACT

Applicant admitted the allegations under Guideline F, subparagraphs 1,a, 1.b, 1.d, 1.e, 1.g, 1.h, and 1.i of the SOR.¹ He denied the remaining allegations. Those admissions are incorporated as findings of fact.² After a complete review of the evidence in the record and upon due consideration, I make the following findings of fact.

Applicant is 42-years-old and works as a test engineer for a Department of Defense contractor, a job he has held for almost 3 years. He graduated from high school in 1983. He joined the United States Navy in 1983 and served over 20 years on active duty. He received an honorable discharge in 2002 as an E-6. During his years in the Navy, he received numerous medals and awards, including a Southeast Asia Service Medal with a bronze star, 4 Navy Achievement Medals, and 5

¹Item 3 (Applicant's response to the SOR, dated April 15, 2007) at 1-2.

²*Id.*

Navy Good Conduct Medals. Applicant married in 1988 and divorced in 2004. He has twin sons, age 19, and a daughter age 16. He remarried in 2004.³

Applicant’s monthly gross income from his full-time job totals approximately \$4,327, plus \$170 from a part-time position. His net monthly pay from both jobs totals approximately \$3,415, plus \$931 in monthly retirement benefits for a net monthly income of \$4,346. His estimated monthly expenses total \$2,500, leaving approximately \$1,800 a month to pay his debts. His regularly monthly expenses are current.⁴

A review of Appellant’s credit reports dated August 19, 2005, March 6, 2007, and the SOR shows seven unpaid debts totaling \$18,830 and six judgments totaling \$12,406.⁵ The current status of these debts is as follows:

SOR ¶	Account/ Amount	Status	Evidence
1.a	Judgment \$ 79.00	Unpaid	Item 3, Item 5, Item 7
1.b	Judgment \$ 8,824.00	Unpaid	Item 3, Item 5, Item 7
1.c	Judgment \$ 740.00	Paid	Item 6 at 7; Item 7 at 4.
1.d	Collection 1 \$ 42.00	Unpaid	Item 3, Item 5, Item 7
1.e	Collection 2 \$ 371.00	Unpaid	
1.f	Medical \$ 724.00	Paying by garnishment	Item 3, Item 6 at 7 ⁶
1.g	Telephone \$ 687.00	Unpaid	
1.h	Repossession \$14,480.00	Unpaid	
1.i	Car debt \$ 8,824.00	Same as 1.b	Item 3, Item 5, Item 7
1.j	Judgment \$ 1,298.00	Paid	Item 5 at 2, item 7 at 5-6
1.k	Credit card \$ 1,725.00	Paid	Item 3, Item 5, Item 7
1.l	Bank account \$ 801.00	Unpaid	
1.m	Judgment \$ 695.00	Unpaid	Item 7

³Item 4 (Applicant application for a security clearance, dated July 28, 2005) at 2, 7-12, 14-16, 18-19, 20-23; Item 6 (Applicant’s answers to interrogatories, dated February 13, 2007) at 5.

⁴Item 6, *supra* note 3, at 4, 8, 9; Item 5 (Credit report, dated March 6, 2007).

⁵Item 5, *supra* note 4; Item 7 (Credit report, dated August 19, 2005).

⁶In his response, Applicant stated that his pay had been garnished to pay this debt. His earnings statement reflects a \$7.50 deduction for VLI each payday. VLI is undefined. Based on his statement in his response, I assume this represents his wage garnishment.

1.n	Judgment	\$ 770.00	Unpaid	Item 7
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Applicant has presented no evidence that he paid the four outstanding judgments or that he has established a payment plan for these judgments. Likewise, he has presented no evidence that he paid his five outstanding debts or that he met with or is working with a counseling service to resolve his remaining debts.

POLICIES

The revised Adjudicative Guidelines set forth disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. An administrative judge need not view the revised adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, are intended to assist the administrative judge in reaching fair and impartial common sense decisions. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the revised AG should be followed whenever a case can be measured against this policy guidance. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.⁷

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁸ The government has the burden of proving controverted facts.⁹ The burden of proof is something less than a preponderance of the evidence.¹⁰ Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.¹¹ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹²

⁷Directive, revised Adjudicative Guidelines (AG) ¶ 2(a)(1)-(9).

⁸ISCR Case No. 96-0277 at 2 (App. Bd. July 11, 1997).

⁹ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

¹⁰*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹¹ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

¹²ISCR Case No. 93-1390 at 7-8 (App. Bd. Decision and Reversal Order, Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

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 Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹⁵ Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.¹⁶ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

Financial Considerations

Under Guideline F, the “failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.” (AG ¶ 18.) The credit reports reflect several old, large, unpaid debts and judgments. Because of the age of these debts and judgments and their delinquent status, Applicant showed a long term inability or unwillingness to pay his debts. Based on the evidence of record, the Government established the applicability of DC ¶ 19 (a) *inability or unwillingness to satisfy debts* and DC ¶ 19 (c) *a history of not meeting financial obligations*.

I have considered all the mitigating conditions under Guideline F. Although two judgments and one debt have been paid and one is being paid, I conclude that the mitigating conditions do not apply to his remaining unpaid debts and judgments. Applicant has many old debts and judgments. He has not provided an explanation for his indebtedness or for why he has not paid his indebtedness. He has not contacted a financial counseling service to help resolve his debts, nor has he established a repayment plan with his judgment creditors. He has not shown that his debts occurred because of factors beyond his control. Thus, MC ¶ 26 (a) *the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment*; MC ¶ 26 (b) *the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the*

¹³*Egan*, 484 U.S. at 531.

¹⁴*Id.*

¹⁵*Id.*; Directive, revised AG ¶ 2(b).

¹⁶Executive Order No. 10865 § 7.

individual acted responsibly under the circumstances; MC ¶ 20 (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; MC ¶ 20 (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; MC ¶ 20 (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue and MC ¶ 20(f) the affluence resulted from a legal source do not apply.

Whole Person Analysis

Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Thus, in reaching this decision, I have considered the whole person concept in evaluating Appellant's risk and vulnerability in protecting our national interests.

Applicant served honorably in the Navy for 20 years. From the meager information in the record, it appears that his current finances are well managed. He has sufficient monthly income to repay his smaller debts and to develop an overall repayment plan for his larger debts. He has not done so. He may be pressured to engage in illegal acts either to pay the judgments or because the judgments may be viewed as bad mark against him.

I have carefully weighed the mitigating factors in this case, Applicant's honorable service while a member of the military, his present income management against his unpaid outstanding debts and judgments and concluded that he has not mitigated the Government's security concerns about his finances. Accordingly, Guideline F is found against Applicant.

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:

SOR ¶ 1-Guideline F :	AGAINST APPLICANT
Subparagraph a:	Against Applicant
Subparagraph b:	Against Applicant
Subparagraph c:	For Applicant
Subparagraph d:	Against Applicant
Subparagraph e:	Against Applicant
Subparagraph f:	For Applicant
Subparagraph g:	Against Applicant
Subparagraph h:	Against Applicant
Subparagraph i:	For Applicant
Subparagraph j:	For Applicant
Subparagraph k:	For Applicant
Subparagraph l:	Against Applicant

Subparagraph m:
Subparagraph n:

Against Applicant
Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is denied.

Mary E. Henry
Administrative Judge