

KEYWORD: Financial

DIGEST: Applicant has a number of listed delinquent debts, two of which she disputes and the balance of which she acknowledges as her own. By her demonstrated good-faith disputes with the two creditors, her initiated counseling, and the steps she has taken to discharge her other creditors, she demonstrates extenuating circumstances and ensuing corrective efforts to discharge her accepted debts and ensure control over her finances in the future. Applicant mitigates security concerns associated with her delinquent debts. Clearance is granted.

CASENO: 06-26083.h1

DATE: 08/16/2007

DATE: August 16, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-26083
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
ROGER C. WESLEY**

APPEARANCES

FOR GOVERNMENT
Julie R. Edmunds, Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant has a number of listed delinquent debts, two of which she disputes and the balance of which she acknowledges as her own. By her demonstrated good-faith disputes with the two creditors, her initiated counseling, and the steps she has taken to discharge her other creditors, she demonstrates extenuating circumstances and ensuing corrective efforts to discharge her accepted debts and ensure control over her finances in the future. Applicant mitigates security concerns associated with her delinquent debts. Clearance is granted.

STATEMENT OF THE CASE

On April 27, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which 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, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on May 10, 2007, and requested a hearing. The case was assigned to me on June 22, 2007, and was scheduled for hearing on July 25, 2007. A hearing was held on July 25, 2007, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of three exhibits; Applicant relied on one witness (herself) and five exhibits. The transcript (R.T.) was received on August 3, 2007.

PROCEDURAL ISSUES

_____ Before the close of the hearing, Applicant requested leave to keep the record open to permit her the opportunity to assess any net monthly remainder from her husband's earnings. For good cause shown, Applicant was granted seven days to supplement the record. The Government, in turn was allowed three days to respond. Within the time permitted, Applicant furnished a summary of monthly expenses for April-July 2007 and approximate monthly income by both Applicant and her husband for the same period. Additionally, Applicant timely supplemented the record with a letter of additional information regarding her brother-in-law's lack of funds to pay for the truck he is purchasing from Applicant and her husband, and other expense outlays not covered at the hearing. She also confirmed Applicant's enrollment in counseling, and a documented payment arrangement on her Ford debt. There being no objection from the Government, and good cause demonstrated, Applicant's supplemental exhibits are admitted as Applicant's exhibits F through I.

SUMMARY OF PLEADINGS

_____ Under Guideline F, Applicant is alleged to have accumulated seven delinquent debts exceeding \$10,000.00. For her answer to the SOR, Applicant admitted to all but two of the listed debts, denying the debts listed under sub-paragraphs 1.b and 1.h.

FINDINGS OF FACT

_____ Applicant is a 26-year-old engineer technician for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant accumulated a number of delinquent debts (seven altogether) between 1999 and 2004. One of the debts (creditor 1.a) represents back rent owed to a landlord for an apartment Applicant shared with a friend. Applicant was under the impression at the time that the friend would take care of the rent. She later learned that the friend did not pay the rent. Applicant has since communicated with the landlord and arranged to make monthly payments to creditor 1.a (*see ex. B; R.T., at 22*). A second listed debt with the landlord (creditor 1.b) appears to be a duplicate, and Applicant has asked credit reporting agencies to delete the debt from her credit reports (*see ex. D; R.T., at 24-26*). Her payment arrangement with the landlord creditor (identified as creditor 1.a) corroborates her duplicate explanation and is accepted.

Applicant assumed responsibility for a vehicle in July 1999 (*see ex.3*). Her brother-in-law has since purchased the truck from her but has lacked the funds to pay it off since his recent collision with the truck (which resulted in out-of-pocket repairs and assumption of the deductible). So, for the past two months Applicant has been covering for the brother-in-law in making the remaining monthly payments (\$239.88 a month). Applicant expects she and her husband (H) will have to continue their monthly payments on the truck for the ensuing one to two months until her brother-in-law gets caught up with his expenses (*see ex. F; R.T., at 34*). When her brother-in-law is able to resume his monthly truck payments, Applicant and H expect to be able to apply the expected monthly savings to their creditor 1.c wireless debt and pay off the \$409.00 balance (*R.T., at 32-34*).

Applicant's listed debt with creditor 1.d is a disputed credit card debt. Applicant took out a line of credit with this company in September 2000 while in college and acknowledges purchases totaling around \$350.00 (*see ex. 3; R.T., at 51*). With limited funds, she has not been able to pay the debt off and in recent years has been burdened with interest and late fees on the account. She has been endeavoring to obtain an updated account history and acknowledges owing no more than \$600.00, inclusive of interest and late fees (*R.T., at 38-39*).

Applicant became indebted to other creditors as well: creditors 1.e (a wireless utility account) and 1.g (a deficiency owed on a repossessed Ford Ranger truck). When she signed for a wireless account with creditor 1.e in February 2004, Applicant assumed her wireless plan provided nationwide service (*R.T., at 40-41*). She subsequently learned that her service only had regional reach. She has since entered into a payment agreement with creditor 1.e that provides for monthly payments of \$121.56 and assures she will be able to make the required payments on the account until it is payed off (*see ex. C; R.T., at 22-23; 40-41*).

Applicant's debt with FMCC (creditor 1.g) represents a deficiency balance on a Ford Ranger she purchased in October 2000 (for around \$20,000.00) and paid down the balance to approximately \$11,000.00 before she became pregnant without health insurance and could no longer manage her car payment. So, she permitted the truck to be repossessed in March 2004 (*see ex. 3; R.T., at 52-53*). The deficiency following the vehicle's sale was \$5,636.00 (*see ex.3*). Applicant documents entering

into a repayment agreement with the creditor assignee for the ensuing six months that calls for \$150.00 a month payments on the current assessed balance of \$7,541.92 (*see ex. I*). The payment agreement does not explain what is expected of the parties after the expiration of the initial six months.

Applicant's last listed creditor is creditor 1.h: a collection account arising out of an imposed court fine for not appearing in court at the scheduled time to respond to a citation for driving on a suspended license (R.T., at 54-57). The carried balance on the court's records that was assigned to creditor 1.h for collection was \$711.00. Applicant documents paying this debt off in full in April 2006 (*see ex. A*).

Applicant has since signed up for financial counseling to help to prevent any recurrent episodes of debt delinquencies. She documents enrolling in a 13-week financial management course through a local chapel program on her employer's work-site. She is scheduled to commence classes in August 2003 (*see ex. H*).

Applicant reported net monthly income of \$2,200.00 for herself and \$2,400.00 for H. Her detailed monthly expenses totaled around \$3,100.00 (including child care and payments on her creditor 1.a and creditor 1.e debts). Applicant couldn't be sure what H was doing with his net monthly income and wanted time to check with him (R.T., at 66-67). Her revised net monthly income and expenses leaves her with less of a remainder than she had estimated at hearing (*see ex. G*). Her estimated net total monthly expenses for H and herself was \$4,4457.82 (reduced to \$4,117.94 with her brother-in-law contributing as suggested at hearing). Revised net monthly income between Applicant and H is \$4,700.00, a slight net reduction from what she estimated at hearing (*compare ex. G with R.T., at 57-58*). Under either estimate, though, Applicant and H appear to have some net proceeds after expenses to address her other debts.

POLICIES

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

The Concern: 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Burden of Proof

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant is an engineer technician for a defense contractor who accumulated a number of delinquent debts over a five-year period spanning 1999 and 2004: some disputed and some acknowledged. Considered together, and without resolution, they raise security significant concerns.

Security concerns are raised under the financial considerations guideline of the revised Adjudicative Guidelines where the individual appellant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can raise questions about the individual's reliability, trustworthiness and ability to protect classified information, and place the person at risk of having to engage in illegal acts to generate funds.

Applicant's accumulation of delinquent debts and her past failures to document payments on any of her listed debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines for financial considerations: DC 19(a) (*inability or unwillingness to satisfy debts*) and DC 19(c) (*a history of not meeting financial obligations*).

Applicant's debts are attributable in part to her continuing disputes over the justification of two of her listed debts, *i.e.*, creditor 1.b (an apparent duplicate debt with her prior landlord) and creditor 1.d (a long disputed credit card account), the lack of health insurance to cover experienced medical complications associated with her pregnancy, and extended assistance to a brother-in-law to cover car payments on a vehicle the latter had purchased from Applicant.

Since receiving the SOR, Applicant has initiated considerable efforts to resolve the debts she acknowledges as her own. Specifically, she is able to document paying off one of her listed creditors (creditor 1.h) and setting up payment arrangements to discharge three of the remaining ones (creditors 1.a, 1.e, and 1.f). She hopes to soon eliminate her interim support to her brother-in-law and apply the monthly savings to their still outstanding wireless debt. Given her exhibited extenuating circumstances associated with her 2004 pregnancy, her limited resources available to her for an extended period between 2003 and 2006, and her documented responsible efforts to resolve her acknowledged debts, Applicant may rely on MC 20 (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 individual acted responsibly under the circumstances)*) of the Guidelines for financial considerations.

Mitigation credit is also available to Applicant based on her presented repayment proofs. Applicant is able to demonstrate credible disputes with two of her listed creditors, (*i.e.*, creditors 1.b and 1.d) and initiated repayment efforts with remaining ones. Age of the debts at issue is covered by two of the mitigating conditions for financial considerations: MC 20(a) (*the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*) has applicability, while not dispositive. 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*) has applicability as well relative to her creditors 1.b (an apparent duplication) and 1.d (an acknowledged creditor who Applicant claims to have inflated the amount owed).

While she is to be credited with her election to seek financial counseling, it is still too soon to determine whether or not she completes the identified course and profits from it. So, at this time, she may not claim credit from 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*). Based on her initiated efforts to date, though, prospects for her gaining important insights in handling her finances in the future appear to be promising.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases (as here).

Taking into account all of the facts and circumstances surrounding Applicant's debt accumulations and documented steps taken to resolve them, Applicant mitigates security concerns related to both her disputed debts and her proven debt delinquencies. Favorable conclusions warrant with respect to the allegations covered by sub-paragraphs 1.a through 1.h of the SOR.

In reaching my decision, I have considered the evidence as a whole, including each of the E2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE F: (FINANCIAL CONSIDERATIONS):	FOR APPLICANT
Sub-para. 1.a:	FOR APPLICANT
Sub-para. 1.b:	FOR APPLICANT
Sub-para. 1.c:	FOR APPLICANT
Sub-para. 1.d:	FOR APPLICANT
Sub-para. 1.e:	FOR APPLICANT
Sub-para. 1.g:	FOR APPLICANT
Sub-para. 1.h:	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 Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge
