

DATE: October 25, 2007

In re:

-----

SSN: -----

Applicant for Security Clearance

)  
)  
)  
) ISCR Case No. 07-02978  
)  
)  
)

**DECISION OF ADMINISTRATIVE JUDGE  
MARC E. CURRY**

**APPEARANCES**

**FOR GOVERNMENT**

Richard A. Stevens, Esq., Department Counsel

**FOR APPLICANT**

Twila Byars, Personal Representative

**SYNOPSIS**

Applicant's credit reports list approximately \$27,000 of delinquent debt. Although she disputes all except one, she failed to provide documented proof substantiating the basis of her disputes, and has not taken any action to resolve the one she acknowledges. Clearance is denied.

**STATEMENT OF THE CASE**

On May 4, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) explaining why it was not clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended. She answered the SOR on June 25, 2007, denying all the allegations and requesting a hearing.

The case was assigned to me on August 15, 2007. On August 23, 2007, DOHA issued a notice of hearing scheduling it for September 12, 2007. During the hearing, I received three government exhibits, three Applicant exhibits, and Applicant's testimony. At Applicant's request I left the record open for her to submit additional exhibits. Within the time allotted, she submitted three additional exhibits which I incorporated into the record. DOHA received the transcript on September 20, 2007.

### **FINDINGS OF FACT**

Applicant is a 55-year-old woman with two adult children. Her marriage ended in divorce in 1989. She earned a GED in 1973, and has worked as a mail clerk for a defense contractor for 30 years.

Applicant is highly respected on the job. According to her current supervisor, she is a trustworthy person with high moral and ethical principles. (Exhibit E) A former supervisor describes her as a person of integrity. (Exhibit B)

Between April 2002 and October 2005, Applicant was laid off three times. The first layoff lasted five months, the next one, which occurred in February 2003, lasted a month, and the most recent one occurred between July 2003 and October 2005. (Answer at 4) Since November 2006, Applicant has been on disability leave. Her salary is 20 per cent less than it was before she became disabled. (Tr. 32)

Through 2002, Applicant was current on her debt payments. (Tr.54) When the layoffs began, she began to encounter financial difficulties. (Tr. 30, 34) She used her credit cards as a stopgap measure.

Applicant increasingly began to struggle to make ends meet. In December 2003, she sold her home and moved in with her mother. (Tr. 33) She earned between 15 and 20 thousand dollars on the sale that she used to satisfy debts not listed in the SOR. (Tr. 65)

Applicant does not know how many credit card accounts grew delinquent or the amount of the credit card delinquencies she accrued while unemployed. (Tr. 50) At some point, she destroyed all of her credit cards. She could not identify the creditors who had issued her the credit cards, and the record is unclear when she destroyed them.

Currently, Applicant's credit report reflects approximately \$27,000 of delinquent debt. All are owed to banks, credit card companies, or collection agencies. According to Applicant, all except subparagraph 1.a, which she acknowledges,<sup>1</sup> were either her ex-husband's, or were the product of mistaken identity. (Tr. 43)

Currently, she owes approximately \$6,200 toward the satisfaction of SOR subparagraph 1.a. (Exhibit 2 at 6) She has not developed a payment plan, or sought the help of a credit counselor to

---

<sup>1</sup>SOR subparagraphs 1.e, 1.f, and 1.h are duplicate of 1.a.

begin satisfying it. (Tr. 77) Also, she has not contacted any of the creditors to address the disputed delinquencies.

Applicant completed a security clearance application in 2005. She did not list any delinquent debt as required in response to question 28. Upon reconsideration, she realized she should have disclosed it. (Tr. 60) Before being confronted by a security clearance investigator, she informed someone in her company's security office of her omission. (*Id.*)

## **POLICIES**

The adjudicative guidelines, as revised December 29, 2005, and implemented by DoD on September 1, 2006, apply to the analysis of this case. In addition to brief introductory explanations for each guideline, they are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (mitigating conditions).

Because the entire process is a scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (1) the nature and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the age of the applicant; (5) the extent to which the participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest." *See generally*, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2. In reaching this decision, I have drawn only those conclusions that are based on the evidence contained in the record.

The Government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the Government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

## **CONCLUSIONS**

### **Financial Considerations**

Under this guideline, "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." (Adjudicative Guideline (AG) Paragraph 18). Here, Applicant's history of financial problems triggers the application of Financial

Considerations Disqualifying Conditions (FC DC) 19(a): *inability or unwillingness to satisfy debts*, FC DC 19(c): *a history of not meeting financial obligations*, and FC DC 19(e): *consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis*.

Applicant's delinquencies are still outstanding. Although she disputes all but one of them, I cannot conclude they are not her responsibility because she failed to provide either a reasonable basis for her disputes, or any evidence of actions to resolve them. Neither Financial Considerations Mitigating Condition (FC MC) 20(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*, nor FC 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*, applies.

Applicant's delinquencies were caused by a series of layoffs. Her ability to resolve them is hindered by a disability that renders her unable to work. Although she receives disability benefits, they are approximately 20 percent less than her income.

In December 2003, Applicant generated approximately 15 to 20 thousand dollars by selling her home. She used this to pay debts not listed in the SOR. Since then, she has not taken any steps to resolve the debt she acknowledges, nor contacted the creditors of the disputed delinquencies. Also, she has never sought credit counseling. Consequently, although FC MC 20(b): *the condition 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*, applies, it has minimal probative value.

Applicant's failure to either attend credit counseling, identify delinquencies, or pay them renders FC 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*, and FC MC 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, inapplicable. Applicant has not mitigated the financial considerations security concern.

## **Personal Conduct**

Under the this guideline, "conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information." (AG ¶15) Here, Applicant's omission of the delinquencies listed on her credit bureau report raises the issue of whether Personal Conduct Disqualifying Condition 16(a): *deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination*, applies.

Shortly after Applicant completed the security clearance application, she realized she should have disclosed her history of financial problems. Before being confronted by a security clearance investigator, she informed someone in her company's security office. Personal Conduct Mitigating Condition 17(a): *the individual made prompt, good-faith efforts to correct the omission*,

*concealment, or falsification before being confronted with the facts*, applies. Applicant has mitigated the personal conduct security concern.

### **Whole Person Concept**

Applicant contended that all of the SOR delinquencies except SOR subparagraph 1.a and its duplicates, were erroneously attributed to her. This contention is undercut by her failure to inform the disputed creditors, her failure to begin satisfying SOR subparagraph 1.a, and her failure to take any action to organize her finances. Consequently, the fact that her financial problems were caused by circumstances beyond her control is insufficient to overcome the negative security implications of the continuing financial problems. Evaluating this case in the context of the whole person concept, I conclude her financial problems remain a security concern. Clearance is denied.

### **FORMAL FINDINGS**

Paragraph 1 – Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a -1.h:	Against Applicant
Paragraph 2 - Guideline E:	FOR APPLICANT
Subparagraph 2.a-2.b:	For 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. Clearance is denied.

Marc E. Curry  
Administrative Judge