

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant owes 34 creditors approximately \$49,000 for accounts past due or placed for collection. Following the hearing, Applicant filed for Chapter 7 bankruptcy protection. The record evidence is insufficient to mitigate or extenuate the negative security concerns based on financial considerations. Clearance is denied.

CASENO: 07-03120.h1

DATE: 09/19/2007

DATE: September 19, 2007

_____)	
In re:)	
)	
-----)	ISCR Case No. 07-03120
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
CLAUDE R. HEINY**

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes 34 creditors approximately \$49,000 for accounts past due or placed for collection. Following the hearing, Applicant filed for Chapter 7 bankruptcy protection. The record

evidence is insufficient to mitigate or extenuate the negative security concerns based on financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On May 4, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding¹ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR set forth reasons why a security clearance could not be granted or continued due to financial considerations and personal conduct security concerns.

On May 19, 2007, Applicant answered the SOR and requested a hearing. On June 14, 2007, I was assigned the case. On July 5, 2007, a Notice of Hearing was issued for the hearing held on July 23, 2007. On August 1, 2007, DOHA received the transcript (Tr.). The record was kept open to allow Applicant to submit additional documents. Applicant requested an additional 30 days in which to submit documents. Department Counsel having no objection, the additional time was granted. On September 29, 2007, Applicant filed for Chapter 7 bankruptcy protection. Department Counsel having no objections, the document was admitted into evidence as App Ex G.

FINDINGS OF FACT

The SOR alleges security concerns for financial considerations and personal conduct. Applicant in his response to the SOR admits being indebted on the 31 debts listed in the SOR and admits falsifying his Electronic Questionnaires for Investigations Processing (e-QIP). The admissions are incorporated herein as findings of fact. After a thorough review of the record, I make the following findings of fact.

Applicant is a 67-year-old security officer who has worked for a defense contractor since 1973 and is seeking to maintain a security clearance. The loss of Applicant's clearance would result in a pay decrease of \$4 per hour and the loss of benefits. (App Ex F)

Applicant was unemployed from a time in 1974 through a time in 1976. In August 1981, he quit his job and did not return to his former employer until 1986 or 1987. In 1991, Applicant's wife retired taking a lump-sum retirement payment. (Tr. 27) Both Applicant and his wife receive social security payments. In 1993, his wife was in a car wreck and broke her neck. (Tr. 49) Applicant's wife is 77-years-old and suffers from high blood pressure, two ruptured disks in her lower back, narcolepsy, arthritis, and a thyroid problem. (Tr. 48) Applicant is the primary care giver for his wife.

In August 2006, Applicant's daughter and her two children moved into his home resulting in a financial burden. During their stay, his daughter and children provided only \$300 even though both his daughter and grandson were employed full time. Applicant used credit cards to pay his

¹Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

expenses, which he now realizes was a big mistake. At one time, Applicant had seven to ten credit cards and things got out of hand.

In June 2007, Applicant consulted with a financial advisor. (App Ex B) In reviewing his debts with his advisor, they developed a repayment plan where by small payments would be made to each of the creditors. The SOR alleges 31 debts which total \$49,000. Applicant admits to the debts. The worksheet prepared by his advisor lists 37 creditors owed \$53,580. The worksheet indicates Applicant would make \$740 per month in payments. (App Ex C) In June and July 2007, following receipt of the SOR, Applicant paid an \$84 debt and made \$10 per month payments on five debts. If he were able to make his \$740 monthly payments the entire debt would be paid in six years if no additional interest or fees accumulated.

The hearing was left open so Applicant could consult with his advisor and verify the debt and consider the impact of the statute of limitation on his debts. Following the hearing, he filed for Chapter 7 bankruptcy protection. (App Ex G) None of the bankruptcy schedules were attached so it is impossible to know which debts have been included in the bankruptcy or if it was an asset or no asset Chapter 7. The filing has been made, but there is no indication the Chapter 7 has been accepted by the bankruptcy court.

Applicant's monthly income from his job and social security for himself and his wife is \$4,500. His monthly expenses total \$3,331 leaving a monthly net remainder of \$1,174. (App Ex C) Applicant has \$75,400 equity in his home and \$36,000 equity in other personal property. He also owes six acres of land worth approximately \$12,000.

In 2006, Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP). Question 28 a. asked if he had been more than 180 days delinquent on any debt during the prior seven years. He answered "no." Question 28 b. asked if he was currently more than 90 days delinquent on any debt. He again answered "no." Applicant acknowledged he was getting calls from creditors continuously. (Tr. 32) He said he was in a hurry to complete the e-QUIP and his answers to the financial questions were an oversight. (Tr. 63)

POLICIES

The Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, dated August 2006, sets forth Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guidelines to be applied here are Guideline F, financial considerations, and Guideline E, personal conduct._____

BURDEN OF PROOF

The sole 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. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance.” A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access to classified information in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, financial considerations. A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

Financial considerations become a security concern when a person has significant delinquent debts. 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. Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Applicant owes approximately \$49,000 on 31 debts. Disqualifying Conditions (DC) 19(a) “inability or unwillingness to satisfy debts” and 19(c) “a history of not meeting financial obligations,” apply.

² ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15

The only indication Applicant has attempted to pay the past due debts was in June and July 2007, after having received the SOR, Applicant paid an \$84 debt and made five payments of \$10 each. Following the hearing, Applicant filed for Chapter 7 bankruptcy protection, but failed to provide the schedules showing which debts were included, failed to indicate if this was an asset or no asset Chapter 7 or had been accepted by the bankruptcy court.

Mitigating Condition (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,” has limited applicability because only one of the debts (SOR 1. ee) was medically related. Additionally, that \$84 debt has been paid. The debts were the result of poor financial management and unwise use of credit cards. These debts remain unpaid.

Mitigating Conditions (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,” does not apply. The debts are recent, they are numerous, and incurred under circumstances that cast doubt on Applicant’s good judgment.

There is evidence Applicant sought financial counseling, but he has failed to demonstrate a positive change in his financial management. It is not clear the problem is being resolved or under control. 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,” does not apply nor does MC 20(d) “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

For MC 20(d) to apply there must be an “ability” to repay the debts, the “desire” to repay, and evidence of a good-faith effort to repay. A systematic, concrete method of handling his debts is needed, which is not present here. Applicant paid an \$84 debt and paid a total of \$50 to five other creditors. The other debts remain unpaid and there is no plan for paying them.

Applicant has been financially irresponsible over a number of years. He never realized how severe his financial situation was until he received the SOR. Applicant has not done enough to address his financial problems. Since receiving the SOR, he had paid \$134 and filed Chapter 7 bankruptcy. This is too little, too late.

Under the personal conduct guideline the concern is that 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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Concern is raised under paragraph 16(a) which is a deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant was aware of his financial problems. He said he was continuously being called by his creditors. When he completed his e-QUIP he denied he had ever been more than 180 days delinquent on any debt during the prior seven years or was currently more than 90 days delinquent on any debt. Applicant has presented no good explanation for why he did not answer the questions correctly. None of the mitigating factors or conditions apply to his personal conduct. I find Applicant falsified his e-QUIP.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future. I find against Applicant as to financial considerations and personal conduct.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 financial considerations:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	Against Applicant
Subparagraph 1.x:	Against Applicant
Subparagraph 1.y:	Against Applicant
Subparagraph 1.z:	Against Applicant

Subparagraph 1.aa:	Against Applicant
Subparagraph 1.bb:	Against Applicant
Subparagraph 1.cc:	Against Applicant
Subparagraph 1.dd:	Against Applicant
Subparagraph 1.ee:	For Applicant

Paragraph 2 personal conduct:	AGAINST APPLICANT
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Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	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. Clearance is denied.

Claude R. Heiny
Administrative Judge