

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has a history of delinquent debts that stem in part from the payment failures of her spouse during periods of income losses attributable to his underemployment. While Applicant and her spouse have since began paying off their listed debts, their efforts are for the most part quite recent and incomplete. Based on the limited repayment efforts she and her spouse have demonstrated to date, she is unable to mitigate security concerns associated with her past history of delinquent debts. Applicant successfully refuted allegations that she falsified his security clearance application, but failed to mitigate additional security concerns attributable to her failure to provide requested financial releases and agree to a follow-up OPM interview. Clearance is denied.

CASENO: 07-04658.h1

DATE: 09/28/2007

DATE: September 28, 2007

In re:

SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 07-04658
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**DECISION OF ADMINISTRATIVE JUDGE
ROGER C. WESLEY**

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent debts that stem in part from the payment failures of her spouse during periods of income losses attributable to his underemployment. While Applicant and her spouse have since begun paying off their listed debts, their efforts are for the most part quite recent and incomplete. Based on the limited repayment efforts she and her spouse have demonstrated to date, she is unable to mitigate security concerns associated with her past history of delinquent debts. Applicant successfully refuted allegations that she falsified his security clearance application, but failed to mitigate additional security concerns attributable to her failure to provide requested financial releases, and agree to a follow-up OPM interview. Clearance is denied.

STATEMENT OF THE CASE

On June 8, 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 July 11, 2007, and requested a hearing. The case was assigned to me on August 14, 2007, and was scheduled for hearing on September 12, 2007. A hearing was held on September 12, 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 one witness (an OPM investigator) and three exhibits; Applicant relied on one witness (herself) and two exhibits. The transcript (R.T.) was received on September 20, 2007.

PROCEDURAL ISSUES

Before the close of the hearing, Applicant requested leave to keep the record open to permit her the opportunity to document her payments to her creditors. For good cause shown, Applicant was granted seven days to supplement the record. The Government, in turn was allowed five days to respond. Within the time permitted, Applicant furnished a two-month checking account summary covering the period of July to September 2007, statements documenting her payments on a non-listed account, pay offs of her student loans, and payments on her creditor 1.e and creditor 1.f/g debts. For good cause demonstrated, Applicant's supplemental exhibits are admitted as Applicant's exhibits C through F.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to have accumulated seven delinquent debts exceeding \$40,000.00. Under Guideline E, she is alleged to have (a) falsified her electronic questionnaire for investigations (e-QIP) of August 2006 by omitting her debts over 180 and 90 days

delinquent, respectively, and (b) failing to cooperate by (i) declining to execute financial releases in November 2006 and (ii) declining to submit to an additional interview at her place of employment or agree to a more convenient time for the agent to return.

For her answer to the SOR, Applicant admitted to three of the listed debts, but denied the remainder of them (claiming they belonged to her spouse). Applicant denied falsifying her e-QIP and failing to cooperate. She claimed she gave the investigating agent copies of her cleared checks and denied any further contact with the agent until January 2007.

FINDINGS OF FACT

_____Applicant is a 39-year-old accounts payable specialist 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.

Between 2003 and 2005, Applicant and her spouse opened joint accounts with the creditors listed in the SOR. These debts appear on her credit report as joint marital debts and must be considered as such, absent probative evidence that the debts were created by her spouse alone and were neither intended to benefit Applicant nor did so in fact. This is a rather tall evidentiary burden, which Applicant has not met. She has neither challenged her disputed creditors and the credit reporting firm nor otherwise demonstrated at hearing that the debts are not her responsibility.

Burdened by her parenting responsibilities with her two children, she regularly deferred to her spouse to pay their debts. Her husband, who was underemployed during key periods between 2003 and 2005, stopped paying on some of their debts. Applicant assures that after the birth of her second child, her spouse took over the responsibilities for paying their bills and did not confide in her about the financial difficulties they were experiencing (R.T., at 33). Her spouse admits to not keeping her informed of their financial problems (*see ex. A*). Without informing Applicant, he borrowed heavily on their Navy Credit Union accounts to repay their other debts during their period of reduced family income (R.T., at 46-48).

Since receiving the SOR, Applicant and her spouse have initiated efforts to pay some of their creditors. Applicant documents paying off her creditor 1.a account and making payments on her creditor 1.e repossession deficiency and creditor 1.f/g credit union accounts (*see exs. C and F*; R.T., at 40). She documents also paying off her non-listed student loan accounts (*see ex. E*). She claimed she has since paid off the \$11,000.00 balance with funds furnished by her aunt, who she has not yet begun to repay. Applicant was afforded an opportunity to supplement the record with payment documentation regarding this creditor 1.d debt (R.T., at 44-45). Her supplemented bank statement and other statements provided make no references to her creditor 1.d debt. Whether this debt was actually paid or not cannot be documented from the post-hearing materials furnished by Applicant. As for her debts covering creditors 1.b and 1.c, she provides no documented repayment.

Applicant assures she is working on repaying the remaining listed accounts, and has tasked her spouse to contact creditors 1.b and 1.c and 1.e through 1.g). Her spouse just recently started a new job and now brings home around \$4,000.00 a month (R.T., at 48-49). Previously, he netted less than \$1,200.00 a month, which produced, together with Applicant's \$1,800.00 a month (R.T., at 48),

a monthly net of around \$3,000.00 a month (R.T., at 52). Applicant and her spouse have no mutual funds or savings accounts and maintain a very small checking account (R.T., at 51-52). Neither Applicant nor her spouse have received financial counseling since they began encountering financial difficulties.

Asked to complete an e-QIP in August 2006, Applicant omitted her debts over 180 and 90 days delinquent, respectively. She attributes her omissions to her unawareness at the time that she had any delinquent debts (R.T., at). She had deferred to her spouse to pay the bills and was not told of any delinquent debts. Her spouse corroborates Applicant's claims. When asked, though, by an interviewing OPM agent in November 2006 to complete financial releases, Applicant declined (*see* ex. 3; R.T., at 24-25). She did indicate that she and her spouse fully intended to pay off their delinquent obligations, and she agreed to provide copies of her canceled checks (*see* ex. 3). The same OPM agent returned in December 2006 to interview Applicant (R.T., at 25). At this interview, she provided copies of her checks, but declined to be interviewed further about her finances. The agent offered to be flexible about scheduling, but Applicant (claiming he was rude) still refused to be interviewed again (R.T., at 25-26, 35).

At hearing, Applicant said she checked with her supervisor after her interview with the OPM agent and was told she did not require a clearance (R.T., at 58). She claimed her human resource manager suggested she apply for a clearance, but initially never advised her that her company was sponsoring her clearance application (R.T., at 59-61). She says that her resource manager advised her later (after she completed her e-QIP and was interviewed by OPM) that she needed a clearance for her company's federal contract (R.T., at 63-64). She states that had she known initially that her company had sponsored her for a clearance she might have provided the requested financial releases (R.T., at 65). Applicant could not corroborate her claims in any way. The information provided Applicant, both by her supervisor/human resources manager in the beginning and by the OPM agent who subsequently came to interview her in November and December 2006, was sufficient to apprise her of the nature of the Government's background investigation and her corresponding need to be cooperative in all phases of the investigation.

Applicant is well regarded by her supervisor and work colleagues and is reputed to be responsible and trustworthy (*see* ex. B). A coworker grades her with high marks in her business and personal life (ex. B).

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.

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, 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.

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 accounts payable specialist for a defense contractor who accumulated a number of delinquent debts over a three-year period spanning 2003 and 2005, while deferring to her spouse to pay their bills. Each of the accounts are considered marital debts. These debts, considered together, and without resolution, raise security concerns, along with the omissions of the same in her e-QIP. Security significant, too, are Applicant's repeated failure to cooperate with an interviewing OPM agent about her security clearance application.

Financial issues

Security concerns are raised under the financial considerations guideline of the revised Adjudicative Guidelines where the individual applicant 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 deferring to her spouse who was not able to attend to the debts during periods of reduced income, and tried unsuccessfully to cover their other debts with Navy credit union loans. Except for her student loans, neither Applicant nor her spouse had any contact with their creditors to resolve their debts before receiving the SOR.

Since receiving the SOR, Applicant has initiated efforts to resolve some of her listed delinquent debts. Specifically, she is able to document paying off one of her listed creditors (creditor 1.a) and repaying her student loans. She documents also paying on one of the non-listed creditors and initiating repayment of her creditor 1.e repossession deficiency and her Navy Credit Union debts (creditors 1.f and 1.g). She expresses hope of working on her remaining creditor accounts. Because of her husband's work losses that contributed to their financial difficulties, Applicant may rely somewhat 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.

Without financial counseling and a stronger repayment history, though, mitigation credit is more difficult for Applicant at this time. Her repayment efforts to date entitle her some advantage of MC 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) of the Guidelines. However, her repayment efforts, while encouraging, remain a work in progress. With her spouses's increased contributions to the family's aggregate income, Applicant should be able to make continued progress in the repayment of her listed delinquent debts. At this time, though, it is still too soon to make any safe predictions about her ability to repay her debts in the foreseeable future. Based on her repayment history to date, Applicant may not take advantage of any of the other available mitigating conditions.

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 the debt accumulations of Applicant and her spouse and the limited steps they have taken to date to resolve them, Applicant does not mitigate security concerns related to her established debt delinquencies. Unfavorable conclusions warrant with respect to the allegations covered by sub-paragraphs 1.b through 1.g of the SOR. Applicant is entitled to mitigation credit with respect to creditor 1.a, for which she provides payment documentation.

E-QIP issues

Security concerns over Applicant's judgment, reliability and trustworthiness are raised under the personal conduct guideline, too, as the result of her omissions of her debts in the e-QIP she completed in August 2006. By omitting debts attributable to her over 180 and 90 days delinquent, respectively, Applicant failed to furnish materially important background information about her debts that was needed for the Government to properly process and evaluate her security clearance application.

Applicant's e-QIP omissions are attributable to her accepted impressions that she had no debts of her own that were over 180 and 90 days delinquent with creditors 1.a through 1.g. Applicant's impressions, while mistaken, were made in good faith, without any indicated intent to mislead. Applicant's explanations, considering the circumstances surrounding the furnished information at the time, enable her to refute the falsification allegations. Considering all of the evidence produced in this record, favorable conclusions warrant with respect to subparagraphs 2.a and 2.b of Guideline E.

Cooperation issues

Interested in following up on Applicant's e-QIP submission after obtaining a copy of her credit report, an OPM agent tried in vain to resolve his agency's concerns with his initial and follow-up interview in November 2006. In the first interview, he asked for the standard financial release to enable him substantiate information in Applicant's obtained credit report. Asked to provide a financial release, Applicant declined, citing privacy concerns. His attempts, in turn, to schedule a follow-up interview with Applicant to discuss her finances were rebuffed. By all tangible indications in the developed record, Applicant failed to cooperate with the OPM agent tasked to investigate her background eligibility for holding a security clearance. To date, Applicant has still not provided the requested financial releases, or agreed to reschedule another OPM interview.

Appraising the security significance of Applicant's cooperation failures, a number of disqualifying conditions under the personal conduct guideline are applicable. Applicant's failure and refusal to provide the requested financial releases and sit for a second OPM interview raises

security concerns covered by the personal conduct guideline that normally mandate an unfavorable clearance action. Specifically, 15(a) (*refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation*) applies herein to Applicant's refusal to provide a financial release or agree to reschedule a second OPM interview when expressly asked by the appearing OPM agent in December 2006. In such a case (as here) where the clearance applicant persists in her refusal to provide requested financial information and meet for a requested interview, cooperation strains emerge that are at odds with that agency's security requirements.

Applicant can be granted no excuse from the accepted regulatory requirement of cooperating with the Government's background investigation of her security clearance worthiness and eligibility. Applicant's refusals to complete financial releases and agree to the rescheduling of a second OPM interview to address her reported debts in her latest credit report (as here) represent material breaches of her fiducial responsibilities to cooperate with the Government in all stages of processing of her security clearance application. While Applicant might well believe she does not need a security clearance for her work assignment based on information supplied by her supervisor, her employer manifestly determined otherwise and submitted the required application materials in Applicant's behalf.

Based on Applicant's repeated and continuous refusal to cooperate with the Government in its background investigation of her clearance eligibility, no mitigating conditions under the personal conduct guideline are available to her. While her most recent efforts in supplying updated financial information about her repayment initiatives are encouraging, more probative demonstrations of her willingness to cooperate are needed before Applicant can be fully credited with eliminating all residual concerns about her willingness to cooperate with Government investigators and the Government's correlative concerns about her reliability and trustworthiness to hold a security clearance.

Altogether, Applicant's extenuation and mitigation efforts fail at this time to quell the still active concerns about her reliability and trustworthiness associated with her past failures to cooperate fully with the instituted background inquiries of OPM. Unfavorable conclusions warrant, accordingly, with respect to the allegations covered by subparagraph 2.c of Guideline E.

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):	AGAINST APPLICANT
Sub-para. 1.a:	FOR APPLICANT

Sub-para. 1.b:	AGAINST APPLICANT
Sub-para. 1.c:	AGAINST APPLICANT
Sub-para. 1.d:	AGAINST APPLICANT
Sub-para. 1.e:	AGAINST APPLICANT
Sub-para. 1.g:	AGAINST APPLICANT

GUIDELINE E (PERSONAL CONDUCT):	AGAINST APPLICANT
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Sub-para. 2.a:	FOR APPLICANT
Sub-para. 2.b:	FOR APPLICANT
Sub-para. 2.c:	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 Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge