

DATE: December 13, 2007

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In Re:	)	
	)	
-----	)	ISCR Case No. 07-05301
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
_____	)	

**DECISION OF ADMINISTRATIVE JUDGE  
THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

Rita C. O'Brien, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a project coordinator for a defense contractor. She has delinquent debts from credit cards and department stores that she has not paid. She was unemployed at times, and family issues affected her finances. However, she has been steadily employed since 2003. She has not taken any steps to pay or resolve her delinquent debts. She failed to mitigate security concerns for financial considerations. Clearance is denied.

**STATEMENT OF THE CASE**

On August 06, 2007, the Defense Office of Hearing and Appeals (DOHA) issued a Statement

of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). Applicant acknowledged receipt of the SOR on September 17, 2007. The SOR alleges security concerns under Guideline F (Financial Considerations) of the Directive.

Applicant answered the SOR in writing on September 17, 2007. She admitted the 21 financial allegations under Guideline F noting that one account was now current. She elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on October 29, 2007. Applicant received a complete file of relevant material (FORM) on November 6, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. She responded on November 13, 2007, providing additional information on her finances. On November 20, 2007, Department Counsel noted that there was no objection to consideration of the additional information provided by Applicant. The case was assigned to me on November 26, 2007.

### **FINDINGS OF FACT**

\_\_\_\_\_ I thoroughly and carefully reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is a 48-year-old project coordinator for a defense contractor. She submitted a security clearance application on August 16, 2006. Subsequent investigation shows she has delinquent debts from as early as 2002.<sup>1</sup>

Applicant and her first husband divorced in 1988, and Applicant became a single mother raising two children. She was able to send both of her children to college, even though she did not receive child support from the children's father. Applicant remarried in 2001. When she remarried, her husband was employed in the airline industry in New York, and Applicant worked for an electrical contractor at the World Trade Center. After the events of September 2001, Applicant lost her job, and her husband transferred to another area because of the airline industry downturn. Applicant returned to school and received training in computer systems. Applicant moved to join her husband at his location. However, her income was substantially less than what she was earning in New York. Applicant's husband was required to move twice more as the airline industry adjusted. Applicant did not move necessitating that the family establish two households.<sup>2</sup>

Applicant was unemployed for over 14 months in 2002 and 2003, and for over four months in 2005. Applicant took vacations to Mexico in 2002 and 2003. However since her husband is an

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<sup>1</sup>Item 6.

<sup>2</sup>Item 6, Response to FORM, dated November 13, 2007.

airline employee, vacations were at reduced cost.<sup>3</sup>

Applicant admits to the 20 delinquent debt allegations in the SOR. The debts total almost \$21,000. While admitting to one of the allegations (1.q), applicant states the account is now current. The alleged debts are mainly to on-line clothing companies, department stores, and credit cards. The individual debts range from slightly in excess of \$100 to over \$2,000.<sup>4</sup> There are no delinquent debts listed in the SOR for a student loan. Applicant also admitted she filed a bankruptcy in 1995. There is no further information presented on the bankruptcy filing.<sup>5</sup>

Applicant presented no information to show payment of any SOR alleged delinquent debts. She also did not present information to show payment of the one debt she states is current. The debt is still listed as delinquent on her most current credit report.<sup>6</sup>

## POLICIES

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.”<sup>7</sup> Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.<sup>8</sup>

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. The adjudicative guidelines for this case are the guidelines promulgated by the President on December 29, 2005, and implemented by the Department of Defense on September 1, 2006. Each

clearance decision must be fair, impartial, and a commonsense decision based on the relevant and

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<sup>3</sup>*Id.*

<sup>4</sup>*See*, Items 5, 8, and 9.

<sup>5</sup>Credit reports list delinquent student loans. Credit reports also show some of the student loans are in a deferred status. There are no allegations in the SOR concerning student loans. Applicant responded to interrogators that one loan she identified as a student loan was paid. *See*, Item 7, and the Response to FORM. However, in the FORM, Department Counsel discusses delinquent student loans that have not been mitigated. Since delinquent student loans were not alleged in the SOR as security concerns, they will not be discussed in this decision. Since the bankruptcy filing in 1995 was listed as a security concern, it will be discussed in this decision.

<sup>6</sup>Item 7 at 3, Item 8.

<sup>7</sup>*Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>8</sup>Directive ¶ E2.2.1.

material facts and circumstances, and the whole person concept.<sup>9</sup>

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. An administrative judge should consider: (1) the nature, extent, 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 applicant's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence.<sup>10</sup>

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.<sup>11</sup> 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.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.<sup>12</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>13</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>14</sup> The government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating condition, and an Administrative Judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.<sup>15</sup> "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability."<sup>16</sup> "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the

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<sup>9</sup>AG ¶ 2(a).

<sup>10</sup>*Id.*

<sup>11</sup>*See* Exec. Or. 10865 § 7.

<sup>12</sup>Directive ¶ E3.1.14.

<sup>13</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

<sup>14</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>15</sup>ISCR Case No. 99-0597 (App. Bd. Dec 13, 2000).

<sup>16</sup>ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

national security.”<sup>17</sup>

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions section below.

## CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

A security concern exists because a 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.<sup>18</sup>

The cause of debts and action taken or not taken to pay debts are a better indicator of a person’s reliability or trustworthiness and judgment than the amount of debt. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation 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. Irresponsibility towards financial obligations may be indicated by failure to take reasonable measures to pay or reduce debts. A person’s relationship with her 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 situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations.

Applicant’s delinquent debts from credit reports admitted by Applicant brings the matter within Financial Considerations Disqualifying Conditions (FC DC) ¶ 19(a) (Inability or unwillingness to satisfy debts), and FC DC ¶ 19(c) (A history of not meeting financial obligations). Since Applicant admits all of the alleged debts, I conclude the above disqualifying conditions have been established.

Appellant’s answers to the SOR and the FORM raises Financial Consideration Mitigating Conditions (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 judgement), and FC 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). The alleged debts are still delinquent and therefore current.

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<sup>17</sup>*Egan*, 484 U.S. at 531; see AG ¶ 2(b).

<sup>18</sup>AG ¶ 18.

Since there are 20 varied delinquent debts, delinquent debt is incurred frequently. Applicant did not present any information that shows the debts were incurred under circumstances that were unusual or that delinquent debt will not occur in the future. FC MC ¶ 20(a) does not apply. Applicant did lose employment for a time in 2002-2003. However except for a short period in 2005, she has been fully employed since 2003. Her salary was reduced but she was still employed. Her husband was also employed even though he had to relocate and the family had to maintain separate households. These work related conditions were beyond her control, but the circumstances did not create significant financial problems such that some action or payment of debts could be made. While she was able to take vacations at reduced cost, she did incur some costs that could have been applied to pay some of the smaller delinquent debts. There is no information on payment of any debts or change in life style because of reduced income. Applicant did not present information to show she acted responsibly under the circumstances. FC MC ¶ 20(b) does not apply.

FC MC ¶ 2 (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) is not applicable since there is no evidence presented that Applicant received any financial counseling and the financial problems are not under control. FC MC 20(d) (The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) cannot be applied because Applicant presented no information to show she made any attempts to pay the delinquent debts alleged in the SOR or make arrangements with the creditors. Applicant did state she would pay the debts when she and her husband were able to live together and maintain only one household. An intention to pay debts in the future is not sufficient to establish a good-faith effort to pay the debts. Applicant admitted the debts and took no action to pay or resolve them.

Bankruptcy is a legal and permissible means of paying and resolving debt. However, the circumstances leading up to the bankruptcy action and the actions of Applicant after debts are discharged should be examined to determine if Applicant acted reasonably and responsibly in regard to her finances. The bankruptcy was filed in 1995 and there is no information about whether the debts were discharged or are still current. Since bankruptcy is a legal means of resolving debt, there is no security concern based solely on the filing of a bankruptcy over 12 years ago.

I carefully considered all of the circumstances in light of the “whole person” concept. I conclude Applicant is not eligible for access to classified information. Applicant has shown an irresponsible attitude toward her debts. She presented insufficient information to explain the debts or mitigate the disqualifying conditions. She has failed to carry her burden to refute, extenuate, or mitigate the security concern for delinquent debts. I conclude Applicant has not mitigated the security concerns for financial considerations.

### **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

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.:	For Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant or continue access to classified information for Applicant. Clearance is denied.

Thomas M. Crean  
Administrative Judge