

KEYWORD: Financial

DIGEST: Applicant is a 37-year-old employee of a defense contractor. Applicant accrued delinquent debts when her newborn baby required an operation, and her husband lost his job. Her delinquent debts total more than \$19,900. Applicant did little to resolve her debts, other than wait until they were uncollectible as beyond the statute of limitations. Applicant has not mitigated the security concerns based on her financial problems. Clearance is denied.

CASENO: 06-25090.h1

DATE: 06/30/2007

DATE: June 30, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-25090
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
EDWARD W. LOUGHRAN**

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 37-year-old employee of a defense contractor. Applicant accrued delinquent debts when her newborn baby required an operation, and her husband lost his job. Her delinquent

debts total more than \$19,900. Applicant did little to resolve her debts, other than wait until they were uncollectible as beyond the statute of limitations. Applicant has not mitigated the security concerns based on her financial problems. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On February 23, 2007, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. Applicant answered the SOR in writing on March 27, 2007, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on April 19, 2007. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on April 26, 2007, and responded on May 15, 2007. The case was assigned to another administrative judge on May 29, 2007, and reassigned to me on June 22, 2007.

FINDINGS OF FACT

Applicant is a 37-year-old employee of a defense contractor. She is divorced, and has a five-year-old child.²

Applicant's child was born in 2001. Applicant did not work for several months before her child was born, through about January 2003. She described herself as a “stay at home mom.”³ She worked for about five to six months in 2003. Applicant and her husband divorced in 2003. From June 2003 through January 2005, Applicant attended college. She lived with her parents and did not work during this period. Applicant started working as an intern in January 2005. She graduated college with honors in December 2005. She has worked for her current employer since December 2005.⁴

Applicant's husband lost his job very shortly after their child was born. This was followed almost immediately by their child developing a medical condition, which required surgery. The combination of events left Applicant in a financial dilemma. Several bills became delinquent.⁵

¹Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

²Item 4.

³*Id.* at 17 of 35.

⁴Items 3, 4.

⁵Items 3-6.

Applicant admitted to all the debts listed in the SOR. The debt in SOR ¶ 1.a is a medical debt in the amount of \$78. This debt was paid on March 13, 2007.⁶

The debts in SOR ¶¶ 1.b and 1.c, are credit card debts, totaling approximately \$19,969. Applicant does not intend to pay these debts as they are uncollectible, because they are beyond the four-year statute of limitations for her state. The credit reports list the date of last action as November 2001, for the debt in SOR ¶ 1.c, and February 2002, for the debt in SOR ¶ 1.b. Applicant is current on her other bills.⁷

POLICIES

“[N]o one has a ‘right’ to a security clearance.”⁸ As Commander in Chief, 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.”⁹ The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”¹⁰ An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.¹¹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹² The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. 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.¹³

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in the Directive and AG ¶ 2(a).

⁶Item 3, Item 5 at 1.

⁷Items 3-6; Applicant’s response to FORM.

⁸*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁹*Id.* at 527.

¹⁰Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

¹¹ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹²*Id.*; Directive, ¶ E2.2.2.

¹³Exec. Or. 10865 § 7.

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

CONCLUSIONS

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

Guideline F: Financial Considerations

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.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) 19(a) (*inability or unwillingness to satisfy debts*) and FC DC 19(c) (*a history of not meeting financial obligations*) apply in this case. Applicant accumulated substantial delinquent debt, which remains mostly unpaid.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered 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*), 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*), FC MC 20(c) (*the person received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*), FC MC 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) and 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*).

Applicant has two unpaid debts, totaling more than \$19,900. The debts have not been paid, but are unenforceable due to the running of the statute of limitations. Much of Applicant's financial difficulties started in 2001, when her husband lost his job shortly after their child was born, followed almost immediately by large medical bills related to their child's operation. These constitute conditions that were largely beyond Applicant's control. However, after these events occurred, Applicant did not work for extended periods while she was married, or while attending college after her divorce. Applicant graduated from college, and has worked for her current employer for about 18 months, and has done very little to pay her debts. Even if Applicant's debts are uncollectible because of the statute of limitations, the facts and circumstances under which the debts were incurred are to be considered when deciding whether Applicant took reasonable steps to address or otherwise

resolve those debts before the statute of limitations expired.¹⁴ Applicant did not provide sufficient information for a finding that her actions are unlikely to recur and do not cast doubt on her current reliability, trustworthiness, or good judgment; or that she acted responsibly under the circumstances. FC MC 20(a) and FC MC 20(b) are both partially applicable.

There is no evidence that Applicant received counseling for her problems. Based upon the evidence presented, I am unable to make a determination that there are clear indications that the problem is being resolved or is under control. FC MC 20(c) does not apply.

Applicant paid a small debt, but has not paid the two large debts. FC MC 20(d) does not fully apply because there is insufficient information to establish that Applicant showed good faith in the resolution of her debts.¹⁵ The Appeal board has held that reliance on the running of the statute of limitations does not normally absolve an applicant of his or her responsibilities for security clearance purposes, absent other mitigating circumstances.¹⁶

Applicant cites the statute of limitations to support the application of FC MC 20(e). A debt may be uncollectible, and still be a legitimate debt within the meaning of this mitigating condition. FC MC 20(e) does not apply.

Whole Person Analysis

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive and AG ¶ 2(a). I have also considered all the evidence, and every finding of fact and conclusion discussed above.

¹⁴ISCR Case No. 01-06776 (App. Bd. Jul. 24, 2003).

¹⁵The Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6, an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

¹⁶ISCR Case No. 05-00412 at 3 (App. Bd. Apr. 6, 2007) (citing ISCR Case No. 03-04779 at 4 (App. Bd. Jul. 20, 2005)).

Applicant's financial issues stem from her newborn baby's operation, which coincided with her husband's losing his job. She was also not working at the time. She did not work for several months before the child was born, until her child was about 16 months old. She worked for about five to six months, and then did not work again while attending college. Applicant started working for her current employer in December 2005. She did not submit any information about what attempts she made to address her delinquent debts prior to them becoming uncollectible. She merits some credit from the statute of limitations because the debts are uncollectible, which accordingly reduces her potential vulnerability to improper financial inducements. I also considered her outstanding scholastic record, her employment, and that she is current on her other debts.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on her financial issues.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant

DECISION

In light of all of 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.

Edward W. Loughran
Administrative Judge