

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Applicant is 40 years old and has been a security guard for a federal contractor since October 2005. She is underemployed and has been unemployed for long periods of time. She has four children and her husband is unemployed. She and her family have incurred substantial medical expenses because they have been uninsured and have had difficulty paying copayments. Applicant is saving money from her paycheck and has paid some creditors. She is setting up a repayment plan through a consumer credit counseling service. She was confused when she completed her security clearance application and unintentionally failed to list some information. Applicant has mitigated the security concerns under Guideline F, financial considerations, Guideline E, personal conduct, and Guideline J, criminal conduct. Clearance is granted.

CASENO: 06-24280.h1

DATE: 05/07/2007

DATE: May 7, 2007

In re:)	
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SSN: -----)	ISCR Case No. 06-24280
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
CAROL G. RICCIARDELLO**

APPEARANCES

FOR GOVERNMENT

John B. Glendon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 40 years old and has been a security guard for a federal contractor since October 2005. She is underemployed and has been unemployed for long periods of time. She has four children and her husband is unemployed. She and her family have incurred substantial medical expenses because they have been uninsured and have had difficulty paying copayments. Applicant is saving money from her paycheck and has paid some creditors. She is setting up a repayment plan through a consumer credit counseling service. She was confused when she completed her security clearance application and unintentionally failed to list some information. Applicant has mitigated the security concerns under Guideline F, financial considerations, Guideline E, personal conduct, and Guideline J, criminal conduct. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on January 16, 2007, detailing the basis for its decision—security concerns raised under Guideline F (financial considerations), Guideline E (personal conduct), and Guideline J (criminal conduct) of the revised Adjudicative Guidelines issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR in writing on February 2, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on March 12, 2007. With the consent of the parties, I convened a hearing on April 18, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government offered three exhibits that were marked as GE 1-3 and admitted without objections. Applicant testified on her behalf and did not offer any documents. The record was left open to allow Applicant to submit documents, which she did in a timely manner. The exhibits were marked as AE A-G and admitted without objections. DOHA received the hearing transcript (Tr.) on April 27, 2007.

FINDINGS OF FACT

Applicant is 40 years old and has worked as a security guard for a federal contractor since October 2005. She has been married for 16 years and is the mother of four children ages 15, 13, 9 and 8. Her eldest child has serious respiratory problems that requires frequent emergency medical treatment. Their family lives with his mother and pays the mortgage on the home. It is located in a dangerous part of town. Applicant works nights and is not comfortable leaving the children with their grandmother alone. Her husband is presently unemployed and is responsible for caring for the children in the evening.

The SOR alleges 20 delinquent debts, of those 16 are for medical debts incurred by Applicant to care of the needs of her family or herself. Her children are currently on medicaid to pay for their medical needs. Her eldest daughter has a serious health issue and frequently needs emergency room care. Many of Applicant's debts are for emergency room visits. Applicant has a very small income, but has been saving \$50 a paycheck to pay off some of her debts. She presently has the means to pay

off five of the delinquent accounts. However, in attempting to do so she has been passed back and forth between collection agencies and creditors who can not identify her debts or do not have current account numbers or have different account numbers. Despite her attempts she has been frustrated by the creditor/collection agencies bureaucracy.

Prior to her current employment, Applicant was unemployed for approximately two years, from October 2003 to October 2005. She worked for a federal transportation service from November 2001 to October 2003. Earlier in 2003, Applicant suffered a mild stroke and was out of work for approximately four months. She was not paid during this time. Her husband was working during this time. When she returned to work in October 2003 she was required to take a certification test. She could not pass the test so she was terminated. In 1999, Applicant contracted meningitis and was very sick and could not return to work for approximately six months. During this time her husband was working. She is diabetic and requires regular medical check ups twice every three months and regular medication. She must wait for "open season" to be covered by her employer for medical benefits, so she is currently uninsured, but the children receive medicare. She and her husband do not have any credit cards.

Four delinquent debts are not for medical necessities. The debt in SOR 1.a is from a catalog company where she purchased merchandise on one occasion. It has been in a delinquent status since 2003. The debt in SOR 1.f is for tires she purchased. She stated she did make payments, but the remainder of the debt is unpaid. The debt in SOR 1.g is to a video store. This debt has been paid. The debt in SOR 1.s is for a credit card debt that went delinquent when she lost her job. The debt remains unpaid.

On December 3, 2002, Applicant was charged for failure to maintain financial responsibility (no car insurance) and failure to wear her seat belt. She was again charged on July 20, 2005 for failing to maintain financial responsibility and failure to yield right of way. Her reason in both cases for failing to have car insurance was because she did not have the money. She presently has car insurance. She paid the fines related to the charges.

On October 12, 2003, Applicant was charged with theft by writing a bad check. She believed when she wrote the check that there were sufficient funds in her account to cover the check and there were not. She did not receive a notice from the bank about her account. She paid the fine and was released. Applicant failed to list this offense on her security clearance application (SCA). Applicant credibly testified that she was told by the bail bondsman that all she had to do was make restitution and pay the fine. She never went to court or entered a plea. The charges were dismissed. She testified credibly that she was confused by the questions and believed she only had to list felonies. She did not understand that she was required to list any arrests, charges or convictions she may have had.

Applicant pays her taxes and does not have any credit cards. She and her husband drive older model vehicles that are paid for. Applicant is responsible for managing all of the family's finances. Her husband has been unemployed for 18 months and there was a period of time when they were both unemployed. The reason Applicant did not pay her debts is because during certain periods of time she did not have the money. She does not have a phone and limits the family's spending. She does not buy the children new clothes or shoes unless they absolutely need them. The younger

children are growing fast and need more things. She is hoping to save some money when the children break for the summer so they will not need school supplies.

Applicant has sought financial assistance through a credit counseling service. She is providing them with a list of her creditors and they are assisting her in formulating a realistic repayment plan. She anticipates they will negotiate settlements with some of the creditors. She is attempting to pay some of the small debts and has contacted some of the creditors regarding her outstanding debts. She also anticipates that her husband will resume work in the next month so they will have two incomes. Applicant believes with two incomes they can resolve their debts, live within their means and stay current on their expenses. Applicant and her family have had many medical issues. She does not drink, smoke or gamble and her children are happy and on the honor roll.

POLICIES

“[N]o one has a ‘right’ to a security clearance.”¹ 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.”² 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.”³ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁶ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁷ 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.⁸

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive to be considered in evaluating a person’s eligibility to hold a security clearance.

¹*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²*Id.* at 527.

³Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

⁴ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

⁵*Id.*

⁶*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

⁷Executive Order 10865 § 7.

⁸*See* Exec. Or. 10865 § 7.

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 factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the revised adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

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

CONCLUSIONS

Based upon consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline F-Financial Considerations are a concern because 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.

Guideline E-Personal Conduct is a concern because conduct involving questionable judgment, lack of candor, dishonest, 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.

Guideline J-Criminal Conduct is a security concern because criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

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 has numerous delinquent debts that she only recently has started to resolve. The debts date back to 2000.

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), and FC MC 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts).

Applicant's debts are recent because they remain unpaid. There are also many debts so her behavior is not infrequent. Because of her employment situation I can not find that the event is unlikely to recur. Therefore, FC MC 20(a) does not apply.

Applicant has a big family and most of her delinquent debts are for unpaid copayments for medical bills. She has a daughter with a serious medical condition. Applicant has suffered from meningitis, a stroke, and is a diabetic. All of these debilitating conditions have caused substantial medical expenses and caused her to be unemployed. While unemployed she did not have medical insurance thereby escalating the problem. Her husband also has been unemployed during long periods. Because of her low income, she can not afford to live in a safer neighborhood and she is concerned for the safety of her children, so her husband does not work nights so he can stay home with the children. Applicant's debts are not the result of frivolous or irresponsible spending, or living beyond her means, but rather are from being underemployed, unemployed, medical problems and lack of medical insurance, and having a family of six that she is responsible for on a meager income. I find all of these circumstances were beyond her control and had a major impact on her ability to pay her debts. Applicant has acted responsibly under the circumstances and therefore FC MC 20(b) applies.

Applicant is receiving financial counseling and is setting up a repayment plan. She has paid some of the small medical copayments and the consumer credit service is helping negotiate settlements for her other debts. She saves \$50 from her paycheck and slowly is repaying some of her debts. There is clear indication Applicant is committed to resolving her delinquencies and is making a good-faith effort to do so. She anticipates her husband being employed in the near future and that will expedite her repayment plan. I find FC MC 20(c) and (d) apply.

I have considered Personal Conduct Disqualifying Conditions (PC DC) 16(a) (*deliberate omission, concealment, or falsification of relevant 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.*) and PC MC 16(c) (*personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress,...*). I considered Applicant's testimony, demeanor and candor and conclude she did not deliberately or intentionally omit information on her SCA. She credibly testified she was confused and thought she did not have to include certain information. Regarding the bad check offense, Applicant had an overdraft on her account and was not notified by the bank. She made restitution and paid a fine. I do not find this is the type of conduct that creates a vulnerability to exploitation, manipulation or duress. She resolved the issue. Considering all of the evidence, I find none of the disqualifying conditions apply and therefore it is unnecessary to consider any of the mitigating conditions.

I concluded Applicant did not intentionally or deliberate falsify her SCA and therefore I conclude she did not violate Title 18 U.S.C.§ 1001. I find that none of the Criminal Conduct Disqualifying Conditions apply.

Whole Person Analysis

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered the whole person in evaluating the case. I considered Applicant's credibility, demeanor and responsiveness when testifying. Applicant's delinquent debts result from being unemployed, underemployed, and medical issues that were beyond her control. She has a meager salary and is supporting a large family. She has taken constructive action to repay her debts. She does not spend beyond her means and is frugal. Applicant's good faith efforts to resolve her debts are indications that she is getting her financial issues under control. I find Applicant has successfully mitigated the security concerns raised under Guideline F, financial conditions, Guideline E, personal conduct, and Guideline J, criminal conduct.

FORMAL FINDINGS

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

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraph 1.a-1.v:	For Applicant
Paragraph 2. Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Paragraph 3. Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is grant.

Carol G. Ricciardello
Administrative Judge