

KEYWORD: Financial Considerations; Personal Conduct; Criminal Conduct

DIGEST: Applicant has had a history of overdue debts that have not been resolved. The information that she provided to the Government in a Security Clearance Application (SCA) on July 8, 2005, regarding her indebtedness, was materially incorrect and incomplete, but the evidence has not established that Applicant knowingly provided false information. Mitigation has not been shown. Clearance is denied. _____

CASENO: 06-18164.h1

DATE: 9/14/2007

DATE: September 14, 2007

In re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 06-18164
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
MARTIN H. MOGUL**

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq., Department Counsel

FOR APPLICANT

Charles S. Parnell, Esq.

SYNOPSIS

Applicant has had a history of overdue debts that have not been resolved. The information that she provided to the Government in a Security Clearance Application (SCA) on July 8, 2005, regarding her indebtedness, was materially incorrect and incomplete, but the evidence has not established that Applicant knowingly provided false information. Mitigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On November 13, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) (Exhibit 1) to the 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 a clearance should be denied or revoked.

In a signed and sworn statement, dated January 5, 2007, Applicant responded to the SOR allegations (RSOR) (Exhibit 2). She requested that her case be decided on the written record in lieu of a hearing.

On May 30, 2007, Department Counsel prepared the Department's written case. A complete copy of the File of Relevant Material (FORM) was provided to Applicant, and she was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due by July 11, 2007, but no response to the FORM was filed. The case was assigned to this Administrative Judge on August 20, 2007.

Department Counsel offered eight documentary items (Exhibits 1-8), which have been admitted without objection. Applicant offered no documentary evidence into the record.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive. The SOR contains 7 allegations, 1.a., through 1.g., under Guideline F, two allegations, 2.a. and 2.b., under Guideline E, and one allegation, 3.a., under Guideline J. Applicant has admitted SOR allegations 1.a. and 1.g., and she has denied the other allegations. The admitted allegations are incorporated herein as findings of fact.

Since this matter is being decided without a hearing, my evaluation is necessarily limited to the contents of the various documents that are found in the case file. After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the FORM, and the admitted documents, and upon due consideration of that evidence, I make the following Additional

findings of fact:

Applicant is 53 years old. She is employed by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector.

Paragraph 1 (Guideline F - Financial Considerations)

The SOR lists seven allegations of overdue debts, 1.a. through 1.g, under Adjudicative Guideline F. These debts will be discussed in the order that they were listed in the SOR:

1.a. This overdue debt to Creditor 1 is cited in the SOR in the amount of \$2,199. In her RSOR (Exhibit 2), Applicant admits this debt was incurred by her husband on a credit card for which she was jointly liable. She contends that she was unaware of it before she received the SOR. In Responses to Interrogatories, signed by Applicant on October 10, 2006, (Exhibit 6) Applicant denies that this debt is hers, as she claims it is a disputed bill from her husband's "old company." This contradicts her response to the SOR in two places. First she claims that she was unaware of the bill until the SOR, but clearly she had notice of the bill at least since she received the interrogatories. Also, on the interrogatories she denies that she was responsible for the debt, but on her RSOR, she concedes liability for this debt.

Finally, Applicant states that this debt is no longer listed on her most current credit report, and she also cites Colorado Revised Statute 13-80-103.5 to argue that the statute of limitations to enforce this obligation has expired. I find that insufficient evidence has been introduced to determine if the statute is applicable in this case, and based on the above discussed inconsistencies in her responses, I can not find that this debt has been resolved.

1.b. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$2,887.82. Applicant denies this debt and contends that she has disputed this debt for years. Exhibit 7, a credit report, dated January 4, 2006, shows that this debt was disputed by consumer, and that it has been resolved. While it is not clear what the outcome of the debt is, I find that this debt has been resolved.

1.c. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$237. In her RSOR, Applicant claims that she was unaware of this debt, but after she received the SOR, she paid the debt. However, in her Responses to Interrogatories (Exhibit 6), which she executed a month before she received the SOR, she claimed that she had already paid this debt. Based on this discrepancy and the lack of any independent evidence to establish payment of this debt, I can not find that this debt has been resolved.

1.d. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$136.48. In her RSOR, Applicant claims that she was unaware of this debt, but after she received the SOR, she paid the debt. In her Responses to Interrogatories (Exhibit 6), Applicant claimed that she had already paid this debt, but she only included evidence of one payment of \$45.49. I find that Applicant still owes the remainder of the debt.

1.e. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$78.43. In her RSOR, Applicant claims that she was unaware of this debt, but after she received the SOR, she paid the debt. Based on the lack of any independent evidence to establish payment of this debt, I can not find that this debt has been resolved.

1.f. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$156. In her RSOR, Applicant claims that she was unaware of this debt, but after she received the SOR, she paid the debt. Based on the lack of any independent evidence to establish payment of this debt, I can not find that this debt has been resolved.

1.g. This overdue debt to Creditor 7 is cited in the SOR in the amount of \$4,852.02. In her RSOR, Applicant admits this debt was incurred by her husband on a credit card for which she was jointly liable. She contends that she was unaware of it before she received the SOR, In Responses to Interrogatories (Exhibit 6) Applicant denies that this debt is hers, as she claims it is a disputed bill. Again, she twice contradicts her response to the SOR. First she claims that she was unaware of the bill until the SOR, but clearly she had notice of the bill at least since she received the interrogatories. Also, on the interrogatories she denies that she was responsible for the debt, but on her RSOR, she concedes liability for this debt.

Finally, Applicant cites Colorado Revised Statute 13-80-103.5 to argue that the statute of limitations to enforce this obligation has expired. I find that insufficient evidence has been introduced to determine if the statute is applicable in this case, and based on the above discussed inconsistencies in her responses, I can not find that this debt has been resolved.

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because when Applicant completed a signed, sworn Security Clearance Application (SCA) on July 8, 2005, she furnished untruthful information to the Government (Exhibit 5).

2.a. Question #38 asks, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Applicant answered "No" to this question. At the time she completed the SCA, Applicant had been over 180 days delinquent on the debts listed on the SOR, as discussed above, and she should have answered "Yes" to this question and included the debts listed in the SOR that were overdue.

2.b. Question #39 asks, "Are you currently over 90 days delinquent on any debt(s)?" Applicant answered, "No" to this question and again listed no debts. At the time she completed the SCA, Applicant was still delinquent on the debts listed on the SOR, and she should have included all of these debts.

In her RSOR, Applicant claims that she was not aware that any of these debts were overdue at the time she completed the SCA, and that she did not deliberately provide false information to the Government. In the FORM, Department Counsel states that a credit report, provided by Applicant with her Responses to Interrogatories, lists all of the debts on the SOR. However, the Government has not provided the evidence to establish that Applicant had this credit report or other information

that these debts were owed, at the time she completed the SCA.

Paragraph 3 (Guideline J - Criminal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has engaged in criminal conduct as she furnished information on a SCA to the Government in 2005 that was not complete and truthful. This act is a violation of Federal Law, Title 18, United States Code Section 1001. However, since it has not been proven that Applicant knowingly and wilfully provided false information to the Government, Title 18, United States Code Section 1001, does not apply in this case.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case.

As set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of alcohol abuse and criminal conduct that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future."

The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant her a security clearance. This the

Applicant has not done.

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to Guidelines F, E, and J:

(Guideline F - Financial Considerations)

The Government has established its case under Guideline F. The record evidence clearly establishes Applicant's long history of indebtedness, and there is no evidence that Applicant has resolved these overdue debts.

Regarding the Disqualifying Conditions (DC) under Guideline F in the Adjudicative Guidelines, I conclude both DC 19 (a) and (c) apply, because of Appellant's "history of not meeting financial obligations" and her apparent "unwillingness to satisfy her debts."

In considering the Mitigating Conditions (MC) 20, I do not find that any of the MCs apply I, therefore, hold Guideline F against Applicant.

Until Applicant makes a good-faith effort and can prove that she has resolved her overdue debts, and she can establish a record of financial responsibility and stability, security concerns will continue to exist under Guideline F. I resolve Guideline F against Applicant.

(Guideline E -Personal Conduct)

With respect to Guideline E, the evidence establishes that Applicant provided incorrect material information to the Government in response to two questions on the SCA that she executed in 2005. Applicant was delinquent on the debts discussed above, and she should have answered "Yes" to questions #38, and #39, and included on her SCA all of the debts discussed above. However, Applicant denies that she was aware of these overdue debts when she completed her SCA, and there is no evidence to contradict her contention.

In reviewing the DCs under Guideline E, I conclude that no DC applies against Applicant. I therefore, resolve Guideline E against Applicant.

(Guideline J - Criminal Conduct)

The Government has been unable to establish that Applicant engaged in criminal conduct, as she did not knowingly furnished information to the Government that was incomplete and untruthful. Therefore, no violation of Federal Law, Title 18, United States Code Section 1001 was committed.

Under Guideline J, I conclude that no DC applies, and I resolve Guideline J for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant
Subparagraph 1.b.: For 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

Paragraph 2. Guideline E: For APPLICANT

Subparagraph 2.a.: For Applicant
Subparagraph 2.b.: For Applicant

Paragraph 3. Guideline J: For APPLICANT

Subparagraph 3.a.: For 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.

**Martin H. Mogul
Administrative Judge**