

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is 42 years old and has worked for a federal contractor since March 2003. She has more than \$17,000 in delinquent debts that she has not paid. She did not provide any information to mitigate the concerns raised by her financial situation. On her security clearance application she deliberately failed to divulge any of her delinquencies. Applicant failed to mitigate the security concerns raised by Guideline F, financial considerations and Guideline E, personal conduct. Clearance is denied.

CASENO: 06-18209.h1

DATE: 03/30/2007

DATE: March 30, 2007

_____)	
In re:)	
)	
-----)	ISCR Case No. 06-18209
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

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

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

_____ Applicant is 42 years old and has worked for a federal contractor since March 2003. She has more than \$17,000 in delinquent debts that she has not paid. She did not provide any information to mitigate the concerns raised by her financial situation. On her security clearance application she deliberately failed to divulge any of her delinquencies. Applicant failed to mitigate the security concerns raised by Guideline F, financial considerations and Guideline E, personal conduct. Clearance is denied.

STATEMENT OF CASE

On August 22, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.¹ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct.

In a sworn statement dated September 12, 2006, Applicant responded to the SOR allegations. Applicant elected to have her case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on January 11, 2007. The FORM was mailed to Applicant on January 12, 2007, and received on January 22, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant had no response. The case was assigned to me on March 8, 2007.

FINDINGS OF FACT

_____ Applicant is 42 years old and has worked as a custodian for a federal contractor since March 2003. She has been steadily employed since 1988. Applicant married in 1989, and has been separated from her husband since 1992. She has two children, ages 22 and 18.

Applicant admits she owes the debts listed in SOR ¶¶ 1.a-1.d, 1.f, 1.g, and 1.i-1.l. She denies the allegations in ¶¶ 1.e, 1.h, 2.a, and 2.b. Her credit reports verify that there are zero balances on debts ¶¶ 1.e and 1.h that she claimed are paid.² No information was provided regarding whether she has set up a repayment plan, contacted her creditors or has made any attempt to resolve her other delinquent debts. She did not provide any information to show the debts were incurred because of conditions beyond her control or that she has received any financial counseling to assist her in resolving her debts. Some of Applicant's delinquent debts show that there has been no activity on them for several years, some are charged off and some are in a collection status.³

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

²Item 7.

³Items 5, 6 and 7.

Applicant signed her security clearance application on June 7, 2004, and again on May 19, 2005. Applicant answered “No” in response to Question 38, which asked: “Your Financial Delinquencies-In the last 7 years have you ever been over 180 days delinquent on any debt(s)?” She also answered “No” to Question 39, which asked: “Your Financial Delinquencies-90 Days Are you currently over 90 days delinquent on any debt(s)?” Applicant denied she deliberately failed to list her debts. Her explanation was “I misunderstood the question, which [I] told the person who interviewed me that [I] misunderstood the question.”⁴ Her answer was the same for both questions. No other information was provided by Applicant. She did not provide any amplifying information as to specifically what she misunderstood or what confused her about the questions. Applicant has more than \$17,000 of delinquent debt from ten accounts. Some of her debts were placed for collection or charged off in 2002. The delinquent debt in SOR ¶ 1.g is for \$6,087; ¶ 1.f is for \$4,594; ¶ 1.i is for \$2,573, and ¶ 1.a is for \$1,159. All of these debts are substantial amounts. She admits all of them and all are in a collection status. The questions on the SCA are very clear. The heading states “**Your Financial Delinquencies-180 Days.**” It goes on to ask if in the past 7 years have you ever been over 180 days delinquent on any debt(s)?” She failed to list any of her debts. She did the same for her debts that were 90 days past due. Considering the number of debts, the amount of the debts, the fact that many of the debts were in a collection status for a long period of time, and the probability that she received notifications from these creditors, I find Applicant deliberately did not list her delinquent debts in Questions 38 and 39.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person’s eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific 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 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 adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁵ The government has the burden of proving controverted facts.⁶ The burden of proof is something less than a

⁴Item 2.

⁵ISCR Case No. 96-0277 at 2 (App. Bd. Jul. 11, 1997).

⁶ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

preponderance of evidence.⁷ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁸ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁹

No one has a right to a security clearance¹⁰ and “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.¹³ 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.

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

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 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.

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.

⁷*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁸ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

⁹ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

¹⁰*Egan*, 484 U.S. at 531.

¹¹*Id.*

¹²*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

¹³Executive Order 10865 § 7.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards.

Based on all of the evidence, Financial Considerations Disqualifying Condition (FC DC) FC DC E2.A6.1.2.1 (*a history of not meeting financial obligations*) and FC DC E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*), apply in this case. Applicant has many delinquent debts that she failed to pay. Many have had no activity on them for years. She admits she owes the debts and they are delinquent.

I have considered all of the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2. (*It was an isolated incident*), FC MC E2.A6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)*), FC MC E2.A6.1.3.4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant has paid two delinquent debts. She has not provided any mitigating information regarding her other delinquent debts. No evidence was provided to explain how her debts became delinquent and why some have not been paid for years. No evidence was provided to show she is attempting to resolve the debts or has made a good-faith effort to repay her debts. Applicant simply has not provided anything by way of mitigation to consider. Therefore, I find none of the financial consideration mitigating conditions apply.

Based on all the evidence, Personal Conduct Disqualifying Condition (PC DC) E2A5.1.2.2 (*The 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.*) applies. Applicant deliberately failed to list her debts that were over 180 days delinquent and were 90 days past due.

I have considered all of the Personal Conduct Mitigating Conditions (PC MC), and especially considered PC MC E2.A5.1.3.3 (*The individual made prompt, good faith efforts to correct the falsification before being confronted with the facts*) and PC MC E2.A5.1.3.5 (*The individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation or duress*). I find neither applies. Applicant did not promptly provide the correct information for her security clearance application, but waited until she was confronted and interviewed by an investigator. She stated she misunderstood the questions, but failed to explain what she misunderstood or what may have been confusing to her. A blanket statement that she misunderstood is not enough to meet any of the mitigating criteria when considering all of the facts in the record. An applicant's financial history is a matter that could affect a final agency decision on whether to grant the applicant a clearance, and an applicant's failure to disclose it would impede a thorough investigation of her background. At the time she completed her SCA, I find she was aware that she had delinquent debts and deliberately failed to reveal them. I find the questions in the SCA are quite clear and not

confusing. The heading alone puts the Applicant on notice as to what the question is all about. Her claim that she misunderstood the question is not enough, based on all of the other evidence to convince me she did not understand the questions. I considered the number of debts, the amounts of the debts, the lengthy period many have been in collection status or charged off, and that she was required to list them in Questions 38 and 39. I also considered that the questions are quite clear as to what information is being requested and that Applicant's admissions to the debts corroborates that she was aware of them. It is not credible to believe based on the information provided that she did not understand the questions. Having found Applicant deliberately failed to divulge the information, I also find Applicant did not provide any evidence or reassurance that she has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation or duress. None of the personal conduct mitigating conditions apply.

The 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 age and length of employment, the number of debts and how long they have been in collection or charged off status, the debts she has paid and the lack of information regarding the resolution of her other debts. I also considered the clear language of Questions 38 and 39 on the SCA. I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guidelines E and F are decided against Applicant.

FORMAL FINDINGS

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

Paragraph 1	Financial Considerations (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:	For Applicant
	Subparagraph 1.f:	Against Applicant
	Subparagraph 1.g:	Against Applicant
	Subparagraph 1.h:	For Applicant
	Subparagraph 1.i:	Against Applicant

	Subparagraph 1.j:	Against Applicant
	Subparagraph 1.k:	Against Applicant
	Subparagraph 1.l:	Against Applicant
Paragraph 2	Personal Conduct (Guideline E)	AGAINST APPLICANT
	Subparagraph 2.a:	Against Applicant
	Subparagraph 2.b:	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 a security clearance for Applicant. Clearance is denied.

Carol. G. Ricciardello
Administrative Judge