

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has approximately 13 delinquent debts, totaling \$16,199. She deliberately failed to disclose her delinquent accounts on security clearance applications submitted on September 4, 2002, and April 20, 2005. While intending to resolve her delinquent accounts in the future, the majority of her delinquent accounts remain unresolved. She has not mitigated the security concerns raised under financial considerations and personal conduct. Clearance is denied.

CASENO: 06-21854.h1

DATE: 05/22/2007

DATE: May 22, 2007

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In re:)	
)	
-----)	ISCR Case No. 06-21854
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
ERIN C. HOGAN**

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has approximately 13 delinquent debts, totaling \$16,199. She deliberately failed to disclose her delinquent accounts on security clearance applications submitted on September 4, 2002, and April 20, 2005. While intending to resolve her delinquent accounts in the future, the majority of her delinquent accounts remain unresolved. She has not mitigated the security concerns raised under financial considerations and personal conduct. Clearance is denied.

STATEMENT OF CASE

On November 27, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating they were 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, of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006.

In a sworn statement, dated December 18, 2006, Applicant responded to the SOR allegations and elected to have her case decided on the written record, in lieu of a hearing. Department Counsel submitted the government's file of relevant material (FORM) on January 24, 2007. The FORM was mailed to Applicant on January 25, 2007, and received on January 31, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond. The case was assigned to me on March 28, 2007.

PROCEDURAL ISSUES

The case file did not indicate Applicant received a copy of the revised AG. Department Counsel's FORM cited the old adjudicative guidelines. On March 23, 2007, an Order was sent to Department Counsel to amend the FORM citing the revised AGs and send a copy of the amended FORM and a copy of the revised AGs to Applicant. Applicant had 30 days to respond after receipt of the amended FORM and revised AG.

Applicant received the revised FORM and a copy of the revised AGs on April 2, 2007. She timely submitted a nine page response to the amended FORM on May 3, 2007.

In her December 18, 2006, Response to the SOR, Item 3, Applicant indicated and provided proof that she got married on October 14, 2006. She took her husband's last name. The SOR is amended to reflect her married last name. Her new last name is in parentheses after her maiden name in the case caption.

FINDINGS OF FACT

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).

In her SOR response, Applicant denies SOR ¶¶ 1.h and 1.m and admits to all remaining allegations. Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 30-year-old woman employed with a Department of Defense contractor who is applying for a security clearance. She is married and has no children.²

On September 4, 2002, Applicant completed a security clearance application, (SF 86).³ In response to question 38. Your Financial Delinquencies - 180 Days. "In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?", she answered, "No." At the time she filled out the SF 86, the debts alleged in SOR ¶¶ 1.a through 1.e were over 180 days delinquent. She also answered, "No" in response to question 39. Your Financial Delinquencies - 90 Days. "Are you currently over 90 days delinquent on any debt(s)?" The debts alleged in SOR ¶¶ 1.a through 1.f were over 90 days delinquent.

On April 20, 2005, Applicant completed another security clearance application, (SF 86).⁴ In response to question 38. Your Financial Delinquencies - 180 Days. "In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?", she answered, "No." At the time she filled out the SF 86, the debts alleged in SOR ¶¶ 1.a through 1.k were over 180 days delinquent. She also answered, "No" in response to question 39. Your Financial Delinquencies - 90 Days. "Are you currently over 90 days delinquent on any debt(s)?" The debts alleged in SOR ¶¶ 1.a through 1.k were over 90 days delinquent.

The delinquent accounts included a \$1,077 credit card account charged off in April 2000 (SOR ¶ 1.a); a \$2,639 collection account turned over for collection in September 2000 (SOR ¶ 1.b); a \$522 delinquent account delinquent since November 2000 (SOR ¶ 1.c); a \$844 catalogue account charged off in December 2000 (SOR ¶ 1.d); a \$1,215 account placed for collection in November 2000 (SOR ¶ 1.e); a \$595 account placed for collection in May 2002 (SOR ¶ 1.f); a \$156 account placed for collection in April 2003 (SOR ¶ 1.g); a \$6,209 credit card account placed for collection in July 2003 (SOR ¶ 1.h); a \$93 insurance bill placed for collection in March 2004 (SOR ¶ 1.i); a \$502 medical account placed for collection in June 2004 (SOR ¶ 1.j); a \$86 insurance bill placed for collection in August 2004 (SOR ¶ 1.k); a \$1,495 telephone account placed for collection in February 2005 (SOR ¶ 1.l); and a \$770 account placed for collection in August 2005. (SOR ¶ 1.m).⁵

Applicant denies the debt alleged in SOR ¶ 1.h. She acknowledges that she owes the debt but disputes the balance. She has not talked with the creditor/collection agency in over a year because of their aggressive collection tactics.⁶ She denies the debt alleged in SOR ¶ 1.m. She contracted with a firm to attend a program that promised to help her obtain a federal job. She claims

² Items 3 and 4.

³ Item 5.

⁴ Item 4.

⁵ Items 6, 7, 8.

⁶ Item 3, Supplemental Response to Revised AG, dated May 1, 2007.

she cancelled the contract within seven days as allowed by the contract. The company claims she did not cancel and owes them the full amount. She did not save any paperwork. She is disputing the account on her credit report.⁷

Applicant paid the debt alleged in SOR ¶ 1.1 which is a cell phone account. She settled the account for \$600 on September 23, 2005.⁸ She entered into a payment plan with the creditor for the debts alleged in SOR ¶¶ 1.f and 1.g. She agreed to pay \$25 per month on the 14th of each month. She provided copies of the checks sent to the creditor in November, February, March and April. She claims she paid the December and January payments online.⁹ No documentation was provided verifying these two payments were made.

Applicant sent letters to the creditors alleged in SOR ¶¶ 1.g, 1.i and 1.k. She has not heard back from these creditors.¹⁰ She has not contacted the creditors alleged in SOR ¶¶ 1.c, 1.d, and 1.e. She intends to contact them within the next month to establish a payment plan or a settlement that she can afford to pay.¹¹

In her response to the SOR, Applicant stated "I first must apologize for making false statements about my debt. It hasn't been until recently that I have started to take my credit more seriously by making sure I pay my debts on time."¹² In her response to the revised FORM, Applicant claims that although she admits to providing a false statement on her security clearance application, she was unaware of her credit situation at the time she submitted her 2002 and 2005 security clearance applications.¹³

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."¹⁴ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

⁷ *Id.*

⁸ Response to Revised Form, dated May 1, 2007, at 4-5.

⁹ *Id.* at 3, 6-9.

¹⁰ Item 3, Response to Revised Form, dated May 1, 2007, at 3.

¹¹ Response to Revised Form, dated May 1, 2007, at 3.

¹² Item 3.

¹³ Response to Revised Form, dated May 1, 2007, at 2.

¹⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines, approved by the President on December 29, 2005 and implemented by the Department of Defense, effective September 1, 2006, sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

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.¹⁵

Guideline E - Personal Conduct: Conduct involving questionable judgment, lack of candor, dishonesty, 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.¹⁶

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

“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.”¹⁷ 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 the following factors: (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 individual’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 permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.¹⁸

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

¹⁵ Revised AG, dated August 2006, ¶ 18.

¹⁶ Revised AG, dated August 2006, ¶ 15.

¹⁷ Revised AG, dated August 2006, ¶ 2(a).

¹⁸ *Id.*

information.¹⁹ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.²⁰ “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”²¹

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 a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a prima facie case for disqualification under Guidelines F and E.

Guideline F - Financial Considerations

Applicant's poor financial history raises a security concern. She has encountered financial problems over the past several years, accumulating 13 delinquent accounts, totaling approximately \$16,199. 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 to Applicant's case. By her own admission, Applicant was not very responsible when it came to handling her financial affairs in the past. Although Applicant settled one account and is making payments towards two other debts, her remaining delinquent accounts remain unresolved.

The financial considerations concern can be mitigated. I find that none apply. Applicant did not provide information which would indicate that her financial problems were caused by conditions that were beyond her control. There is no indication Appellant received financial counseling. The majority of the debts remain unresolved.

Guideline E - Personal Conduct

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully.

¹⁹ Directive ¶ E3.1.14.

²⁰ Directive ¶ E3.1.15.

²¹ Revised AG, dated August 2006, ¶ 2(b).

Applicant admits to deliberately falsifying her security clearance applications submitted on September 4, 2002, and April 20, 2005, with regard to her delinquent accounts.

Personal Conduct Disqualifying Condition ¶16(a) (*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form*) I give little weight to her recent clarifications that she was unaware of her delinquent accounts when filling out the her security clearance applications. *rm used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies.

None of the Personal Conduct Mitigating Conditions apply. Applicant deliberately withheld the fact that she had delinquent debts on two separate security clearance applications. In her response to the SOR, she apologized for "making false statements about my debt" noting that she only recently started to make sure that her debts were paid on time. In her response to the revised FORM, dated May 1, 2007, she claims she was not aware of her delinquent accounts when she filled out her security clearance applications. I do not find this supplemental response credible considering her prior apology.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I find Applicant has failed to mitigate the security concerns raised by the financial considerations and personal conduct concern. Therefore, 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.

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. 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:	For Applicant
Subparagraph 1.m:	Against Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant

DECISION

In light of all of the evidence presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

Erin C. Hogan
Administrative Judge