

Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to 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 trustworthiness determination for an ADP clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether such a clearance should be granted, continued, denied, or revoked.

On May 18, 2007, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on June 22, 2007. A notice of hearing was issued on August 28, 2007, for a hearing on September 11, 2007, which was held that day. The government offered five exhibits and Applicant offered one exhibit in evidence. All were accepted. The record was left open for two months for Applicant's submission of additional material. The transcript was received on September 19, 2007. Three post-hearing submissions were made. The first consisting of four documents was made on September 12, 2007; the second consisting of six documents was made on October 14, 2007; and a third consisting of five documents was made on November 12, 2007. All documents were admitted in evidence without objection.

FINDINGS OF FACT

_____ Applicant admitted all allegations of delinquent debts under the financial considerations security concern and one allegation under personal conduct regarding erroneous information on her application for trustworthiness determination (SF 85 P).

Applicant is a 37-year-old customer service representative for a defense contractor health provider. She obtained this employment in 2006 after a period of unemployment from 2001 to 2003 and temporary employment in 2004 and 2005 (Exh. 1). She was divorced on February 6, 2002, which caused additional financial hardship. She began paying some debts a year after obtaining her present job and has been doing so for the past ten months (Tr. 19). She did not take action concerning some of the other delinquent debts until after the hearing in this matter, but she provided information in her three post-hearing submissions concerning the actions she has taken to resolve the debts and the status of each of them.

Applicant has one son age 16 about whom she has a court order included in her divorce decree to receive child support from her former husband (Exh. B 6). He was unemployed for a period, but is now employed and paying the child support payments and on an arrearage of approximately \$5,000 (Tr. 20).

Applicant's four largest delinquent debts are as follows with the status of payments and arrangements with creditors:

1. SOR 1.c. The largest debt is for education loans for \$16,555 which was 90 days delinquent. Applicant is now paying on this loan and it is now current (Exh. A).
2. SOR 1.g. A debt for \$8,143 is from credit card debt that became delinquent in 2004.

Payments are being made on this debt of \$20 per month with a plan for payment in full by a date certain (Exhs. B 2 and 4).

3. SOR 1.b. Auto re-possession in 2002 for \$3,196 which was a subject in the Applicant's divorce decree in 2002 that made her husband responsible for the debt (Exh. B 6).

4. SOR 1.f. A debt to the college she attended of \$1,475 is covered by an agreement with the college for monthly payment of \$20 which she has begun with a fixed date for final payment (Exh. C 1).

A large number of the remaining debts totaling approximately \$5,000 concern medical costs and other credit card debts which accumulated during her periods of unemployment and under-employment. Some have been resolved and others are still the subject of discussions between Applicant and the creditor. They are as follows:

1. SOR 1. m. and n. Two credit card debts totaling \$348 for which payments of \$45 per month are being made per agreement with the creditor (Exh. C 2).

2. SOR 1.k. Delinquent debt of \$635 which is the subject of an agreement requiring monthly payments of \$25 which has begun (Exh. B 5).

3. SOR 1.d. Delinquent debt of \$983 is being investigated by Applicant. She has been in contact with the attorney for the creditor who asks for half payment, but there is a good prospect to work out a settlement amount in January 2008. (Exh. C 3).

4. SOR 1.i. and j. Two hospital bills from same hospital of \$713 and \$598. Arrangements made with creditor and payments of \$25 per month have begun (Exh. C 5).

5. SOR 1.a. and h. Investigating these debts of \$860 and \$1490 as possibly for rent or telephone since to the same creditor and became due close to same time. Applicant has been in contact with creditor who demands a large initial payment before documentation can be provided. She is working on a settlement with the creditors (Exh. C 3).

6. SOR 1.l. Court fee of \$244 now reduced to \$24. (Exh. C 3).

7. SOR 1.o., p., q. and e. These four debts are each for only near \$100. Contact has been made with all four and contact names provided (Exh. C 3). Some payments have been made on all four debts.

When Applicant completed her SF 85 P she discussed her financial problems with her company security staff and advised them that she had credit problems. When she answered Question 20 relating to delinquent debts of 180 days, she erroneously answered it in the negative (Tr. 12-13). The company advised her after it had been submitted that she had made a mistake. She requested a hearing to explain the circumstances as well as her delinquent debts.

Applicant's salary is \$25,000 per annum and she brings home approximately \$800 every two weeks. Her husband is in the construction business and makes between \$40,000 and \$50,000 per

annum. Earlier in 2007, he was unemployed for a period which added to the financial problems but he is now fully employed. The family expenses and payment obligations are modest, and they are able to resolve the legitimate outstanding delinquent debts.

Applicant is highly regarded for her work skills and especially her manner of dealing with military personnel who have difficulties in collecting from insurance (Exh. C 4). She has an associate degree from a community college.

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.” *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only to United States citizens “whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information.”

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in DoD 5200.2-R. “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.” DoD 5200.2-R, ¶ C6.1.1.1. Appendix 8 of the Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance.” DoD 5200.2-R, Appendix 8. An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person. *Id.* 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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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. *Id.*

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable access determination may be made. DoD 5200.2-R, ¶ C8.2.1. 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 information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive, ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” Directive, ¶ E2.2.2. The same rules apply to trustworthiness determinations.

A person granted access to sensitive 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 sensitive information. The decision to deny an individual a security clearance or a trustworthiness determination is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

Applicant’s delinquent debts cited in the SOR prompted the allegation of a security concern under Guideline F of the revised Adjudicative Guidelines (AG), since an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds (AG ¶ 18). Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (AG ¶ 19 c), or evidence of inability or unwillingness to satisfy debts (AG ¶ 19 a). The financial situation of Applicant warranted the security concerns stated in the Guidelines.

Mitigating Conditions (MC) include the fact that the conditions that resulted in the behavior were largely beyond the person’s control (AG ¶ 20 b), and there are clear indications that the problem is being resolved or is under control (AG ¶ 20 c). I am confident Applicant has taken sufficient steps to resolve the debts and will follow through on the remainder since she is aware of the possible jeopardy to her job and wants very much to avoid losing it. The unemployment and under-employment of Applicant and her husband, as well as the failure of her former husband to make child support payments justifies a conclusion that her financial situation was beyond her control. Since this case arose, she has undertaken the effort to contact her creditors, establish payment plans when she could, and make payments on many of them. Several payments began over a year ago and she completed the effort to contact creditors, make agreements with them, and begin payments in the last 90 days. Thus, both mitigating conditions are applicable.

The Government established the allegation under Guideline E Personal Conduct alleged in the SOR. The alleged false statement on her SF 85 P raised issues that might indicate questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information. (AG ¶ 15) The specific condition

applicable to this case is deliberately providing false or misleading information concerning relevant and material matters to an investigator, or other official representative could raise a security concern and be disqualifying (AG ¶ 16 b.).

The false answer of Applicant must also have been deliberate according to the guideline. Applicant presented a credible case of the circumstances of the erroneous information. When a falsification allegation is controverted, the government has the burden of proving it since the proof of omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. The record evidence as a whole must be analyzed to determine whether there is direct or circumstantial evidence concerning intent or state of mind at the time the omission occurred. Considering the evidence in the record, I conclude that the error was inadvertent and not deliberate.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to sensitive information have an overriding responsibility for the security concerns of the nation. The objective of the process for adjudicating trustworthiness determinations is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to sensitive information. The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Applicant impressed me at the hearing as a competent person who is hard-working and diligent. She is grateful to be employed in a job where she is appreciated for her work. Her delinquent debts accumulated as a result of matters largely beyond her control, but now that she is employed she is seeking to remedy them and has made significant progress in doing so. I believe she is trustworthy and has shown her good faith in pursuing the resolution of the debts.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude in favor of the grant of a trustworthiness determination.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	For Applicant
Subparagraph 1.g.:	For Applicant
Subparagraph 1.h.:	For Applicant
Subparagraph 1.i.:	For Applicant

Subparagraph 1.j.: For Applicant
Subparagraph 1.k.: For Applicant
Subparagraph 1.l.: For Applicant
Subparagraph 1.m.: For Applicant
Subparagraph 1.n.: For Applicant
Subparagraph 1.o.: For Applicant
Subparagraph 1.p.: For Applicant
Subparagraph 1.q.: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or renew a trustworthy determination for Applicant. Clearance is granted.

Charles D. Ablard
Administrative Judge