

KEYWORD: Financial

DIGEST: Thirty-five year old Applicant has been employed for eight years as a security guard, but she has experienced an excessive amount of financial debts and judgments which remain unpaid, causing doubt as to Applicant's reliability and trustworthiness in a security environment. Clearance is denied.

CASE NO: 01-04854.h1

DATE: 02/11/2002

DATE: February 11, 2002

In Re:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-04854

DECISION OF ADMINISTRATIVE JUDGE

BURT SMITH

APPEARANCES

FOR GOVERNMENT

Catherine Engstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Thirty-five year old Applicant has been employed for eight years as a security guard, but she has experienced an excessive amount of financial debts and judgments which remain unpaid, causing doubt as to Applicant's reliability and trustworthiness in a security environment. Clearance is denied.

STATEMENT OF THE CASE

On August 31, 2001 the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 "Safeguarding Classified Information Within Industry," dated February 20, 1960, as amended, and DoD Directive 5220.6 (Directive) dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied or revoked.

The Applicant responded to the SOR in writing on September 28, 2001, and she requested a hearing. The case was originally assigned to another Administrative Judge, and it was transferred to the undersigned on October 24, 2001. On November 9, 2001, a Notice of Hearing was issued scheduling the hearing on December 13, 2001.

FINDINGS OF FACT

The Applicant is thirty-five years old, and she is employed by a defense contractor as a security guard. She seeks a DoD security clearance in connection with her employment in the civilian defense industry. The Government opposes the Applicant's request for a security clearance on the basis of allegations set forth under Paragraph 1 (Guideline F) of the Statement of Reasons. The following findings of fact are entered as to the allegations in Paragraph 1.

Paragraph 1, Guideline F (Financial Considerations). The Government alleges the Applicant is ineligible for clearance

because she has excessive debts and financial judgments filed against her.

Since 1993 Applicant has been employed as a security guard, except for a brief period of unemployment in 1996. In a sworn statement dated April 11, 2000, Applicant attaches a personal financial statement in which she declares that her net monthly income is \$1,775 and her net remainder after living expenses is \$220. (Gov. Ex. 3, p7)

In the Government's SOR it is alleged that the Applicant is indebted to six creditors in the total amount of approximately \$13,000. The debts described in the SOR arise for the most part from medical bills and credit card charges. In her response to the SOR, Applicant admits to each allegation although she offered testimony in mitigation at the hearing.

Proceeding through the debts as alleged in the SOR, Applicant states she has paid the \$48 debt described in subpara. 1.a. However, the debt appears in the Government's credit report of March, 2000 as a "bad debt" (Gov. Ex. 4, p4), and Applicant presents no controverting evidence such as a receipt or cancelled check. Furthermore, credit reports provided by Applicant with her answer to the SOR do not state clearly the debt is paid.

Subpara. 1.b. concerns Applicant's debt of \$6,045 to a credit card company, and Applicant concedes the debt is legitimate. The debt was incurred when Applicant voluntarily furnished her credit card to a friend for use in paying for the friend's car repairs. Applicant testified that her friend "assured me they were going to continue to pay on the credit card, but of course you can see that didn't happen." (Tr. 15.)

Applicant correctly admits "it boils down to bad judgment on my part . . ." (Tr. 15.) Applicant testified that for awhile she paid the creditor \$50 per month, but the last payment was "a long time ago." (Tr. 24.) The record contains no evidence indicating Applicant ever made an effort to collect the debt owed to her by the friend who used her credit card.

In subpara. 1.c. of the SOR, the Government alleges the Applicant owes another creditor \$369 and that debt was charged off as a loss. Again, evidence of the debt is contained in the Government's credit report which describes the debt as a "bad debt" that was "charged off". Applicant admits she once owed the this creditor \$169, and she testified the debt is paid. However, the Government's credit report, as well as the Applicant's own report, describes the debt as a "charged off account." (Gov. Ex.4, p7 and attachment to Applicant's answer to SOR.)

Subparas. 1.d. through 1.f. relate to medical bills incurred by Applicant when she underwent surgery in 1996. Applicant admits in her answer to the SOR and in other parts of the record that she owes three medical facilities a total of approximately \$6,500 in unpaid medical expenses, and one of the creditors, a hospital, has secured a judgment against her in the amount of \$1,656. Applicant states these bills were supposed to be covered by her employer's medical

insurance, but she has taken no steps to determine whether the insurer will pay the creditors, all or in part. (Tr. 30-31.)

It is found that Applicant has, in general, taken few if any positive steps to repay her creditors. Applicant speaks of contacting creditors and attempting to arrange payment plans, but these efforts were too late and insufficiently aggressive to resolve Applicant's indebtedness in a responsible manner. The record contains no evidence that Applicant has sought credit counseling in an effort to reform her pattern of excessive indebtedness.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. The guidelines are divided into those that may be considered in deciding whether to deny or revoke an Applicant's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's request for access to classified information (Mitigating Conditions).

In addition to these guidelines the Directive provides that under the "whole person concept" the Administrative Judge shall also consider (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.

Based upon a consideration of the entire record, I find the following adjudicative guidelines have application in this case:

[GUIDELINE F]: Financial Considerations.

Disqualifying Conditions.

1. A history of not meeting financial obligations;
3. Inability or unwillingness to satisfy debts.

Mitigating Conditions.

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.)

CONCLUSIONS

In DOHA cases, the Government has the initial burden of going forward with sufficient evidence to prove any controverted facts alleged in the Statement of Reasons. If the Government is successful, the burden then shifts to the Applicant to produce evidence in extenuation, mitigation or changed circumstances which is sufficient to overcome or outweigh the Government's case.

However, the Applicant always bears the ultimate and overall burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance. As noted by the United States Supreme Court in *Department of 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." Thus, the Applicant's ultimate burden of persuasion is a heavy one.

Here, the Government is concerned that Applicant's pattern of excessive indebtedness causes doubt as to her reliability in a security environment. Where an Applicant repeatedly fails to demonstrate responsible conduct in the payment of lawful creditors, it gives rise to the possibility that Applicant may not pay due regard to rules and regulations governing her conduct as a clearance holder. Furthermore, Applicant's serious indebtedness, if known, might attract the attention of unfriendly agents probing for weaknesses in the defense security system.

In this case the Government has met its initial burden of proof. Applicant concedes in her testimony and in her written answer to the SOR that the Government's factual allegations are accurate. As a result, Applicant has the burden of producing evidence in extenuation, mitigation or changed circumstances sufficient to overcome or outweigh the Government's evidence of a disqualifying nature. In her behalf, Applicant asserts that her indebtedness is largely excusable, taking all circumstances into account.

Except for a brief period of unemployment in 1996, Applicant has been continually employed as a security guard since about 1993, and she earns a salary which leaves her with a net remainder of approximately \$200 per month. The evidence indicates that during the last several years the Applicant has accumulated debts in the total amount of about \$13,000. One debt of \$6,045 resulted from Applicant's highly irresponsible use of her credit card.

The debts are not recent, and Applicant has been afforded ample opportunity to organize her funds in a way that would permit payment of her creditors. With care, prudent planning and a prioritized order of payment, it is concluded that the amount of Applicant's indebtedness, equivalent to about eight month's net salary, could have been set aside in increments and provided to her

creditors as a means of discharging her debts. This action, if taken, would have established Applicant as a responsible and trustworthy debtor who handles her personal finances in a reliable manner.

However, Applicant has failed to take action to satisfy the lawful demands of her creditors, and it is concluded that she has no meaningful plans to do so. Applicant responds to the Government's evidence by claiming she will pay the debts at some uncertain date in the future, but she is delayed because her creditors are not cooperative. Except for a copy of her credit report, Applicant presents no cancelled checks, money order receipts, or other documents in support of her claim that some of her overdue debts are now paid, and that she is pursuing various arrangements to resolve the others.

On balance, it is concluded that Applicant has not presented sufficient evidence in extenuation, mitigation or changed circumstances to overcome or outweigh the Government's evidence of excessive indebtedness on the Applicant's part. Accordingly, the evidence supports a finding that the Applicant is not eligible for award of a DoD security clearance.

FORMAL FINDINGS

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparas. 1.a.-1.f.: Against the 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 Applicant's request for a security clearance.

Burt Smith

Administrative Judge