

KEYWORD: Financial

DIGEST: Applicant is a 50-year-old employee of a defense contractor. She has worked for her present employer for more than 20 years and held a security clearance for more than eight years. She has more than \$30,000.00 in delinquent debts. She admits the debts but disputes the amounts. All debts but one were incurred before her divorce in 1998, and all were incurred before her ability to work full-time was impaired by illness in 2001. Security concerns raised by her financial problems are mitigated. Clearance is granted.

CASENO: 02-28121.h1

DATE: 01/19/2005

DATE: January 19, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-28121

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 50-year-old employee of a defense contractor. She has worked for her present employer for more than 20 years and held a security clearance for more than eight years. She has more than \$30,000.00 in delinquent debts. She admits the debts but disputes the amounts. All debts but one were incurred before her divorce in 1998, and all were incurred before her ability to work full-time was impaired by illness in 2001. Security concerns raised by her financial problems are mitigated. Clearance is granted.

STATEMENT OF THE CASE

On November 10, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The SOR alleges security concerns under Guideline F (Financial Considerations).

Applicant answered the SOR in writing on December 5, 2003, admitted the allegations in part, offered explanations, and requested a hearing. The case initially was assigned to another administrative judge, but it was reassigned to me on September 23, 2004. On that same day, DOHA issued a notice of hearing setting the case for October 22, 2004. The case was heard as scheduled. DOHA received the transcript (Tr.) on November 1, 2004. At my request, Department Counsel submitted a brief addressing the statute of limitations on old debts in the jurisdiction where Applicant's debts were incurred. Department Counsel's brief is included in the record as Appellate Exhibit I.

FINDINGS OF FACT

Applicant's admissions in her answer to the SOR and at the hearing are incorporated into my findings of fact. I also make the following findings:

Applicant has worked for a defense contractor for more than 20 years in various administrative and clerical positions. She is 50 years old. She has held a security clearance since October 1996.

Applicant was married in 1976 and divorced in 1982. She has a 32-year-old daughter, 28-year-old son, and 24-year-old daughter from this marriage. She remarried in 1995 and was divorced in November 1998. There are no children from her second marriage.

Applicant had no financial problems before her divorce in 1998. Both she and her spouse had good incomes, and she had no health problems.

During the second divorce proceedings, while mediation of the division of property was ongoing, Applicant was given a choice of being laid off or accepting a "regression" to a lower-paying job. She chose the latter. Based on the amount of money she was told she would be receiving, she agreed to keep the family home, assume responsibility for paying the mortgage, and assume responsibility for paying one-half the balance on two credit card accounts. Neither of these accounts is the basis for the SOR. After the divorce was final, she learned she would be earning considerably less than she had previously been told. Before the regression, she was making about \$23.00 per hour; after regression, her pay was reduced to about \$18.00 per hour. A year and a half later, it was further reduced to about \$16.00 per hour. Applicant sold her home in June 1999, paid her ex-husband for his interest in the home, and moved to a less expensive house.

In April 2001 Applicant was afflicted with Meniere's disease, a disorder of the inner ear. She suffers from severe vertigo, migraines, and nausea. She was on medical leave at reduced pay (about \$240.00 per week) from April until July 2001. She is frequently unable to work and must take leave without pay because she has exhausted her sick leave and vacation time.

In May 2002 she was restored to her previous higher-paying position. However, as a result of her frequent unpaid absences due to illness, her monthly take-home pay fluctuates from a low of \$1,000.00 and a high of about \$2,500.00. In 2004 she lost about \$16,500.00 in income because of her illness. When she does not lose time from work because of her disease, she has a net remainder after paying all expenses of about \$500.00 per month. When she is at the low end of her income range, she draws on the small amounts she saves during good months to pay her living expenses.

Applicant's car loan will be paid off within a year. Satisfying this debt will give increase Applicant's net monthly remainder by \$483.54.

The following table summarizes Applicant's delinquent debts:

Debt	Date	Amount	Status
Credit Card #1 SOR ¶ 1.a.	August 1997	\$3,241.00	Amount Disputed
Credit Card #2 SOR ¶ 1.b.	March 1998	\$3,527.00	Amount Disputed
Credit Card #3 SOR ¶ 1.c.	November 1997	\$6,312.00	Amount Disputed
Jewelry Store SOR ¶ 1.d.	December 1990	\$4,681.00	Amount Disputed
Appliance Store SOR ¶ 1.e.	July 1998	\$3,442.00	Amount Disputed
Gasoline Credit Card SOR ¶ 1.f.	September 1991	\$471.00	Amount Disputed
Auto Repossession SOR ¶ 1.g.	March 2000	\$8,352.00	Amount Disputed

From December 1998 until June 1999, Applicant made small monthly payments on the debts, but those payments were offset by late charges and interest. She offered to compromise the debts and make payments on the principal balance only, but her offers were not accepted.

Applicant hired a credit report monitoring service to help her dispute many of the items in her credit history. Her two-year contract with the service has expired. They were not totally successful, but they caused a number of entries to be removed from her credit history.

Applicant also contacted a credit counseling service to assist her in negotiating settlement of her debts. The service declined to take her case because her illness made her income too unpredictable. She has not sought a discharge in bankruptcy because a member of her security office told her it would cause her to lose her clearance.

Applicant receives no financial assistance from her children. To the contrary, they have caused a significant part of her indebtedness. About half the balance on the jewelry store account was incurred by a daughter. The gasoline credit card debt was incurred when friends of a daughter used Applicant's credit card at a convenience store. The deficiency resulting from the auto repossession occurred when a daughter stopped making payments on a car loan which Applicant had cosigned.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander-in-Chief, 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." *Id.* at 527. The President has restricted eligibility for access to classified information 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." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through ¶¶ 6.3.6.

In evaluating an applicant's conduct, an administrative judge should 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 applicant'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. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec 19, 2002); *see* 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). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

Under Guideline F (Financial Considerations), "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. Two disqualifying conditions (DC) under Guideline F could raise a security concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3.

Although Applicant disputes the amounts of the debts alleged in the SOR, she admits they exist and she has been unable to settle or pay them. Thus, I conclude DC 1 and DC 3 are established.

Security concerns arising from financial problems can be mitigated by showing they are the result of conditions beyond the person's control (MC 3). Directive ¶ E2.A6.1.3.4. The record shows Applicant's financial problems are the result of conditions beyond her control: her two salary regressions after committing to a property settlement during her divorce, a debilitating illness, and the misconduct and financial irresponsibility of her adult children. I conclude MC 3 is established.

Under the law of the jurisdiction where the debts were incurred, a debt is legally unenforceable if the creditor does not bring suit within four years after the cause of action accrues (Appellate Exhibit I). All Applicant's debts appear to be legally unenforceable under this statute of limitations. This legal bar to enforcement does not mitigate DC 1 and DC 3. *See* ISCR Case No. 99-9020, 2001 WL 1044524 at *9 n. 12 (App. Bd. Jun. 4, 2001). However, it is relevant because it can reduce Applicant's mental stress, vulnerability to coercion, and temptation to engage in illegal conduct to generate

funds.

Security concerns also may be mitigated by showing a good-faith effort to resolve debts (MC 6). Directive ¶ E2.A6.1.3.6. The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 99-9020, *supra* at *5, quoting ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). For several months after her divorce and pay reduction, Applicant made small payments on all the debts except the auto repossession deficiency. Unfortunately, she made little progress because the payments were offset by late charges and interest. Applicant was unable to compromise the debts. She made no further attempts after her situation was further complicated by her illness. She hired a service to remove inaccurate information from her credit history and was moderately successful. She was unable to obtain assistance from a credit counseling agency because her income was too unpredictable. Applicant's lack of success in resolving her financial problems does not necessarily negate her good faith. The record shows that her old debts remain unresolved in spite of her good faith efforts to resolve them. I conclude MC 6 is established.

Security concerns based on financial problems can be mitigated by showing Applicant's behavior was not recent (MC 1). Directive ¶ E2.A6.1.3.1. MC 1 is not established by the fact that Applicant's delinquent debts are old, because her failure to pay them is a continuing course of conduct. ISCR Case No. 01-3695, 2002 DOHA LEXIS 453 at *7 (App. Bd. Oct. 16, 2002).

In spite of her financial and medical difficulties, Applicant has managed to satisfy her current financial obligations. All of her delinquent debts were incurred before her divorce in 1998, at a time when her family income was much higher and she was in good health. She is a mature and responsible woman. *See* Directive ¶ E2.2.1.4. Her indebtedness was not caused by greed or an inappropriate life style. *See* Directive ¶ E2.1.7. Because the statute of limitations has run on the delinquent debts, the potential for pressure, coercion, exploitation, or duress is reduced. *See* Directive ¶ E2.2.1.8. Applicant lives modestly and frugally, making further financial problems unlikely. *See* Directive ¶ E2.2.1.9. When Applicant's car loan is paid in about a year, her net monthly remainder will double. After weighing all the disqualifying conditions, mitigating conditions, and applying the general adjudicative guidelines and whole-person concept, I conclude the security concerns raised by Applicant's financial problems are mitigated.

FORMAL FINDINGS

The following are my findings as to each allegation in the SOR:

Paragraph 1. Guideline F (Financial Considerations): FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant a security clearance to Applicant. Clearance is granted.

LeRoy F. Foreman

Administrative Judge