

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has a history of delinquent accounts that have been placed for collection. While her financial statement indicates she has the financial ability to pay the obligations, Applicant made little or no effort to satisfy the indebtedness. Further, Applicant concealed material facts about her financial obligations on a security clearance application. She failed to mitigate the resulting serious questions about her security suitability. Clearance is denied.

CASENO: 02-28648.h1

DATE: 02/14/2005

DATE: February 14, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-28648

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

Nichole L. Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent accounts that have been placed for collection. While her financial statement indicates she has the financial ability to pay the obligations, Applicant made little or no effort to satisfy the indebtedness. Further, Applicant concealed material facts about her financial obligations on a security clearance application. She failed to mitigate the resulting serious questions about her security suitability. Clearance is denied.

STATEMENT OF THE CASE

On October 14, 2003, the Defense Office of Hearings and Appeals (DOHA), issued a Statement of Reasons (SOR) to Applicant alleging facts which raise security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The SOR detailed reasons why DOHA could not find that it is clearly in the national interest to grant or continue a security clearance. [\(1\)](#)

In a sworn written statement, dated December 17, 2003, Applicant answered the SOR (Answer) and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted a file of relevant material (FORM) in support of the government's preliminary decision, a copy of which was received by Applicant on April 5, 2004. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by May 5, 2004. Applicant did not object to the FORM and did not submit anything further in her own behalf. The case was previously assigned to another administrative judge on November 10, 2004, but was reassigned to me on February 1, 2005, due to caseload considerations.

FINDINGS OF FACT

Applicant has admitted 10 of 17 factual allegations pertaining to financial considerations under Guideline F, and denied the two allegations regarding Guideline E, as stated in the SOR. These admissions are incorporated herein as findings of fact. After a thorough review of the record as a whole, I make the following additional findings of fact:

Applicant is a single, 37-year-old project leader employed by a defense contractor. ⁽²⁾ The SOR, paragraph 1, subparagraphs 1.a. through 1.q., details 11 debts placed for collection, one judgment on a debt with four wage garnishments, a deficiency for an automobile repossession, and three bad debts written off but not paid. ⁽³⁾ Applicant admits SOR subparagraphs 1.b., 1.c., 1.d., 1.f., 1.i., 1.k., 1.n., 1.o., 1.p., 1.q., and 1.r., and denies the rest. She claims her financial problems started during 1996-97, when she stopped receiving child support for her only child. She borrowed from small loan companies to get through these times, but Applicant soon found herself mired in unmanageable debt of approximately \$11,285.00. In May 2002, she secured a higher paying job which provided her in excess of \$500 per month after all expenses were paid. ⁽⁴⁾ Though her income increased, she made no effort to reduce her indebtedness ⁽⁵⁾, and in fact, she incurred more obligations that were written off as bad debt. ⁽⁶⁾

Applicant claims the debts listed in 1.e., 1.f., and 1.g., have been paid but provided no corroborating documentation. ⁽⁷⁾ She claims she was unaware of debts 1.j. and 1.l., but both accounts are listed on her credit report, which was available to her. ⁽⁸⁾

With respect to Guideline E, in response to SF-86, question 34, "*In the last 7 years, have you had your wages garnished for any reason?*", Applicant failed to list three garnishments. ⁽⁹⁾ She denied knowledge but admitted her employer had documentation of that information, ⁽¹⁰⁾ which was available to her. In answering question 38, "*In the last 7 years, have you ever been over 180 days delinquent on any debts?*", and question 39, "*Are you currently over 90 days delinquent on any debts?*", Applicant failed to list 14 past due accounts. ⁽¹¹⁾ Applicant claims she did not know she was supposed to provide all the information required to answer the questions completely. ⁽¹²⁾ The questions are unequivocal in calling for "any" past due debts. ⁽¹³⁾ The past due accounts were listed on the credit report. She made no effort to take remedial measures to correct her omissions, and in two interviews with DSS agents never acknowledged her omissions on SF86.

POLICIES

The Directive sets forth adjudicative guidelines ⁽¹⁴⁾ to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the

consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed under guideline F (financial considerations), Directive, ¶ E2.A6.1.1.1. *An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds*; and Guideline E (personal conduct), Directive, ¶ E2.A5.1.1.1. *Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.*

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽¹⁵⁾ for an Applicant to either receive or continue to have access to classified information. The government bears an initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden, it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.⁽¹⁶⁾

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁽¹⁷⁾

CONCLUSIONS

The Government has established its case under Guidelines F. Under Guideline F, a security concern exists where it is

shown an individual is financially overextended, thus being at risk of having to engage in illegal acts to generate funds. **An inability or unwillingness to pay one's debts and to manage one's finances in a reasonably sound manner may also indicate poor judgment and reliability. Department Counsel has presented sufficient evidence in the FORM to establish a prima facie case for disqualification under this guideline. Applicant has a long-standing and sizable credit delinquency and another debt remaining from the repossession of her car. She has not paid or otherwise resolved any of these debts. Guideline F disqualifying conditions Directive ¶ E2.A6.1.2.1. A history of not meeting financial obligations, and ¶ E2.A6.1.2.3. Inability or unwillingness to satisfy debts, apply here.**

I note Applicant's most current credit report⁽¹⁸⁾ includes new collection accounts, further proof her financial difficulties are likely to continue for the foreseeable future. While not alleged in the SOR, such information is directly probative of Applicant's suitability for clearance as addressed through Guideline F. As Applicant did not comment on or object to it when she had the opportunity to respond to the FORM, I have considered it in making my decision. In light of the foregoing I conclude Guideline F against the Applicant.

I further find applicable Guideline E, Directive ¶ E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant material 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. Applicant's omission of material facts on answers to three questions on SF86 and the lack of any mitigating evidence lead me to conclude Guideline E against Applicant.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive in ¶ 6.3. A fair and commonsense assessment of the adverse information about Applicant's financial history raises reasonable doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Absent substantial information to resolve those doubts, which Applicant failed to provide, I conclude the record evidence shows Applicant has not overcome the information supporting the government's decision to deny Applicant access to classified information.

FORMAL FINDINGS

Formal Findings regarding each SOR allegation as required by Directive ¶ E3.1.25 are as follows:

Paragraph 1., Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. Against the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. Against the Applicant

Subparagraph 1.k. Against the Applicant

Subparagraph 1.l. Against the Applicant

Subparagraph 1.m. Against the Applicant

Subparagraph 1.n. Against the Applicant

Subparagraph 1.o. Against the Applicant

Subparagraph 1.p. Against the Applicant

Subparagraph 1.q. Against the Applicant

Subparagraph 1.r. Against the Applicant

Paragraph 2., Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. 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 or continue Applicant's security clearance. Clearance is denied.

Christopher Graham

Administrative Judge

1. This action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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.
2. Item 4 (*Security Clearance Application dated May 13, 2002*) at 1-2.
3. *Id.* at 1-2; Item 6 (*Interrogatories dated November 15, 2003*) at 1.
4. Item 2 (*Answer dated December 17, 2003*) at 6.
5. Item 5 (*Applicant's Statement dated May 29, 2002*) at 1-3.
6. Item 7 (*Credit Report dated March 15, 2004*) at 1-2.
7. Item 2 at 2.
8. Item 6 (*Credit Report dated March 28, 2002*) at 7-8.
9. Item 4 (*Questionnaire for National Security Purposes ("SF86") dated January 21, 2002*) at 9.
10. Item 2 at 6.
11. Item 4 at 10.
12. Item 2 at 6.
13. Item 4 at 10.
14. Directive, Enclosure 2.
15. See *Department of the Navy v. Egan*, 484 U.S. 518 (1998).
16. See *Egan*, 484 U.S. at 528,531.
17. See *Egan*; Directive ¶ E2.2.2.
18. Item 7.