

KEYWORD: Financial

DIGEST: Applicant and her first husband incurred more than \$30,000 in delinquent debt. Much of the debt was incurred without her knowledge. She has been financially stable for more than five years and was advised by an attorney not to file for bankruptcy. Applicant is not a security threat. Clearance is granted.

CASENO: 02-29003.h1

DATE: 01/23/2006

DATE: January 23, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29003

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant and her first husband incurred more than \$30,000 in delinquent debt. Much of the debt was incurred without her knowledge. She has been financially stable for more than five years and was advised by an attorney not to file for bankruptcy. Applicant is not a security threat. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 20 May 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision ⁽¹⁾-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 22 June 2004, 12 December 2004, and 7 January 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on 17 June 2005. On 16 November 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 2 December 2005.

FINDINGS OF FACT

Applicant is a 32-year-old computer support center analyst for a defense contractor. Applicant married in 1996. Applicant and her first husband were unemployed for some time and were unable to pay their debts. In 1997, her husband had heart surgery and the couple separated. She had two children with him, the first in 1994 and the second in 1998. The couple accumulated more than \$30,000 in delinquent debt.

Applicant admitted each of the debts alleged in the SOR, except the debt of approximately \$4,500 owed to the IRS.

Applicant claims she did not have actual knowledge of the items giving rise to the delinquency, and was separated from her husband at the time. She paid more than her share of the tax debt when her income tax refund was withheld by the IRS. The IRS granted her relief from having to pay the full amount.

Applicant completed training at a vocational school, which she attended from July 1999 to February 2000. Ex. 1 at 2. Applicant started her present job in September 2000 and applied for a security clearance that same month. She divorced her first husband in 2001. In May 2002, Applicant completed a signed, sworn statement for a Defense Security Service agent. In her statement, Applicant stated she intended to contact all of the creditors and attempt to make payment arrangements by August 2002. Applicant admits she has not paid any of the debts, nor has she made any effort to contact the creditors. She checked with an attorney about filing for bankruptcy protection, but he suggested that the debts were so old they would no longer be enforceable. He recommended she do nothing about them.

Applicant married her second husband in December 2003. The couple have a child of their own and are raising Applicant's children of her first marriage. Applicant's first husband was ordered to pay child support, but his payments are sporadic. Applicant and her current husband appear to have all of their current debts under control. They purchased a home and have been current on their mortgage payments. They own two cars, on which they are also current.

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

In the SOR, DOHA alleged Applicant had more than \$6,300 in delinquent debts placed for collection (§§ 1.a-1.f, 1.i, 1.q); is indebted to the IRS for more than \$4,400 (§ 1.g); is delinquent more than 120 days on an account for \$399 (§ 1.h); has debts charged off totaling more than \$16,000 (§ 1.j-1.o); and is indebted for a defaulted lease in the amount of \$4,100 (§ 1.p). Applicant admitted each of the allegations, except that in § 1.g. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive § E2.A6.1.1.

The Government's evidence established potentially disqualifying conditions under Guideline F. Applicant has a history of not meeting her financial obligations (DC E2.A6.1.2.1) and is unable or unwilling to satisfy her delinquent debts (DC E2.A6.1.2.3).

An applicant may mitigate such disqualifying conditions by establishing the behavior was not recent (MC E2.A6.1.3.1), the delinquent debts resulted in large part by conditions beyond her control (MC E2.A6.1.3.3), there is evidence the problem is being resolved or under control (MC E2.A6.1.3.4), and the applicant initiated a good-faith effort to resolve her debts (MC E2.A6.1.3.6). Applicant's delinquent debts were not incurred recently. Normally, an applicant is not entitled to consideration of this mitigating condition when the delinquent debts are still outstanding. ISCR Case No. 01-3695, 2002 DOHA LEXIS 453 at *7 (App. Bd. Oct. 16, 2002). Nevertheless, under the circumstances of this case, I believe some small credit should be granted because Applicant was unaware of the debts and, since she has been on her own the past five years, appears to have been financially stable. As the delinquent debts arose from her husband's misuse of his credit cards and his failure to pay his federal income taxes, I find the debts resulted from conditions largely beyond Applicant's control. Thus, MC E2.A6.1.3.3 applies.

Applicant sought out advice from a bankruptcy attorney about her debts. He advised her not to file bankruptcy as the debts were so old and no longer enforceable. At the same time, Applicant entered a relationship with her new husband that is financially stable. I have considered all the evidence, the disqualifying and mitigating conditions, as well as the adjudicative process factors. Under the circumstances of this case, I find for Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a-1.q: For Applicant

DECISION

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

James A. Young

Administrative Judge

1. As required by Exec. Or. 10865 (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended and modified (Directive).