

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 32-year-old employee of a defense contractor working as a video teleconference technician for a military service. She has a long history of inability or unwillingness to pay her debts, extending from 1996 to the present. When completing her security clearance questionnaire, Applicant fraudulently concealed her delinquent debts and unpaid judgments. Applicant has not made significant progress in resolving her delinquent debts, which total about \$40,000.00. She failed to mitigate security concerns arising from her false official statements. Clearance is denied.

CASENO: 02-29180.h1

DATE: 03/28/2005

DATE: March 28, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29180

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Stephanie Hess, Esq., Department Counsel

FOR APPLICANT

Harold Barnes, Personal Representative

SYNOPSIS

Applicant is a 32-year-old employee of a defense contractor working as a video teleconference technician for a military service. She has a long history of inability or unwillingness to pay her debts, extending from 1996 to the present. When completing her security clearance questionnaire, Applicant fraudulently concealed her delinquent debts and unpaid judgments. Applicant has not made significant progress in resolving her delinquent debts, which total about \$40,000.00. She failed to mitigate security concerns arising from her false official statements. Clearance is denied.

STATEMENT OF THE CASE

On June 19, 2001, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On April 2, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, of the Directive.

Applicant answered the SOR in writing on May 27, 2004. Applicant elected to have a hearing before an administrative judge.

I was assigned the case on September 10, 2004. With the concurrence of the parties, I scheduled the hearing for October 27, 2004. On October 26, 2004, Applicant advised department counsel that she was not feeling well and could not attend the hearing as scheduled. I granted an enlargement of time. With the concurrence of the parties, I conducted the hearing on December 3, 2004. The department counsel introduced five exhibits. Applicant's personal representative presented documents admitted as Exhibits A through M, inclusive, the testimony of two witnesses, and Applicant's testimony. At Applicant's request, I left the record open for two weeks for Applicant to submit additional documents. Tr. at 101.

DOHA received the transcript (Tr.) on December 13, 2004. I received an additional document from Applicant on December 21, 2004, and it was admitted as Exhibit N. On March 3 3, 2005, Applicant moved to re-open the hearing to submit additional documents, and requested expedited review. On March 14, 2005, department counsel responded to the motion and noted no objections. On March 21, 2005, I granted the motion to reopen the hearing and admitted additional documents (Exhibits O through U, inclusive), but denied the request for expedited review.

FINDINGS OF FACT

Applicant denied the allegation in ¶ 2.a of the SOR that she intentionally falsified material facts on a security clearance application. Answer to SOR, dated May 27, 2004, at 1-2. She admitted the remaining factual allegations in the SOR, with explanations. *Id.* Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is 32 years old. Ex.1 at 1. She works as a video teleconference technician for a defense contractor, providing service to a military department. Tr. at 45.

Applicant attended a state university from 1990 to 1999. Ex. 1 at 2. She took out several student loans for her education expenses. Tr. at 26.

Applicant got married in March 1996. Ex. 1 at 4. At that time, her husband had only completed eleventh grade, and he found it difficult to find a good job without a high school diploma. Tr. at 24-25. Applicant's husband found jobs where available. Tr. at 25.

After graduation, Applicant worked as a customer service representative at a bank and as a school teacher. Ex. 1 at 3. However, the family's income was not sufficient to pay all the delinquent debts. Applicant was paying on her student loans, but later obtained an extension. Applicant worked full-time and had medical insurance through her employer. Tr. at 25. However, during Applicant's pregnancy the insurance company dropped their coverage and Applicant incurred substantial medical expenses arising from the birth of their child. Tr. at 25.

In about 2000, Applicant and her family moved to the area where they are presently living. Tr. at 26. Applicant testified that they lived with other families for the first few years and did not get their mail. Tr. at 47, 49-50. Applicant's husband

still had difficulty getting a good job. Tr. at 26. In 2004, he obtained his high school diploma. Tr. at 27-28. This enabled Applicant's husband to get a better paying job, to begin in early 2005. *Id.*; Ex. B. He is currently responsible for collections, and is training to be a financial analyst. Tr. at 31-32. Applicant's husband also works as the music director at his church. Tr. at 29; Ex. C.

Applicant completed an SF 86, Security Clearance Application, on June 19, 2001. Ex. 1 at 1. Question 37 of that form inquired whether Applicant had any unpaid judgments within the preceding seven years. Applicant answered "No," to that question. Question 38 on the AF 86 asked whether Applicant had been over 180 days delinquent on any debts within the preceding seven years. Applicant answered that question, "No."

In August 2002, a security investigator interviewed Applicant and obtained a sworn statement and a financial statement. Ex. 2. Applicant admitted that she had not always shown good judgment in financial matters. Ex. 2 at 1. Applicant reported a gross income for the household of about \$50,000.00 per year. Ex. 2 at 3. She admitted that she had numerous judgments filed against her "during the mid to late 1990s and Jan 01 to Oct 01." *Id.* at 2. She stated,

At this particular point I do not feel there is anything I can do about my [financial] past, and I have no intentions of paying out any debts, judgements [sic], or assessments. After my employment in Jun 01, I have not accumulated any additional debt, nor do I intend to become financially delinquent on any other accounts. I cannot afford to take money and financial security from my family. I currently require all my income, and any income my spouse provides to support my family.

Id. Applicant's financial statement showed a net deficit each month. *Id.* at 3.

In April 2004, DOHA initiated this action to deny Applicant a security clearance. SOR, at 1. Applicant and her husband sought financial counseling through her church. They prepared a budget, dated April 1, 2004, reflecting over \$1,600.00 remaining each month after deductions and payment of current living expenses. Ex. D.

At the time of the hearing in December 2004, Applicant and her husband had in excess of \$40,000.00 in delinquent debt. Tr. at 79. Even though their budget from April 2004 showed substantial discretionary funds, they had not paid any delinquent debts because all their disposable income went toward current obligations and their tithe to the church. Tr. at 33, 93; Ex. D. Applicant averred that when her husband began his new job in January 2005, the family would have additional funds and would begin paying off delinquent debts. Tr. at 57.

Applicant testified she did not intend to mislead the government by denying any unpaid judgments within the preceding

seven years. She testified that she knew of her outstanding debts but she was not aware that any were reduced to judgments. Tr. at 50-51. Applicant admitted that her answer to Question 38 regarding delinquent debts was false. Tr. at 51. Applicant explained that in her written statement (Ex. 2), she did not mean that she had no desire to pay her delinquent debts; rather, she meant she was unable to do so at that time. Tr. at 55.

The minister of Applicant's church testified Applicant is an active member of her congregation. Tr. at 14-15. She trusts Applicant with confidential church matters and would trust her with church funds. Tr. at 19. The minister believes Applicant is very dependable and has great integrity. *Id.*; Ex. A. She is aware that Applicant had financial difficulties and that she and her husband were going through financial counseling with the church. Tr. at 16.

Officers and civilian employees of the Department of Defense who work with Applicant praised her technical skill, trustworthiness, and dependability. Exs. E; F, G, H, and M. Applicant submitted copies of several commendations received for her service. Exs. I, J, K, and L.

In late December 2005, after the hearing, Applicant submitted an updated budget. Ex. N. The budget indicates discretionary funds in excess of \$2,700.00 each month, although it does not list some expenses such as child care noted by Applicant and her spouse. Tr. at 35, 40, 78.

On March 3, 2005, Applicant moved to reopen the hearing to submit additional materials. She provided documents later admitted as Exhibits O through T, inclusive, reflecting recent payments of some listed delinquent debts totaling about \$900.00.

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 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and

mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline F, Financial Considerations - An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive, ¶ E2.A6.1.1.

Guideline E, Personal Conduct - Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information. Directive, ¶ E2.A5.1.1.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"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." Directive, ¶ E2.2.1. 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.*

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.

A person granted access to classified 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 classified information. The decision to deny an individual a security clearance 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

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Financial Considerations

Paragraph E2.A6.1.2.1 of the Directive provides that it may be a disqualifying condition if the evidence reveals "[a] history of not meeting financial obligations." Similarly, ¶ E2.A6.1.2.3 indicates that an "[i]nability or unwillingness to satisfy debts" may be disqualifying. Applicant has a long history of not meeting her financial obligations. She has had delinquent debts totalling about \$40,000.00 for many years. Although she was notified of this action in April 2004, and had some discretionary funds at the end of each month, Applicant made no significant payments toward her delinquent debts until after the hearing in December 2004. Although Applicant has promised to make payments on the delinquent debts and provided proof of some payments, she has not entered into a formal repayment plan or made significant strides in reducing her delinquent debts. I find Applicant has shown both a history of failing to meet her financial obligations and an inability to satisfy her debts. I conclude both these potentially disqualifying conditions apply.

The security concerns arising from Applicant's financial difficulties can be mitigated under certain circumstances. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." Some of Applicant's delinquent debts date from 1996. However, a large number of the debts remain unpaid at this time. I find Applicant's inability or unwillingness to pay delinquent debts is recent, therefore this mitigating condition does not apply.

Paragraph E2.A6.1.3.2 of the Directive provides that it may be mitigating where the financial difficulty "was an isolated incident." Applicant's numerous delinquent debts arose over many years because of a variety of reasons. I conclude this mitigating condition does not apply.

Under ¶ E2.A6.1.3.3, it may be mitigating where, "[t]he 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)." Applicant indicated that some of her delinquent debts were medical bills incurred when she gave birth to her son and her employer's insurance company would not cover the bills. Such circumstances may constitute a medical emergency or a similar circumstance beyond Applicant's control. However, I note many of the delinquent debts are for non-medical expenses, such as parking tickets, unpaid leases, credit card debts, automobile loans, and consumer purchases. Applicant indicated her husband was unable to find long-term employment, and lost his job from time to time. The unexpected loss of employment may also be a circumstance beyond an individual's control and could mitigate the security concerns arising from financial difficulties. At the same time, I note her husband's employment history was sporadic for many years, reducing to some extent the "unexpected" nature of the loss of income. I find this mitigating condition applies to the medical bills. I am not persuaded by Applicant's evidence that this mitigating condition applies

to the remaining debts.

Proof that "[t]he person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control," may be mitigating, under ¶ E2.A6.1.3.4 of the Directive. Applicant received financial counseling through her church. However, there is no evidence Applicant made any payments of delinquent debts as a result of this counseling until after the hearing. There is no evidence of a formal plan to repay delinquent debts, or that Applicant has made enough progress to conclude that her debt problem is under control or is being resolved. I find this mitigating condition does not apply.

Finally, it may be mitigating where "[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Directive, ¶ E2.A6.1.3.6. As noted above, Applicant made no significant payment toward the delinquent debts listed in the SOR until after the hearing, notwithstanding her financial counseling and discretionary funds remaining each month. The only exceptions are the debts listed in ¶¶ 1.e, 1.i, 1.m, and 1.n of the SOR, and the debt listed in ¶ 1.a of the SOR for her student loans, which Applicant has kept current or lawfully deferred. I conclude this mitigating condition does not apply to the remaining debts.

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. I conclude Applicant has not mitigated the security concerns arising from her history of failing to meet her financial obligations and her inability to pay her debts.

Personal Conduct

The Directive sets out various factors relevant to an applicant's personal conduct that may be potentially disqualifying. Under ¶ E2.A5.1.2.2 of the Directive, "[t]he deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire" may be disqualifying. The SOR alleges Applicant deliberately failed to report on her security clearance application her unpaid judgments within the preceding seven years. Applicant asserts she was not aware of the judgments, indicating that the family moved in 2000 and did not receive their mail for some time. I note that most of the judgments were obtained long before Applicant moved to this area. I also note at least two of the listed judgments continued into garnishment actions against Applicant's pay. Considering the number of debts and judgments, the dates they arose, and all the circumstances in the case, I find Applicant deliberately omitted and concealed relevant and material facts by falsely answering "No" on Question 37 of her personnel security clearance questionnaire. Additionally, Applicant admits she lied in response to Question 38 and concealed information about her financial delinquencies. This potentially disqualifying condition applies.

Under the Directive, the security concerns arising from questionable personal conduct may be mitigated under certain circumstances. Directive, ¶ E2.A5.1.3. Under ¶ E2.A5.1.3.1, it may be mitigating where "[t]he information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability." Applicant's admissions

and the government evidence demonstrate the information about Applicant's financial difficulties is substantiated. Also, the information was pertinent to a determination of her judgment, trustworthiness, and reliability. I find this mitigating factor does not apply.

Paragraph E2.A5.1.3.2 of the Directive arises where "the falsification was an isolated incident, was not recent, and the individual subsequently provided correct information voluntarily." The available evidence reveals only one occasion where Applicant made false official statements, therefore I find it was an isolated incident. Applicant made false statements on her security clearance application in June 2001, thus I find it was not recent. Also, Applicant subsequently provided accurate information about the incident in her statement to the investigator dated August 7, 2002. However, Applicant has not shown whether she did so voluntarily, or whether the investigator first confronted Applicant with the fact of her financial delinquencies and judgments. I conclude this potentially mitigating condition does not apply, although Applicant's candor to the investigator is a circumstance worthy of consideration.

Under the Directive, it may be mitigating where, "[t]he individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts." As noted above, on August 7, 2002, Applicant provided an accurate statement concerning her financial difficulties. However, Applicant has not met her burden of proving that she initiated the efforts at correction, or that her efforts were prompt. I find this potentially mitigating condition does not apply. I also considered carefully the other potentially mitigating conditions and conclude they do not apply.

I considered carefully all the facts and circumstances in this case in light of the "whole person" concept. I conclude Applicant has not mitigated the security concerns arising from her false official statements.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: For Applicant

Subparagraph 1.n: For Applicant

Subparagraph 1.o: Against Applicant

Subparagraph 1.p: Against Applicant

Subparagraph 1.q: Against Applicant

Subparagraph 1.r: Against Applicant

Subparagraph 1.s: Against Applicant

Subparagraph 1.t: Against Applicant

Subparagraph 1.u: Against Applicant

Subparagraph 1.v: Against Applicant

Subparagraph 1.w: For Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Michael J. Breslin

Administrative Judge