

DATE: June 14, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29491

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Esquire, Department Counsel

FOR APPLICANT

George C. Butts, Personal Representative

SYNOPSIS

Applicant has experienced financial difficulties and delinquent debts for almost 10 years due mostly to her own financial carelessness and lack of action in paying or otherwise resolving her debts. Applicant also deliberately falsified her responses about finances and prior criminal conduct in a personnel security questionnaire and in an interview with a government investigator, conduct which violates federal law. She has failed to mitigate the resulting security concerns about her financial condition, her personal conduct, and her criminal conduct. Clearance is denied.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to give Applicant a security clearance. On April 27, 2004, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline E (personal conduct), Guideline F (financial considerations), and Guideline J (criminal conduct). Applicant timely answered the SOR (Answer), admitted all but eight⁽²⁾ of the 23 allegations therein, and requested a hearing.

I convened a hearing on October 20, 2004. The parties appeared as scheduled and the government presented seven exhibits (GE 1 through 7), which were admitted without objection. Applicant testified in her own behalf and presented one exhibit (AE A). I also left the record open after the hearing to afford Applicant an opportunity to submit additional information I deemed relevant to the issues in this case. However, Applicant failed to submit any additional information, and the record closed on November 8, 2004. DOHA received the transcript (Tr) the same day. The issuance of this decision has been delayed due to an unusually large caseload.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 32 years old and employed as a technical writer/editor by a defense contractor. She has held her position since June 2001. She seeks her first security clearance in connection with her assigned duties.

Applicant is a single mother of three children - 11-year-old twins and their 12-year-old sibling. She has been married twice. The first marriage in October 1990 was to her children's father, who was a junior enlisted man in the Navy. While they were married they were barely able to make ends meet and Applicant was often left without sufficient support for the children and herself while her husband was away on deployment. After the marriage failed in 1993, Applicant received one support payment of about \$300 garnished from her ex-husband's military pay; however, he was soon thereafter administratively discharged from the Navy. Because the divorce decree did not order child support, her ex-husband was no longer a source of additional income. Applicant's second marriage lasted from 1997 until 1999. No children were born of that union and Applicant receives no support from her second ex-husband either.

Since about 1995, Applicant has been employed in a variety of jobs paying modest wages. She was unemployed between June 1996 and November 1998, but ostensibly was supported for most of that time by her second husband. Since then, she has been steadily employed as a technical writer, first for a firm doing business unrelated to the defense industry, then with her current employer. Neighbors and co-workers who have known Applicant between two and four years vouch for her as honest, hardworking, dedicated, and conscientious.

Beginning sometime in 1996, Applicant became increasingly unable to pay her debts. Many of the debts stemmed from her first marriage and became delinquent in the two or three years following her divorce. Applicant owes attorney fees of about \$1,500 due from her first divorce (SOR ¶2.d); however, she feels the amount owed is disproportionate to the services rendered, and she thought her ex-husband would pay this bill. It appears the one attorney represented Applicant and her ex-husband in formalizing the divorce. Applicant also owes \$501 to a former landlord who obtained a judgment against her in 1996 (SOR ¶2.c), and \$908 to various collection agencies for seven different unpaid medical services bills. (SOR ¶¶2.b, 2.e, 2.f, 2.g, 2.i, 2.j, 2.p, and 2.q)

Applicant also co-signed a loan for her second husband's truck and a missed payment of \$345 is attributable to her (SOR ¶2.a); however, he still has the truck, which was purchased in 1997 or 1998. Applicant also owes \$744 for missed payments on a car loan for a vehicle she claims was repossessed (SOR ¶2.h), \$80 for a returned check in 2000 (SOR ¶2.k), \$986 for two delinquent credit card accounts delinquent since mid-2000 (SOR ¶¶2.l and 2.m), \$816 for a delinquent personal loan (SOR ¶2.n), and \$52 for a collection account the origin of which is unclear. (SOR ¶2.o)

In November 1996, Applicant and a friend, riding in Applicant's car, stopped at a convenience store for gas. Applicant had no money and thought her friend would pay for the gas when she went into the store while Applicant stayed with the car. However, the friend did not pay for the gas and Applicant was notified a few days later there was a charge pending against her for theft by taking. Applicant went to the police station and was formally charged. She eventually pled guilty, was fined, and had to make restitution. (SOR ¶1.a(1)) In December 1998, Applicant was charged with writing bad checks. She was found guilty, placed on 12 months probation, assessed a fine and court costs, and had to make restitution.

Applicant has been gainfully employed for the past seven years and currently earns about \$2,000 each month after taxes and deductions for benefits. She pays \$500 rent monthly to her parents and \$450 on a car loan, which her mother has had to help pay at times. Applicant asserts she has paid the debts listed in SOR ¶¶2.b, 2.e, 2.j, and 2.m. However, she has been unable to document her assertions despite being afforded extra time after the hearing to produce such evidence. She is also repaying her parents for their financial help and has made satisfying her debt to them a priority over repaying her other creditors. Applicant attributes her debt problems to her two failed marriages, but acknowledges she has been careless about money until recently.

Applicant submitted a security clearance application (SF 86) on June 7, 2002. She admits she deliberately falsified her response to question 38 (debts more than 180 days past due at any prior time) by listing only one debt when she knew she had many other debts that should have been disclosed. (SOR ¶1.c) Applicant answered "no" to question 37 (unpaid judgments) despite owing a debt enforced by judgment for unpaid rent as listed in SOR ¶2.c. She claims she did not know about the judgment when she completed the questionnaire. (SOR ¶1.b)

In response to SF 86 question 26 (other criminal offenses), Applicant listed her 1996 arrest for theft by taking, but failed

to list her 1998 arrest for writing bad checks. (SOR 1.a) In July 2002, Applicant was interviewed by a Defense Security Service (DSS) agent about her finances and past criminal charges. Applicant discussed her 1996 arrest, but denied any other criminal conduct. DSS later discovered Applicant's 1998 arrest through a routine records check and the agent had to re-interview Applicant a few weeks later. (3) (SOR 1.d) Applicant alternatively claims she thought the 1996 charge and the 1998 charge had been combined and disposed of as one case, or that she did not think the 1998 arrest was still in her record so she did not have to disclose it.

Applicant continues to raise her three children by herself. She is, by all accounts, a reliable employee and is active in her community by volunteering at a local food bank each week.

POLICIES

The Directive sets forth adjudicative guidelines (4) to be considered in evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of 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 Section 6.3 of the Directive. 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 record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are Guideline E (personal conduct), Guideline F (financial considerations), and Guideline J (criminal conduct).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest (5) for an Applicant to either receive or continue to have access to classified information. The government bears the 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. (6) 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 judgement, 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. (7)

CONCLUSIONS

Under Guideline E, a security concern arises where it is shown an applicant has exhibited questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Such conduct may indicate the person may not properly safeguard classified information. (8) Here, the government questions Applicant's trustworthiness and personal conduct based on her apparently deliberate falsification of her SF 86 and her false statements to a government investigator. The government has presented sufficient information to support the allegations in SOR ¶¶1.a, 1.b, 1.c, and 1.d, thereby establishing a *prima facie* case for disqualification under Guideline E. Applicant admitted in her SOR response she deliberately falsified her answer to SF 86 question 38. Also, her inconsistent explanations about her answer to SF 86 question 26, and the DSS agent's testimony about her omissions from both the SF 86 and her subject interview undermine her claims she did not intend to falsify her statements. As to the allegation in SOR ¶1.b, that Applicant deliberately withheld the fact there is an unpaid judgment against her, she claims she did not know about the judgment. While it is not unusual that a person might not be aware a judgment to enforce a debt has been entered, the weight of the evidence here is that Applicant intended to minimize the extent of her criminal conduct and her financial problems. Guideline E disqualifying condition (DC) 2 (9) and DC 3 (10) apply, and Applicant has failed to present sufficient evidence to refute, mitigate, or extenuate these disqualifiers. I conclude this guideline against the Applicant.

Under Guideline F, the security concern is that someone who is financially overextended through delinquent debt and poor personal financial management may be at risk of engaging in illegal acts to generate funds to resolve their fiscal difficulties. Here, the government's concerns about Applicant's suitability to hold a clearance are based on a history of delinquent debts in the form of unpaid credit cards, a judgment to enforce a debt for unpaid rent, several unpaid medical bills, and unpaid attorney's fees from her first divorce. As to SOR 2.a, I find for Applicant as her second ex-husband is in possession of the vehicle which is the subject of this debt and she should not be held solely responsible for what appears to be a joint obligation. However, as to the remaining allegations under SOR 2, I conclude Applicant still owes these debts. The government has established a *prima facie* case for disqualification due to financial considerations and Guideline F DC 1 [\(11\)](#) and DC 3 [\(12\)](#) apply.

Regarding possible mitigation, I do not accept Applicant's assertions she has paid some of the debts, especially in light of the fact she had ample time to provide corroborating documentation. Even were I to find Applicant paid some of the debts, she has yet to satisfactorily address the factors that gave rise to her problems in the first place; namely, she has not corrected her own financial mismanagement. Granted, her failed marriages played some part in her financial history, and Guideline F mitigating condition (MC) 3 [\(13\)](#) must be considered here. However, she has been steadily employed for seven years and her second marriage ended eight years ago. Therefore, MC 3 has little persuasive value here. Applicant appears to be at least partially dependent on financial help from her parents and did not present any information that would suggest she has a plan for addressing her debts, many of which are under \$100, well within her ability to pay. I conclude Applicant has failed to refute, extenuate, or mitigate the adverse information on which the government based its decision to deny her a clearance because of her financial problems.

Criminal conduct, as addressed under Guideline J, is a security concern because it may indicate an unwillingness to abide by rules and regulations, and may show an applicant to be unreliable and untrustworthy. [\(14\)](#) Here, the government has established a *prima facie* case for disqualification by showing Applicant deliberately made false statements or representations to the government by her answers in her SF 86 and during her subject interview with DSS. This conduct violates federal criminal law as specified in Title 18 of the United States Code, Section 1001. Applicant signed her SF 86 directly below an advisement regarding the applicability of that statute. She was also advised of the statute when she was interviewed and when she signed her written statement. Guideline J DC 1 [\(15\)](#) applies here. A review of the listed mitigating conditions leads me to conclude that none apply. The conduct was recent, was not isolated (insofar as Applicant deliberately made at least two false statements to the government), was undertaken voluntarily and without undue pressure, and there is insufficient evidence of rehabilitation given Applicant's continued denials she tried to mislead the government. I conclude Guideline J against the Applicant.

I have carefully weighed all of the available evidence, and I have applied the appropriate disqualifying and mitigating conditions. Further, I have tried to make a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. This record 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. The record also supports a conclusion Applicant has not mitigated those doubts or otherwise overcome the government's case.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline E (Personal Conduct): 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

Paragraph 2, Guideline F (Financial): AGAINST THE APPLICANT

Subparagraph 2.a: For the Applicant

Subparagraph 2.b: Against the Applicant

Subparagraph 2.c: Against the Applicant

Subparagraph 2.d: Against the Applicant

Subparagraph 2.e: Against the Applicant

Subparagraph 2.f: Against the Applicant

Subparagraph 2.g: Against the Applicant

Subparagraph 2.h: Against the Applicant

Subparagraph 2.i: Against the Applicant

Subparagraph 2.j: Against the Applicant

Subparagraph 2.k: Against the Applicant

Subparagraph 2.l: Against the Applicant

Subparagraph 2.m: Against the Applicant

Subparagraph 2.n: Against the Applicant

Subparagraph 2.o: Against the Applicant

Subparagraph 2.p: Against the Applicant

Subparagraph 2.q: Against the Applicant

Paragraph 3, Guideline J (Criminal Conduct): AGAINST THE APPLICANT

Subparagraph 3.a 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 a security clearance for the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Applicant denied she deliberately falsified her SF 86 as alleged in SOR ¶¶1.a, 1.b, and 1.d. She also denied she owed the debts listed in SOR ¶¶ 2.a, 2.b, 2.d, and 2.k. Lastly, Applicant has denied she violated federal law as alleged in SOR ¶3.a.
3. Tr., pp. 17 - 27.

4. Directive, Enclosure 2.
5. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
6. *See Egan*, 484 U.S. at 528, 531.
7. *See Egan*; Directive E2.2.2.
8. Directive, E2.A5.1.1.
9. Directive, E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and 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;
10. Directive, E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination;
11. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;
12. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
13. Directive, E2.A6.1.3.3. 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);
14. Directive, E2.A10.1.1.
15. Directive, E2.A10.1.2.1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged;