

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is 54 years old and has been employed by a defense contractor since 1999, as a material planner analyst. Applicant has over \$24,000.00 in delinquent debts. Applicant has affirmatively avoided contact with her creditors, by changing her phone number and ignoring their letters. Applicant has not set up any plan to resolve her delinquencies. Applicant failed to provide honest answers regarding her debts on her security clearance application and refused to allow the Defense Security Service access to her accounts. Clearance is denied.

CASENO: 02-29672.h1

DATE: 02/14/2005

DATE: February 14, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29672

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 54 years old and has been employed by a defense contractor since 1999, as a material planner analyst. Applicant has over \$24,000.00 in delinquent debts. Applicant has affirmatively avoided contact with her creditors, by changing her phone number and ignoring their letters. Applicant has not set up any plan to resolve her delinquencies. Applicant failed to provide honest answers regarding her debts on her security clearance application and refused to allow the Defense Security Service access to her accounts. Clearance is denied.

STATEMENT OF THE CASE

On April 27, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F for financial considerations and Guideline E for personal conduct.

In a sworn statement, dated May 21, 2004, Applicant responded to the SOR allegations, and elected to have her case decided on the written record, in lieu of a hearing. In her SOR response, Applicant admitted some allegations and denied other allegations contained in the SOR. Department Counsel submitted the government's case on October 14, 2004. A complete copy of the file of relevant material (FORM) was received by Applicant on October 22, 2004. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM, and did not provide any additional material. The case was assigned to me on February 10, 2004.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and statements, I make the following findings of fact:

Applicant is 54 years old and has been employed since 1999, by a defense contractor, as a material planner analyst. Applicant worked for the same contractor from 1981 through 1993. She was laid off in 1993, moved to another state, and was employed for a short period of time. Applicant was unemployed from 1995 through 1999, and was supported by her in-laws. Applicant has been married since 1981 and her husband does not work.

In Applicant's answer to the SOR, she denies the allegations in subparagraph 1.a. In Applicant's statement of October 5, 2001, Applicant admits she owes money to two creditors. She specifically acknowledges owing money to the creditor in subparagraph 1.b. Regarding the other debt, in one statement she claims she does not recall the name of the other creditor and in the other statement she claims the account is in her husband's name.

Applicant received numerous phone calls and letters from both creditors over a period of years. Applicant told the creditors she had no money. Applicant changed her phone number, so the creditors would stop calling. Applicant received letters from the creditors and she ignored the letters. Later she would receive an annual letter reminding her of her debts. The last letter she remember receiving reminding her of her debts was in May 2001.

Applicant never sought, nor received credit counseling. Applicant never contacted her creditors regarding her delinquent debts to attempt to pay or settle the debts.

In August 2001, Applicant was issued court papers from her creditor in subparagraph 1.b. She and her husband were deciding how to resolve the issue and whether to file for bankruptcy. No further information was provided in this regard. Applicant stated she is refinancing a home in another state.

Applicant completed her security clearance application (SF 86) on March 1, 2000. She answered no to question 38: *In the last 7 years have you ever been over 180 days delinquent on any debt(s)*, and question 39: *Are you currently over 90 days delinquent on any debt(s)*? Applicant admitted she provided false answers on her SF 86 to both questions 38 and 39. Applicant claims she thought the accounts had "gone away."⁽²⁾ Later, Applicant claims she was under a doctor's care at the time she completed her SF 86, and did not recall owing money to any credit agency, other than her current credit card.⁽³⁾ Applicant provided no documentation to verify she was incapable of providing accurate information due to a medical condition.

Applicant admitted she refused to consent and grant the Defense Security Service access to her credit card records and refused to provide an explanation. Applicant admitted she refused to execute a Personal Financial Statement, stating she was unable because she sends her money to her husband and he pays the bills. She also keeps some money for herself.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline F, pertaining to financial considerations, and Guideline E, pertaining to personal conduct, with their respective DC and MC, apply in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁴⁾ The government has the burden of proving controverted facts.⁽⁵⁾ The burden of proof is something less than a preponderance of evidence.⁽⁶⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹¹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹²⁾ 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.

CONCLUSIONS

Under Guideline F, a security concern exists when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and FC DC E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*), apply in this case. I have considered all the Financial Considerations Mitigating Conditions (FC MC), and specifically considered FC MC 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)*), and conclude it does not apply. Applicant started experiencing financial difficulties when she was unemployed from 1995 to 1999. She has been employed in a permanent job since 1999, a period of over 6 years. However, since she has resumed full time employment, Applicant has not made any attempt to contact her creditors, set up a payment plan, or do anything to resolve her delinquent debts.

I have considered FC MC 4 E2.A6.1.3.4. (*The person has or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*), and conclude it does not apply. Applicant never sought or received any credit counseling.

I have also considered FC MC E2.A6.1.3.6, (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), and conclude it does not apply. Applicant has not made any effort to resolve her delinquent debts. Rather, Applicant has intentionally avoided her creditors, by changing her phone number, ignoring their letters, and considering the debts as having gone away.

Personal Conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Personal 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.

Based on all the evidence Personal Conduct Disqualifying Condition (PE DC) E2.A5.1.1.2. (*Refusal to complete required security forms, releases, or provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personnel security or trustworthiness determination.*), and PE DC 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.) apply in this case. Applicant was aware of her delinquent debts and failed to list them on her SF 86. Applicant refused to grant access to DSS to review her credit cards records.

I have considered all the Personal Conduct mitigating conditions (PC MC), and specifically considered PC MC E2.A5.1.3.3. (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts.*) and conclude it does not apply. Applicant was well aware of her delinquent debts when she completed her SF86 in March 2000. She acknowledged that she was receiving notices from her creditors prior to then and up to at least March 2001, even if she chose to ignore them. Although Applicant admits to her delinquencies in her statement of October 5, 2001, she backtracks on her knowledge of the debts in her statement of May 21, 2004.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and various other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am persuaded by the totality of the evidence in this case that it is not clearly consistent with the national interest to grant Applicant a security clearance. Applicant has failed to mitigate the security concerns caused by her financial delinquencies and personal conduct. Accordingly, Guideline F, pertaining to financial considerations, and Guideline E, pertaining to personal conduct are decided against Applicant.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1 Financial Considerations (Guideline F) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Paragraph 2 Personal Conduct (Guideline E) AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Subparagraph 2.c. 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 Applicant. Clearance is denied.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

2. Item 5.

3. Answer.

4. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.

6. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

7. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, ¶ E3.1.15.

8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15

9. *Egan*, 484 U.S. at 531.

10. *Id.*

11. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

12. Executive Order 10865 § 7.