

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 46-year-old custodial employee of a defense contractor who incurred approximately \$9,000.00 in delinquent debts. She admitted four of the nine debts cited in the SOR for a total amount of \$2,475.00. She stated that some had been paid and her intent to pay them all. She did not offer any evidence of payment. Applicant failed to acknowledge the delinquent debts on questions 39 on her SF 86. Clearance is denied.

CASENO: 02-11687.h1

DATE: 08/13/2004

DATE: August 13, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-11687

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 46-year-old custodial employee of a defense contractor who incurred approximately \$9,000.00 in delinquent debts. She admitted four of the nine debts cited in the SOR for a total amount of \$2,475.00. She stated that some had been paid and her intent to pay them all. She did not offer any evidence of payment. Applicant failed to acknowledge the delinquent debts on questions 39 on her SF 86. Clearance is denied.

STATEMENT OF CASE

On November 19, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, 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, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement dated December 19, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on March 24, 2004. A complete copy of the file of relevant material (FORM) was provided to the Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond and the case was assigned to me on June 8, 2004.

FINDINGS OF FACT

After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 46-year-old custodial employee of a defense contractor who incurred approximately \$9,000.00 in delinquent debts. She admitted four of the nine debts cited in the SOR for a total amount of \$2,475.00. She stated that some debts had been paid and that she intended to pay them all. One debt for over \$6,000.00 had been written off but there is no evidence that she does not still owe it. Four other debts that she denied are still on her most recent credit report and she gave no evidence of payment either with her answer or when given the opportunity to respond to the FORM over three months later.

Applicant failed to acknowledge the delinquent debts on questions 39 on her SF 86. She advised the investigator that she did know the meaning of "delinquent."

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

Applicant's extensive delinquent debts prompted the allegation in the SOR of violation of Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) include the fact that the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.) and that the conditions resulting in the problems were largely beyond the person's control such as divorce. (E2.A6.1.3.3.)

Also alleged under Guideline E is Applicant's falsification of her SF 86 by failing to disclose the delinquent debts. Such failure might indicate questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information (E2.A5.1.1.). Specifically, the deliberate omission, concealment, or falsification of relevant and material facts from a personnel security application could raise a security concern and be disqualifying. (E2.A5.1.2.2.)

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

Applicant has acknowledged some of the delinquent debts and she failed to report them on her SF 86. A mere stated intent to pay the debts is not sufficient to mitigate the allegations. Applicant has had almost two years of college. I do not accept her excuse that she did not understand the term "delinquent" and find that her omission was deliberate as required by the guideline. Applicant has failed to rebut the allegations in the SOR. No mitigating conditions are

applicable.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Paragraph 2.Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge