

KEYWORD: Financial

DIGEST: Applicant is a 37-year-old senior technical writer for a defense contractor. Prior to 1995, Applicant and her husband had a family business that failed and they had difficulties paying debts associated with the business. Applicant accumulated additional personal debts. Applicant has numerous judgments against her, and numerous delinquent debts, which total approximately \$20,000.00, that she has failed to make any payments on, and failed to set up any plan for resolving her financial problems. Applicant has failed to mitigate the security concerns caused by her financial problems. Clearance is denied.

CASENO: 02-12453.h1

DATE: 02/07/2005

DATE: February 7, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-12453

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 37-year-old senior technical writer for a defense contractor. Prior to 1995, Applicant and her husband had a family business that failed and they had difficulties paying debts associated with the business. Applicant accumulated additional personal debts. Applicant has numerous judgments against her, and numerous delinquent debts, which total approximately \$20,000.00, that she has failed to make any payments on, and failed to set up any plan for resolving her financial problems. Applicant has failed to mitigate the security concerns caused by her financial problems. Clearance is denied.

STATEMENT OF THE CASE

On August 5, 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.

In a sworn statement, dated September 16, 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 all the allegations contained in the SOR. Department Counsel submitted the government's case on October 29, 2004. A complete copy of the file of relevant material (FORM) was received by Applicant on November 19, 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 December 29, 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 a 37-year-old senior technical writer for a defense contractor. She has been married since 1986 and has two children. Applicant and her husband had a family business prior to 1995. Apparently it failed and they were unable to satisfy their business debts. Applicant also failed to pay her personal debts. Applicant was unemployed for three months in 1998. Applicant admitted all of the delinquent debts and judgments in the SOR. Applicant claimed in her statements of September 18, 1998, January 21, 1999, and April 25, 2000, that she intended to satisfy all of her debts and that she was seeking credit counseling. Applicant and her husband are jointly responsible for their business debts. Applicant's husband has not satisfied the joint debts.

In January 1999, Applicant and her husband filed for bankruptcy, but their petition was denied in August 1999. In her statement of April 25, 2000, Applicant stated she would figure out a way to pay her debts. In her statement of September 26, 2003, Applicant stated she was unable to resolve her debts and intended to hire a credit counselor to set up a payment plan. Applicant has not provided any information as to whether she ever set up a payment plan and whether she has paid anything on any of her delinquent debts or judgments. Applicant's final statement of September 16, 2004, she states she is trying to rebuild her credit and she is working to resolve an issue with the Internal Revenue Service. Applicant has not provided any specific information or verification that she has resolved any of her financial delinquencies.

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, with its 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. ⁽²⁾ The government has the burden of proving controverted facts. ⁽³⁾ The burden of proof is something less than a preponderance of evidence. ⁽⁴⁾ 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.⁽⁵⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁶⁾

No one has a right to a security clearance⁽⁷⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁸⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽⁹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹⁰⁾ 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.

CONCLUSION

Applicant admits the debts alleged in the SOR. Applicant and her husband started a business that failed sometime before 1995. Almost ten years later, Applicant has not resolved her debts nor has she set up any type of plan to resolve any of the debts or judgments. Although some of Applicant's debts may be from the failed business, others are for consumer items. Applicant has repeatedly expressed that she will pay her debts and set up a plan, but has not.

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, under Guideline F, I find DC 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts*, apply in this case. I have considered all the mitigating conditions under Guideline F, and specifically considered mitigating condition MC 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's financial difficulties started when her family business failed. No information was provided regarding the specifics of the business or the reason for its failure. Applicant has had almost ten years to attempt to make some payments on her debts and has failed to do so.

I have considered MC 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 merely mentioned her

intention to seek counseling and set up a plan, but has not provided any information that she followed through on doing so.

I have also considered MC 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, and conclude it does not apply. Applicant repeatedly stated her desire to pay her delinquent debts. A good-faith effort must include not only the desire to repay a debt, but also the ability to repay a debt and a systematic, concrete plan for resolving the financial problems. Applicant has numerous judgments and debts and has failed to make a good-faith effort to set up any plan to resolve any of them.

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. Accordingly, Guideline F is 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 Guideline F AGAINST THE APPLICANT

Subparagraphs 1.a.-1.v. 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. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
4. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
5. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, ¶ E3.1.15.
6. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15
7. *Egan*, 484 U.S. at 531.
8. *Id.*
9. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
10. Executive Order 10865 § 7.