

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has ten delinquent debts on her credit record. Those debts were not disclosed on her security clearance application (SCA). Applicant's only child, a daughter now 36 years old and in the state penitentiary, admitted her culpability by incurring those debts without her mother's knowledge or consent. Applicant's SCA did not have Questions 38 and 39 as alleged in the Statement of Reasons (SOR), nor did Applicant know about the debts alleged in the SOR until after she completed the SCA. Applicant mitigated the financial considerations and personal conduct security concerns. Clearance is granted.

CASENO: 02-15844.h1

DATE: 07/23/2004

DATE: July 23, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-15844

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco Mendez, Esq. , Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant has ten delinquent debts on her credit record. Those debts were not disclosed on

her security clearance application (SCA). Applicant's only child, a daughter now 36 years old and in the state penitentiary, admitted her culpability by incurring those debts without her mother's knowledge or consent. Applicant's SCA did not have Questions 38 and 39 as alleged in the Statement of Reasons (SOR), nor did Applicant know about the debts alleged in the SOR until after she completed the SCA. Applicant mitigated the financial considerations and personal conduct security concerns. Clearance is granted.

### **STATEMENT OF THE CASE**

On July 28, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR detailed reasons under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) 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 referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

Applicant submitted an undated signed and sworn statement in answer to the SOR. She denied all the allegations contained in the SOR. She requested a hearing.

This case was originally assigned to me on November 12, 2003. A Notice of Hearing was issued on November 18, 2003, setting the hearing for December 11, 2003. On November 25, 2003, an amended Notice of Hearing was issued retaining the same hearing date. Applicant filed a request for a continuance due to health reasons, and the hearing was

rescheduled for February 11, 2004. The Applicant requested another continuance for health reasons, and a fourth Notice of Hearing was issued on February 23, 2004, setting the hearing for March 10, 2004.

On March 10, 2004, I convened the hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government presented four exhibits which were admitted into evidence. Applicant appeared, testified, and submitted eight exhibits, which were admitted into evidence. I received the transcript of the hearing on March 22, 2004.

### **FINDINGS OF FACT**

Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 64 years old. Applicant is married and has one child, a daughter who is now 36 years old. Applicant owns a tractor trailer with her husband, and they work together as long distance truck drivers. (Exhibit 1 at 1 and 6; Tr. 14)

Applicant has 10 delinquent debts in her name, being unpaid from 1996 onward. The total debt is \$19,000, for bad checks passed at grocery stores, credit card debt, department stores, and banks. Applicant's daughter has had a drug habit since she was 12 years old, and stole from her parents money, checks, and personal property which she pawned for cash, all to pay for her drug habit. Applicant filed numerous police reports over the years since the mid 1990s when they discovered their property missing. Applicant knew nothing about the debts listed in the SOR until the interview with the government investigator in 2002. She had gotten a few telephone calls from creditors before 2002 concerning debts, but took no action. Applicant's daughter opened credit card accounts without Applicant's knowledge because she stole the pre-approved applications from Applicant's mail when Applicant was on the road driving a load, had the cards sent to the daughter's apartment address, and then threw away the bills when they were mailed to her. Applicant's daughter was the bookkeeper for the Applicant's trucking company in the 1990s and knew all of Applicant's account numbers, social security numbers, and other financial information to use for her financial frauds. Applicant's daughter submitted two statements admitting her actions, one dated in 2003, and the second statement at the hearing. The daughter is incarcerated in a state prison for 20 months for parole violations on an earlier drug conviction. (Exhibit A to H, Exhibit 2, 3 and 4; Tr.14 to 58)

Applicant closed bank accounts, filed police reports, changed house locks, has all mail sent to a post office box to which her daughter does not have access, and keeps check books in her tractor to prevent her daughter from continuing her thefts. Applicant has not paid any of the debts listed in the SOR, taking the position with merchants and the police authorities that the debts are her daughter's and she should pay them. She has attempted in the past to have her daughter

pay them, but the attempts were not successful. Applicant did not know about the debts until the mid 1990s. (Exhibit 2; Tr. 14 to 58)

The debts in the SOR paragraph 1 are in Applicant's name, remain unpaid by Applicant, and were incurred by Applicant's daughter without Applicant's knowledge or consent. Subparagraphs 1.a. and 1.c. are high balances, not actual debts, and the Government acknowledged that interpretation. (Tr. 20 to 46)

Applicant is very credible in her explanation of how the debts occurred, her lack of knowledge about them, the culpability of her daughter in incurring all these debts, Applicant's attempts to stop her daughter from stealing her money and account numbers, and Applicant's attempts to get her daughter into drug rehabilitation programs. Applicant's daughter attended several such programs, but always returned immediately to illegal drug use.

Applicant denies falsifying her security clearance application (SCA) by making negative answers to Questions 38 and 39 on the SCA. Applicant did not know about the debts incurred by her daughter until confronted with them by a government investigator after she completed her SCA. The SCA completed by Applicant on February 22, 2002, only contains 30 questions. The financial questions concerning delinquent debts on the SCA form completed by Applicant are located in Question 28, subsections a and b. Applicant did not answer the questions alleged in the SOR because they do not appear on the form used by Applicant. Applicant's explanation of her lack of knowledge about her daughter's actions to incur debts in Applicant's name is credible and persuasive. (Exhibit 1, Exhibit 2; Tr. 22)

## **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. The president has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgement, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* Section 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk.

Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of:

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation;
- (3) how recent and frequent the behavior was;
- (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 (See Directive, Section E2.2.1. of Enclosure 2).

Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Initially, the Government must establish, by substantial 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. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. 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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. See Exec . Or. 12968 Section 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

## **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.

Applicable conditions that could raise a security concern and may be disqualifying include:

(1) A history of not meeting financial obligations. Directive, ¶ E2.A6.1. 2.1.

(3) Inability or unwillingness to satisfy debts. Directive, ¶ E2.A6.1.2.3.

Applicable conditions that could mitigate security concerns include:

None

## **Guideline E - Personal Conduct:**

(A) The Concern: 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. Directive, ¶ E2.A5.1.1.

(B) Conditions that could raise a security concern and may be disqualifying also include:

None

(C) Conditions that could mitigate security concerns include:

None

## **CONCLUSIONS**

I conclude that under Guideline F (Financial Considerations) the Government proved its case. Therefore, the Disqualifying Conditions (DC) 1 (*a history of not meeting financial obligations*) and DC 2 (*an inability or unwillingness to satisfy debts*) apply. Applicant's apparent delinquent financial debts are sizable.

This case presents a unique situation. Applicant's daughter, who is incarcerated in a state prison, took full responsibility for the \$19,000 worth of debts. She submitted two written statements to that effect. The entire case turns on whether Applicant is believed that she did not know about the debts, or whether her explanation is part of an elaborate ruse to incur debts and avoid the duty to repay them. Observing Applicant's demeanor at the hearing, and considering her explanations, I believe her. Applicant did not incur these debts, is the victim of her daughter's rampant and recurring thievery and fraud, and did what she could with her lack of sophistication and legal knowledge to stop or prevent her drug-addicted daughter from further thefts of Applicant's money, personal property, or credit. Because I believe Applicant's explanation and the notarized statements submitted by her daughter, I conclude this guideline for Applicant.

Regarding Guideline E (Personal Conduct), I conclude the Government did not prove its case. The SOR alleges Applicant falsified material facts on the SCA, Question 38 (delinquencies over 180 days) and Question 39 (delinquencies over 90 days) by answering "no" to Question 38 and "no" to Question 39. But there were no such questions on the Exhibit 1, the SCA, which Applicant signed in February 2002. No amendments were made to the SOR to conform it to the reality of the form used. Even if under some legal theory or precedent that the SOR is automatically amended or transposed to reflect the question actually asked and answered on the actual form used in 2002, I would conclude Applicant did not know of the debts in her name until after she completed the SCA and when shown the credit report in April 2002. Therefore, Applicant could not have falsified her SCA. I conclude this guideline for Applicant.

## **FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F: For Applicant

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: For Applicant

Paragraph 2 Guideline E: For Applicant

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

## **DECISION**



In light of all the circumstances and facts presented by the record in this case, it is clearly consistent with the interest of national security to grant a security clearance to Applicant. Clearance is granted.

Philip S. Howe

Administrative Judge