

DATE: February 24, 2004

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-17340

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has failed to mitigate three false answers on her security clearance application. She deliberately failed to disclose two repossessions, three unsatisfied judgments against her, and five delinquent debts that she has not paid. Applicant continued to deny that she had delinquent debts, including those resulting in repossessions and judgments, when she was initially interviewed by a DSS investigator. It was only after she was confronted with her credit report that she acknowledged them and admitted that she lied. Although Applicant pledged never to lie again, in her response to the SOR, she again denies that she knew about the judgments and delinquent debts when she submitted her security clearance application. Clearance is denied.

STATEMENT OF THE CASE

On July 25, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline E (Personal Conduct). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant her access to classified information and recommends that his case be submitted to an Administrative Judge.

On August 25, 2003, Applicant executed a response to the SOR and requested a hearing. The case was assigned to me on November 14, 2003. A notice of hearing was issued on November 26, 2003 and the hearing was held on December 23, 2003. During the hearing, seven Government exhibits (Govt Ex), two Applicant exhibits (Ap Ex) and the testimony of Applicant were received. The transcript (Tr) was received on January 6, 2004.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 44-year-old medical record clerk employed by a defense contractor. She is seeking a security clearance.

In the early 1990s, Applicant became delinquent in her payments for an automobile and it was repossessed by the creditor.

In October 1993, Applicant purchased another automobile, which she financed through an automobile finance company. Subsequently, Applicant was unable to make the payments and agreed to a voluntary repossession of the vehicle. She has not paid the \$7,813.00 balance on the account, which the creditor has charged off as a bad debt.

In March 1995, a hospital obtained a judgment against Applicant in the amount of \$1,140.00 for medical services. Applicant has not satisfied the judgment.

In November 1996, a bank obtained a judgment against Applicant in the amount of \$2,526.00 for an unpaid credit card account. Applicant has not satisfied the judgment.

In February 1998, a second hospital obtained a judgment against Applicant in the amount of \$317.00 for medical services. Applicant has not satisfied the judgment.

In November 1998, Applicant opened a credit card account. She subsequently incurred a \$900.00 balance that she has not paid and that the creditor has charged off as a bad debt.

On April 18, 2001, Applicant executed a security clearance application (SF 86). In response to question 35, ⁽³⁾ Applicant answered, "no," and deliberately omitted the two aforesaid repossessions of automobiles (SOR ¶ 1.a).

In response to question 37 ⁽⁴⁾ on the same SF 86, Applicant answered, "no," and deliberately omitted the three aforementioned judgments against her (SOR ¶ 1.b).

In response to question 38 ⁽⁵⁾ on the same SF 86, Applicant answered, "no," and deliberately omitted the three delinquent debts that resulted in the aforesaid judgments against her (SOR ¶ 1.c).

In response to the same question, she also deliberately omitted her aforesaid delinquent debt to the automobile finance company (SOR ¶ 1.d) and her aforesaid \$900.00 delinquent debt on a credit card account (SOR ¶ 1.e).

In March 2002, Applicant was interviewed by an investigator for the Defense Security Service (DSS). She denied having any delinquent debts.

On April 24, 2002, Applicant provided a sworn statement to the same investigator and acknowledged the aforesaid automobile repossessions, delinquent debts and judgments against her. She admitted she lied on both her SF 86 and to the investigator because she was afraid she would lose her job. Applicant apologized and further said: "I won't lie no more. I will be honest about my debts and things from now on."

POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2. Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

Guideline E: Personal Conduct

The concern under Guideline E is 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. Conditions that could raise a security concern and may be disqualifying under Guideline E include E2.A5.1.2.2 (Disqualifying Condition 2). Disqualifying Condition 2 covers 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.

None of the conditions that could mitigate security concerns are applicable in this case.

CONCLUSIONS

Applicant's admitted falsifications in response to three questions on her security clearance application (SOR ¶ 1.a-1.e) establish Disqualifying Condition 2.

Applicant's testimony offered mitigating circumstances for her delinquent debts: a lack of support from the father of her daughter, who has an autistic disorder; a loss of employment that made her unable to make her car payment and resulted in its repossession; and medical bills she was unable to satisfy because of a lack of medical insurance. However, financial considerations are not in issue in her case. The Government's concern is her personal conduct as evidenced by her falsifications. Applicant has failed to mitigate the disqualifying condition established under Guideline E.

After submitting her recent false security clearance application, Applicant did not attempt to correct the record before she was confronted with her falsifications. In fact, Applicant continued to deny that she had delinquent debts, including those resulting in repossessions and judgments, when she was initially interviewed by a DSS investigator. She acknowledged them only after the investigator confronted her with her credit report.

When confronted with the facts by the DSS investigator, Applicant admitted her falsifications. She apologized and pledged that she would never lie again. In her response to the SOR, however, she denies that she knew about the judgments against her and her delinquent debts when she completed the security clearance application.

Applicant's actions are not consistent with the high level of trust and confidence the federal government must be able to repose in persons granted a security clearance. *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980). I find against Applicant.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline E: 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

DECISION

In light of the evidence of record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
3. "In the last 7 years, have you had any property repossessed for any reason?"
4. "In the last 7 years, have you had any judgments against you that have not been paid?"
5. "In the last 7 years, have you been over 180 days delinquent on any debt(s)?"