

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a financial analyst for a defense contractor. Before purchasing a house in 1999, Applicant settled all delinquent debts. Since purchasing the house, Applicant accumulated 22 delinquent debts totaling approximately \$25,000. Most of the debts were incurred as a result of medical treatment for Applicant. Applicant made no effort to satisfy any of the debt or even contact some of her creditors. In response to questions on her security clearance applications, Applicant did not list a lien, three judgments, and delinquent debts past due over 180 and 90 days. Applicant had paid the lien before purchasing her house so she did not deliberate answer incorrectly. However, she knew of the judgments and the past due delinquent debts and failed to list them. Clearance is denied.

CASENO: 02-20572.h1

DATE: 02/08/2005

DATE: February 8, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-20572

**DECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jason Perry, Esq., Department Counsel

**FOR APPLICANT**

Donald L. Cash, Personal Representative

**SYNOPSIS**

Applicant is a financial analyst for a defense contractor. Before purchasing a house in 1999, Applicant settled all delinquent debts. Since purchasing the house, Applicant accumulated 22 delinquent debts totaling approximately \$25,000. Most of the debts were incurred as a result of medical treatment for Applicant. Applicant made no effort to satisfy any of the debt or even contact some of her creditors. In response to questions on her security clearance applications, Applicant did not list a lien, three judgments, and delinquent debts past due over 180 and 90 days. Applicant had paid the lien before purchasing her house so she did not deliberate answer incorrectly. However, she knew of the judgments and the past due delinquent debts and failed to list them. Clearance is denied.

**STATEMENT OF THE CASE**

On August 23, 2003, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on September 13, 2003. The SOR alleges security concerns under Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the Directive. The SOR was amended at the hearing without objection from Applicant to include more allegations under Guideline F (Financial Considerations).

Applicant answered the SOR in writing on October 23, 2003. She admitted all of the allegations under Guideline F but denied the allegations under Guideline E. Applicant did not request a hearing before an administrative judge. Applicant's answer was not complete and she was requested to provide additional responses. Applicant again answered the SOR in writing on January 27, 2004, admitting the allegations under Guideline F but denying the allegations under Guideline E. She requested a hearing before an administrative judge. The request for a hearing was received by DOHA on February 2, 2004. Department Counsel was prepared to proceed with the case on September 28, 2004, and the case was assigned to me on November 8, 2004. A notice of hearing was issued on November 16, 2004. The hearing was held on January 5, 2005. Nine government exhibits and the testimony of the Applicant were received during the hearing. The transcript was received on January 12, 2005.

## FINDINGS OF FACT

Applicant is a 47-year-old financial analyst employed for 4 years by a defense contractor. She has diabetes and is unable to work at times when hospitalized for her illness. She has incurred delinquent debt mostly for medical bills associated with her medical condition.<sup>(1)</sup> Applicant purchased a home in 1999 and satisfied all of her debts to obtain financing for the house. A credit bureau report received as part of her security application revealed significant debt accumulated since 1999 and the subject of the allegations in the SOR.<sup>(2)</sup> Her present past due debt amounts to approximately \$25,000 to \$30,000.<sup>(3)</sup>

The initial SOR had 14 allegations under Guideline F. Debts a, b, and c were unpaid judgments issued against Applicant in 2001 and 2002. Nine allegations (debts a, d, e, f, h, i, j, k, and l) were the result of unpaid medical bills. No action has been taken by Applicant to inquire about the bills or resolve the debts.<sup>(4)</sup> Applicant could not pay the bills because she had been hospitalized and unable to work.<sup>(5)</sup> Debts b and g are the same delinquent debt which originated from a credit union loan. Applicant has taken no action to resolve this debt.<sup>(6)</sup> Debt c is for furniture that Applicant said she paid off.<sup>(7)</sup> Applicant was provided an opportunity to provide documentary information the debt was satisfied but has not done so. Debts m and n were for telephone service and Applicant took no action to satisfy these delinquent debts.<sup>(8)</sup>

The SOR was amended at the hearing to add nine additional allegations under Guideline F. Applicant was aware of the additional allegations and elected to continue with the hearing. Only eight of the allegations were accepted as additional allegations.<sup>(9)</sup> Four of the allegations (debts o, q, t, u) were medical bills for which Applicant took no action to resolve.<sup>(10)</sup> Allegations r and s are the same debts listed in the original allegations as debts b and g.<sup>(11)</sup> Allegation v is for another debt to a telephone company and Applicant has taken no action to resolve.<sup>(12)</sup> Debt w is for a returned check and Applicant has taken no action to resolve the debt.<sup>(13)</sup> Of the 22 allegations accepted under Guideline F, four allegations concern the same debt and will be considered as only one allegation; one debt Applicant said was satisfied but provided no documentary evidence it has been satisfied; and Applicant has taken no action to resolve the other 18 allegations.

Applicant answered "No" to question 36 on her October 9, 2001 security clearance application requesting if there were any tax liens filed against her in the last 7 years. On the same application, she also answered "No" to question 38 requesting if in the last 7 years she had ever been delinquent on a debt over 180 days, and question 39 whether she was currently over 90 days delinquent on any debt. Applicant answered "No" to question 37 on the same application requesting if she had any unpaid judgements in the last 7 years. In fact, a tax lien was filed against Applicant in April 1997 which Applicant satisfied in 1999. As noted above, her credit report shows she was over 180 days delinquent in the last 7 years on a number of debts and was presently over 90 days past due on a number of debts. As noted above, debts b, c, and d were unpaid judgments incurred in the last 7 years. Applicant explained that she believed she did not have to list the tax lien since it had been satisfied, and was careless in reading questions 37, 38, and 39 and the information required.<sup>(14)</sup>

Applicant thought about filing bankruptcy but decided not to take that action. She thought about seeking a second job to increase her income but has not taken any steps to do so. She could not recall if she received notice of the judgments against her. She did not know if her insurance company

should cover part of her medical bills but she has not inquired of the insurance company if the bill should be covered.<sup>(15)</sup>

## **POLICIES**

"[N]o one has a 'right' to a security clearance."<sup>(16)</sup> 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."<sup>(17)</sup> 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."<sup>(18)</sup> Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance."<sup>(19)</sup> An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>(20)</sup> An administrative judge should consider: (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 applicant'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 of recurrence.<sup>(21)</sup>

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.<sup>(22)</sup> 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.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.<sup>(23)</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts. Directive ¶ E3.1.15.<sup>(24)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security

clearance."<sup>(25)</sup> "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability."<sup>(26)</sup> "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."<sup>(27)</sup>

## CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR:

Under Guideline F (Financial Conditions), a security concern exists for an individual who is financially irresponsible. An individual who is financial irresponsibility may also be irresponsible, unconcerned, or careless in their obligations 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.<sup>(28)</sup> Under Guideline E (Personal Conduct), a security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, *lack of candor*, *dishonesty*, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.<sup>(29)</sup>

Applicants debts that have not been satisfied bring the matter within Financial Consideration Disqualifying Condition Directive ¶ E2.A6.1.2.2 (*a history of not meeting financial obligations*); and Directive ¶ E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*). Applicant has accumulated significant delinquent debts since 1999. She has not satisfied these debts and has taken little if any action to learn about the debts and the action required to satisfy them. I conclude the disqualifying conditions have been established.

The Financial Consideration Mitigating Conditions that should be considered for Applicant's delinquent debts are: Directive ¶ E2.A6.1.3.1 (*the behavior was not recent*); Directive ¶ E2.A6.1.3.2 (*it was an isolated incident*); Directive ¶ 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, unexplained medical emergency, or a death, divorce or separation)*); and Directive ¶ E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). All of the delinquent debts were incurred since 1999 so they are recent. While most of the delinquent debts are the result of medical bills, there are also delinquent debts for loans, furniture purchases, and telephone bills. The delinquent debts are not isolated to one series or type of debt. While most of the delinquent debts are the result of medical bills and beyond her control, Applicant is employed and can make efforts to resolve the debts. In most cases, Applicant has not made any good-faith effort to inquire on some of the delinquent debts let alone satisfy them. I conclude Applicant has not mitigated any of the disqualifying conditions and security concerns under Guideline F.

Applicant's incorrect answers to questions 36, 37, 38, and 39 of the security clearance applicant brings the matter under Directive ¶ E2.A5.1.2.3 (*deliberately providing false or misleading information concerning relevant and material matters to . . . other official representative in connection with a personal security or trustworthiness determination*). A finding of falsification requires evidence that the Applicant acted with an intent to mislead or deceive the government. The record evidence as a whole must be considered to determine whether there is direct or circumstantial evidence concerning Applicant's intent or state of mind at the time the statement was made. As to question 36 concerning the tax lien, Applicant stated she did not think she needed to note this since it has been paid. In spite of the clear language of question 36 to list all lien in the last 7 years, I conclude Applicant was confused on responding to the lien question, and there is no evidence Applicant intended to mislead or defraud the government in her response to question 36. Applicant knew she had some judgments against her and she knew she had significant delinquent debt over 180 and 90 days past due. She could not misunderstand the questions. A quick and light reading of the questions before responding would have alerted Applicant to her required response. I conclude the disqualifying condition under Guideline E has been established only as to allegations 2b, 2c, and 2d.

The Personal Conduct Mitigating Conditions that should be considered for Applicant are Directive ¶ E2.A5.1.3.2 (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*); and Directive ¶ E2.A5.1.3.3 (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*). The incorrect information was on Applicant's most recent security clearance application and Applicant only provided the correct information when questioned at the hearing by Department Counsel. She made no effort to provide correct information before being confronted with the facts. I conclude Applicant has not mitigated the disqualifying condition as to questions 37, 38, and 39.

I carefully considered all of the circumstances in light of the "whole person" concept for a fair, impartial, and commonsense decision. I conclude Applicant is not eligible for access to classified information.

### **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 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.: For Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: Against Applicant

Subparagraph 1.p.: For Applicant

Subparagraph 1.q.: Against Applicant

Subparagraph 1.r.: For Applicant

Subparagraph 1.s.: For Applicant

Subparagraph 1.t.: Against Applicant

Subparagraph 1.u.: Against Applicant

Subparagraph 1.v.: Against Applicant

Subparagraph 1.w.: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

### **DECISION**

In light of all of the circumstances presented in 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.

Thomas M. Crean

Administrative Judge

1. Tr. 25
2. Tr. 26-30.
3. Tr. 59.
4. Tr. 32, 38-39.
5. Tr. 56.
6. Tr. 35.
7. Tr. 33.
8. Tr. 38-39.
9. Tr. 40-46. Allegation p was not accepted.
10. Tr. 41-49.



11. Tr. 47.
12. Tr. 50.
13. Tr. 42.
14. Exhibit 1 (Security Clearance Application, dated October 9, 2001), and Tr. 59-63.
15. Tr. 51-56.
16. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
17. *Id.* at 527.
18. Exec. Or. 12968, *Access to Classified Information* § 3.1 (b) (Aug. 4, 1995).
19. Directive ¶ E2.2.1.
20. *Id.*
21. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
22. *See* Exec. Or. 10865 § 7.
23. Directive ¶ E3.1.14.
24. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
25. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
26. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
27. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.
28. Directive ¶ E2.A6.1.1.
29. Directive ¶ E2.A5.1.1.