

KEYWORD: Personal Conduct; Financial

DIGEST: Applicant has mitigated personal conduct concerns resulting from her fraudulent use of another person's credit account on a government computer. However, she has failed to mitigate financial concerns arising from eleven delinquent debts totaling \$13,497.00. Applicant has only corroborated her payoff of one \$48.00 debt and a \$60.00 payment on a \$229.00 obligation. Clearance is denied.

CASENO: 02-21046.h1

DATE: 04/26/2005

DATE: April 26, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-21046

**DECISION OF ADMINISTRATIVE JUDGE**

**ROGER E. WILLMETH**

**APPEARANCES**

**FOR GOVERNMENT**

Eric C. Hogan, Deputy Chief Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant has mitigated personal conduct concerns resulting from her fraudulent use of another person's credit account on a government computer. However, she has failed to mitigate financial concerns arising from eleven delinquent debts totaling \$13,497.00. Applicant has only corroborated her payoff of one \$48.00 debt and a \$60.00 payment on a \$229.00 obligation. Clearance is denied.

### STATEMENT OF THE CASE

On December 5, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive,<sup>(2)</sup> issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline E (Personal Conduct) and Guideline F (Financial Considerations). 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 her case be submitted to an Administrative Judge.

On January 14, 2004, DOHA received Applicant's answer to the SOR in which she requested a hearing. The case was assigned to me on April 7, 2004. A notice of hearing was issued on May 21, 2004, and the hearing was held on June 10, 2004. During the hearing, four Government exhibits (Govt Ex), six Applicant exhibits (Ap Ex), and the testimony of Applicant were received. Without objection by Department Counsel, I allowed Applicant until July 8, 2004 to submit proof of payments of debts. There is no evidence in the file that Applicant made a submission. The transcript (Tr) was received on June 29, 2004.

### FINDINGS OF FACT

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

Applicant is a 26-year-old senior network specialist employed by a defense contractor. She is a valued and respected employee of her company and is seeking a security clearance.

In July 1999, Applicant opened a credit account with a department store. She incurred a \$229.00 debt that she did not paid. (SOR ¶ 2.d.)

Between August 16 and 24, 2000, while a member of the United States Army, Applicant used another person's credit card to purchase merchandise of more than \$1,000.00 in value, including a camcorder and a TV/VCR. She made the purchases online using a government computer and had the merchandise sent to her address. Applicant was charged with larceny of private funds, computer fraud and mail fraud. In lieu of court-martial, she was administratively separated from the Army and received an other than honorable discharge on December 27, 2000. At the time of her discharge, Applicant had completed two years, 11 months, and 14 days of military service. (SOR ¶ 1.a.)

In July 2001, a collection account was opened against Applicant in the amount of \$1,919.00 for unpaid cable service. She testified she had reduced the amount to \$319.14 by returning equipment and had entered into a payment plan to pay \$52.00 per month. However, Applicant has not provided any documentation or other evidence to corroborate this. (SOR ¶ 2.h.)

In August 2001, Applicant opened a credit card account with a bank. She incurred a \$1,046.00 debt that she did not paid. The bank charged it off as a bad debt. (SOR ¶ 2.a.)

In August 2001, Applicant opened a second credit card account with a bank. She incurred a \$1,453.00 debt that she did not paid. The bank charged it off as a bad debt. (SOR ¶ 2.b.)

In August 2001, a collection account was opened against Applicant for an unpaid doctor's bill in the amount of \$227.00. Applicant testified she had agreed to pay off the bill by making two payments in June 2004. However, she has not provided corroboration of any payment. (SOR ¶ 2.g.)

In September 2001, a judgment was entered against Applicant in the amount of \$1,502.00 for unpaid rent of an apartment. (SOR ¶ 2.j.) In December 2001, another judgment was awarded against Applicant in the amount of \$1,265.00 for cleaning costs related to the same apartment. (SOR ¶ 2.k.)

In January 2002, a collection account was opened against Applicant in the amount of \$4,943.00. She has not paid the debt. (SOR ¶ 2.c.)

In March 2002, a collection account was opened against Applicant for an unpaid newspaper account in the amount of \$48.00. On June 9, 2004, Applicant paid the account in full. (SOR ¶ 2.f.)

In May 2002, a collection account was opened against Applicant in the amount of \$298.00 for an unpaid hospital bill. On June 1, 2004, she made a \$60.00 payment on the account. (SOR ¶ 2.e.)

In August 2002, a judgment was awarded against Applicant in the amount of \$567.00 for unpaid rent. Applicant testified she paid the judgment in cash and obtained a receipt. However, she has not provided any corroboration of the payment. (SOR ¶ 2.i.)

On July 18, 2003, the Army Discharge Review Board affirmed the basis for Applicant's discharge but changed the characterization of her service to general, under honorable conditions. The Board cited the length and quality of her military service and her post-service conduct and accomplishments. (SOR ¶ 1.a.)

## 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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information Within Industry* § 2 (February 20, 1960). 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 and mitigating conditions for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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 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. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the conditions listed in the Directive's guidelines and the applicant's security worthiness. *See* ISCR Case No. 95-0611 at 2 (May 2, 1996). (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (December 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3. 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.

## CONCLUSIONS

### 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. ¶ E2.A5.1.1. Conditions that could raise a security concern and may be disqualifying under Guideline E include ¶ E2.A5.1.2.5 (Disqualifying Condition 5). Disqualifying Condition 5 addresses *a pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency.*

The record establishes that Applicant repeatedly used another person's credit information in order to fraudulently obtain merchandise. Moreover, she did so by misusing a government computer to conduct the transactions online. This

establishes Disqualifying Condition 5.

Applicant's conduct resulted in her administrative separation from the United States Army. Aside from a minor infraction that resulted in an Article 15 punishment, it was the only blemish on Applicant's military record that spanned nearly three years. Since being discharged from the Army, Applicant has distinguished herself with her performance as an employee of a defense contractor. Due to these facts, the Army Discharge Review Board has seen fit to upgrade the characterization of Applicant's military service to a general discharge under honorable conditions. Applicant regrets her actions and it does not appear from the record that she is likely to repeat such conduct. Having mitigated her actions, I find in favor of Applicant with regard to SOR ¶ 1.

#### Guideline F: Financial Considerations

The concern under Guideline F is that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. The Directive ¶ 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 (Disqualifying Condition 1). They also include *an inability or unwillingness to satisfy debts*, ¶ E2.A6.1.2.3 (Disqualifying Condition 3).

The record establishes both Disqualifying Condition 1 and Disqualifying Condition 3. Applicant has a history of not meeting financial obligations as well as his inability or unwillingness to satisfy debts as reflected by having incurred eleven delinquent debts, totaling \$13,497.00.

Conditions that could mitigate security concerns under Guideline F include ¶ E2.A6.1.3.6 (Mitigating Condition 6). Mitigating Condition 6 is applicable when *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*.

In her testimony, Applicant admitted all of the debts addressed by SOR ¶ 2.a, 2.b, 2.c, and 2.g but has failed to demonstrate her mitigation of any of them. She testified she had worked out a payment plan to repay the debts addressed by SOR ¶ 2.a and 2.b and had made one combined payment of \$350.00. However, Applicant failed to provide corroboration of either the payment plan or the payment. Applicant acknowledged that she had not yet made any payment of the debt addressed by SOR ¶ 2.c.

Although Applicant claimed the judgments addressed by SOR ¶ 2.j and 2.k are the same debts that constitute the debt addressed by SOR ¶ 2.c, she failed to provide any corroboration for this. Moreover, her contention was inconsistent with her answer to the SOR. In that response, Applicant admitted both judgments and asserted she had paid the judgment

addressed by SOR ¶ 2.j. She offered no explanation for the inconsistency.

In her answer to the SOR, Applicant denied she was indebted for the debts addressed by SOR ¶ 2.d-2.f. In her testimony, however, she admitted all of them. Applicant provided corroboration of a payment of \$60.00 on the \$298.00 debt addressed by SOR ¶ 2.e and her \$48.00 payoff of the debt addressed by SOR ¶ 2.f. In accordance with Mitigating Condition 6, the latter is the only delinquent debt of the eleven addressed by the SOR that Applicant has mitigated.

Although Applicant claimed that she had reduced the debt addressed by SOR ¶ 2.h from \$1,919.00 to \$319.00 by returning equipment, she failed to provide any corroboration of this. She also failed to corroborate her alleged payoff of the judgment addressed by SOR ¶ 2.i. Applicant claimed she had made a \$567.00 cash payment but did not produce the receipt or other confirmation from the creditor.

Applicant testified her current income provides her with approximately \$600.00 per month after the payment of her bills. It would appear that she has the financial resources to address her delinquent debts. However, Applicant has failed to corroborate her satisfaction of any of the delinquent debts addressed by the SOR except for SOR ¶ 2.f. Therefore, I find against Applicant with regard to SOR ¶ 2.

## **FORMAL FINDINGS**

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

Paragraph 1. Guideline E: FOR APPLICANT

Subparagraph 1.a: For Applicant

Paragraph 2. Guideline F: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

Subparagraph 2.e: Against Applicant

Subparagraph 2.f: For Applicant

Subparagraph 2.g: Against Applicant

Subparagraph 2.h: Against Applicant

Subparagraph 2.i: Against Applicant

Subparagraph 2.j: Against Applicant

Subparagraph 2.k: 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. Clearance is denied.

*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.