

KEYWORD: Financial; Criminal Conduct; Personal Conduct

DIGEST: Applicant is a 34-year-old employee of a defense contractor. She has a long history of failing to meet her financial obligations and inability to pay her debts, extending from 1998 to the present. When completing her security clearance questionnaire in 2001, Applicant fraudulently concealed delinquent debts. In 2002, Applicant was convicted in state court of obtaining financial aid through false pretenses. She has not shown significant progress in resolving her delinquent debts. Applicant failed to mitigate security concerns arising from her financial difficulties, criminal conduct, or personal conduct. Clearance is denied.

CASENO: 02-23709.h1

DATE: 04/25/2005

DATE: April 25, 2005

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-23709

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 34-year-old employee of a defense contractor. She has a long history of failing to meet her financial obligations and inability to pay her debts, extending from 1998 to the present. When completing her security clearance questionnaire in 2001, Applicant fraudulently concealed delinquent debts. In 2002, Applicant was convicted in state court of obtaining financial aid through false pretenses. She has not shown significant progress in resolving her delinquent debts. Applicant failed to mitigate security concerns arising from her financial difficulties, criminal conduct, or personal conduct. Clearance is denied.

### **STATEMENT OF THE CASE**

On August 21, 2001, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On August 4, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline F, Financial Considerations, Guideline J, Criminal Conduct, and Guideline E, Personal Conduct, of the Directive.

Applicant answered the SOR in writing on August 23, 2004. Applicant elected to have a hearing before an administrative judge.

I was assigned the case on November 3, 2004. With the concurrence of the parties, I conducted the hearing on December 8, 2004. The department counsel introduced 11 exhibits. Applicant presented a document admitted as Exhibit A and testified on her own behalf. DOHA received the transcript (Tr.) on December 28, 2004.

## FINDINGS OF FACT

Applicant denied the allegations in ¶¶ 1.c, 1.d, 1.f, 3.a, and 3.b of the SOR. Answer to SOR, dated August 23, 2004, at 1-2. She admitted the remaining factual allegations in the SOR, with explanations. *Id.* Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is 34 years old. Ex.1 at 1. She works as a technician for a defense contractor. *Id.* at 2.

Applicant grew up under difficult circumstances. Her mother was single and had trouble raising her children alone. Applicant and her siblings were removed from their home at an early age. Applicant's Answer to SOR, dated August 23, 2004, at 3-4. When Applicant was still young, her mother took her children from their foster homes and fled to a neighboring state. *Id.* at 4.

Applicant became pregnant at age 16, and gave birth to a son in 1988. *Id.*; Ex.1 at 4. She had her second child in 1989 when she was 18 years old, and dropped out of high school. Answer to SOR, *supra*, at 4. Applicant lived on welfare for some time, but found it difficult to support her two children. *Id.*

Applicant became involved in petty larceny and shoplifting. *Id.*; Ex. 5 at 4. Authorities arrested her in August, 1989, and charged her with petty theft. Answer to SOR, *supra*, at 2. A court found her guilty of the offense and sentenced her to a fine. Ex. 5 at 4. Applicant was arrested for petty theft for the second time in arch, 1992. *Id.* She was convicted of that crime and sentenced to pay court fees and serve 21 days house arrest. *Id.* Applicant recalls the judge giving "fatherly" advice about the importance of getting an education and finding a new direction for her life. *Id.*

Applicant returned to high school and graduated in 1995. *Id.* In 1996, she moved to her present area and lived with her sister for a time. *Id.* She signed up for welfare to assist her in supporting her two children. Tr. at 19-20. Applicant found employment sporadically. She worked in shipping and receiving for a major corporation for several months, and later worked for a delivery service for several weeks. Tr. at 19-20. Applicant failed to inform the welfare agency of her employment, and continued accepting welfare benefits and food stamps. Tr. at 20-21.

During this time, Applicant accumulated debts she could not pay. She was unable to pay a dishonored check to a local department store (¶ 1.e, SOR), became indebted to a local drug store for a second dishonored check (¶ 1.g, SOR), and

accumulated substantial unpaid telephone bills (§§ 1.m and 1.n, SOR). She joined a fitness club and visited a few times, but was unable to pay the entire contract amount of \$963.00 (§ 1.c, SOR). Her checking account was overdrawn and Applicant was unable to pay it, resulting in a \$540.00 debt (§ 1.k). In 1998, Applicant fell behind on her rent payment. Tr. at 34. She was sued for back rent, went to court, and had a judgment entered against her for about \$1,500.00 (§ 1.0, SOR). Applicant was also evicted. Tr. at 34-35.

Applicant attended a technical institute between 1998 and 2000, and obtained an associates degree. Ex. 1 at 2. She worked for a computer company for several months in 2000. Tr. at 22. Applicant continued to receive welfare and food stamps during this time, but did not inform authorities of her employment.

In December 2000, Applicant began working for her current employer as a technician. Tr. at 25; Ex. 1 at 2. Applicant completed an SF 86, Security Clearance Application, on August 21, 2001. Ex. 1 at 1. Question 37 of that form inquired whether Applicant had any unpaid judgments within the preceding seven years. Applicant answered "No," to that question. *Id.* at 7. Applicant did not list the unpaid judgment in favor of her former landlord. Question 39 on the SF 86 asked whether Applicant was currently more than 90 days delinquent on any debts. Applicant answered that question "Yes," but listed only a single delinquent automobile loan. *Id.* Applicant did not list her other delinquent debts. *Id.* at 8.

After starting her current job, Applicant accumulated other unpaid bills. She was not able to pay credit card debts in the amount of \$599.00 and \$120.00 (§§ 1.a and 1.b, SOR). She incurred a \$108.00 debt which she could not pay for a pager service (§ 1.j, SOR). Applicant was unable to pay utility service bills, resulting in a judgment entered against her in the amount of \$1,127.10 (§ 1.p, SOR).

In July 2002, the state brought criminal charges against Applicant for fraudulently receiving welfare benefits and food stamps while she was employed. Ex. 9 at 11. The state charged her with three felony offenses: one count of obtaining financial aid through misrepresentation and two counts of perjury by false application. *Id.* In August 2002, Applicant pled guilty to a misdemeanor offense included in Charge I and the government dismissed the remaining charges. Ex. 9 at 3. Applicant was sentenced to pay \$3,713.00 in restitution and to perform 120 hours of community service. Ex. 4 at 1.

Applicant subsequently obtained her bachelor's degree in Electrical Engineering. Tr. at 11. She is currently working on a master's degree. Ex. 5 at 5.

Applicant looked into debt consolidation, but decided the service was too expensive. Tr. at 46-47. In July, 2004, Applicant contacted a local law center and initiated action to file for personal bankruptcy. Ex. A. At the time of the hearing on December 8, 2004, Applicant did not know if her counsel had filed a petition for bankruptcy. Tr. at 44. Applicant has not otherwise sought credit counseling. Tr. at 45.

## **POLICIES**

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

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.

Guideline J, Criminal Conduct. A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive, ¶ E2.A10.1.1.

Guideline E, Personal Conduct. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information. Directive, ¶ E2.A5.1.1.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"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." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider 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. *Id.*

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. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. 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 (App. Bd. Dec. 19, 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.

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 a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## CONCLUSIONS

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

### **Financial Considerations**

Paragraph E2.A6.1.2.1 of the Directive provides that it may be a disqualifying condition if the evidence reveals "[a] history of not meeting financial obligations." Similarly, ¶ E2.A6.1.2.3 indicates that an "[i]nability or unwillingness to satisfy debts" may be disqualifying. Applicant has a long history of not meeting her financial obligations. She has debts totaling over \$10,000.00 that have remained unpaid for many years. Applicant admitted all the delinquent debts listed in the SOR except those in ¶¶ 1.c, 1.d, and 1.f. Considering all the evidence, I find that all the debts listed in the SOR apply, except those at ¶¶ 1.c, 1.d, and 1.f. I find Applicant has shown both a history of failing to meet her financial obligations and an inability to satisfy her debts. I conclude both these potentially disqualifying conditions apply.

The security concerns arising from Applicant's financial difficulties can be mitigated under certain circumstances. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." Some of Applicant's delinquent debts date from 1998, thus the original indebtedness is not recent. However, a large number of the debts remain unpaid at this time. I find Applicant's inability to pay delinquent debts is recent, therefore this mitigating condition does not apply.

Paragraph E2.A6.1.3.2 of the Directive provides that it may be mitigating where the financial difficulty "was an isolated incident." Applicant's numerous delinquent debts arose over many years because of a variety of reasons. I conclude this mitigating condition does not apply.

Under ¶ E2.A6.1.3.3, it may be mitigating where, "[t]he 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)." Applicant indicated that some of her delinquent debts arose when she was unemployed or underemployed. An unexpected loss of employment may be a circumstance beyond an individual's control and could mitigate the security concerns arising from financial difficulties. However, I note her employment history was sporadic for many years, reducing to some extent the "unexpected" nature of the loss of income. Moreover, Applicant did not make a significant effort to pay these debts after she began her present employment in December 2000; to the contrary, she incurred even more delinquent debt. I am not persuaded by Applicant's evidence that this mitigating condition applies.

Proof that "[t]he person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control," may be mitigating, under ¶ E2.A6.1.3.4 of the Directive. Applicant sought some financial counseling by looking into a debt consolidation plan and contacting a legal services company for assistance in filing bankruptcy. However, there is no evidence Applicant made any payments of delinquent debts as a result of this counseling, or that she actually initiated bankruptcy proceedings. There is no evidence of a formal plan to repay or resolve her delinquent debts, therefore I cannot find that her debt problem is under control or is being resolved. I find this mitigating condition does not apply.

Finally, it may be mitigating where "[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Directive, ¶ E2.A6.1.3.6. As noted above, Applicant made no significant payment toward the delinquent debts listed in the SOR. While she contacted a legal services company to pursue bankruptcy, there is no evidence she filed the bankruptcy petition or otherwise initiated an effort to resolve the debts. I conclude this mitigating condition does not apply.

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. I conclude Applicant has not mitigated the security concerns arising from her history of failing to meet her financial obligations and her inability to pay her debts.

## **Guideline J, Criminal Conduct**

Under the Directive, it is potentially disqualifying where the evidence shows "admission of criminal conduct" (¶ E2.A10.1.2.1) or a "single serious crime or multiple lesser offenses" (¶ E2.A10.1.2.2). A court found Applicant guilty of misdemeanor offenses in 1989, 1992, and 2002. Applicant admitted engaging in petty theft and accepting welfare while employed. As discussed below, I find Applicant also falsely omitted material and relevant information about her

delinquent debts when she completed her Personnel Security Application in August 2001. I find both these potentially disqualifying conditions apply.

Under ¶ E2.A10.1.3.1 of the Directive, it may be mitigating where, "[t]he criminal behavior was not recent." Applicant's petty theft occurred in 1989 and 1992. I find the this criminal behavior was not recent therefore this potentially mitigating condition applies to those offenses. I also find that Applicant's acceptance of welfare benefits while employed and her omissions from her personnel security application were recent. Thus, this potentially mitigating condition does not apply to those crimes.

Paragraph E2.A10.1.3.2 applies where "[t]he crime was an isolated event." Applicant had two criminal convictions for petty theft. She also committed two offenses involving fraud or dishonesty. I cannot find that any of these crimes was an isolated event, therefore this potentially mitigating condition does not apply.

Under ¶ E2.A10.1.3.4 it may be mitigating where "the factors leading to the violation are not likely to recur." Similarly, under ¶ E2.A10.1.3.6 it may be mitigating where "[t]here is clear evidence of rehabilitation." Applicant made great strides in obtaining her education and turning her life around. Undoubtedly she faced enormous pressures in obtaining her education and beginning a career while raising two children. However, at critical times she made some very poor choices and provided false information for her short-term financial benefit. This tends to show that she is unusually vulnerable to financial pressures. While Applicant has gone on to complete her bachelor's degree and has held her job for several years, her financial difficulties continue. I am not persuaded that Applicant has shown clear evidence of rehabilitation. Weighing all the available evidence, I find these potentially mitigating conditions do not apply in this case.

I considered carefully all the facts and circumstances in this case in light of the "whole person" concept. I conclude Applicant's convictions for petty theft in 1989 and 1992 are mitigated. However, considering the later offenses, I conclude Applicant has not mitigated the security concerns arising from her criminal conduct.

## **Personal Conduct**

The Directive sets out various factors relevant to an applicant's personal conduct that may be potentially disqualifying. Paragraph E2.A5.1.2.1 provides that "[r]eliable, unfavorable information" tending to show questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, may indicate that the person may not properly safeguard classified information. Applicant's history of failing to meet her financial obligations tends to show questionable judgment, unreliability, and a lack of trustworthiness. I find this potentially disqualifying condition applies.



Under ¶ E2.A5.1.2.2 of the Directive, "[t]he deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire" may be disqualifying. Paragraph 3.a of the SOR alleges Applicant deliberately failed to report on her security clearance application an unpaid judgment (¶ 1.o, SOR) incurred within the preceding seven years. Applicant asserts she was aware of the 1998 lawsuit and the court order to pay money to her landlord, but did not realize it constituted a "judgment." Considering all the evidence, including her demeanor at the hearing, I find Applicant did not understand the definition of "judgment," and did not intend to deceive the government with her negative response.

Paragraph 3.b of the SOR also alleges Applicant falsified material facts on her security clearance application by listing only one debt in response to Question 39 inquiring about all debts then over 90 days delinquent. Considering the number of delinquent debts and the outstanding court order, the dates they arose, and all the circumstances in the case, I find Applicant deliberately omitted and concealed relevant and material facts by listing only one debt in response to Question 39 on her personnel security clearance questionnaire. This potentially disqualifying condition applies.

Finally, under ¶ E2.A5.1.2.5 of the Directive, evidence of "[a] pattern of dishonesty" may be disqualifying. The evidence reveals Applicant was less than candid with the state government concerning her eligibility for welfare benefits. She was also dishonest in her response to the personnel security questionnaire. I find this potentially disqualifying condition applies.

Under the Directive, the security concerns arising from questionable personal conduct may be mitigated under certain circumstances. Directive, ¶ E2.A5.1.3. Under ¶ E2.A5.1.3.1, it may be mitigating where "[t]he information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability." Applicant's admissions and the government evidence demonstrate the information about Applicant's financial difficulties and her dishonest conduct is substantiated. Also, the information was pertinent to a determination of her judgment, trustworthiness, and reliability. I find this mitigating factor does not apply.

Paragraph E2.A5.1.3.2 of the Directive arises where "the falsification was an isolated incident, was not recent, and the individual subsequently provided correct information voluntarily." The available evidence shows Applicant was less than honest on several occasions, therefore I cannot find either was an isolated incident. I conclude this potentially mitigating condition does not apply.

Under the Directive, it may be mitigating where, "[t]he individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts." Applicant admitted her debts to security investigators. However, she has not met her burden of proving that she initiated the efforts at correction, or that her efforts were prompt. I find this potentially mitigating condition does not apply. I also considered carefully the other potentially mitigating conditions and conclude they do not apply.

I considered carefully all the facts and circumstances in this case in light of the "whole person" concept. I conclude

Applicant has not mitigated the security concerns arising from her personal conduct.

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: Against 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: Against Applicant

Subparagraph 1.q: Against Applicant

Paragraph 2, Guideline J: AGAINST APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

Paragraph 3, Guideline E: AGAINST APPLICANT

Subparagraph 3.a: For Applicant

Subparagraph 3.b: Against Applicant

**DECISION**

In light of all of 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.

Michael J. Breslin  
Administrative Judge