

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a security receptionist for a defense contractor. During the last seven years she has failed to properly manage her personal finances, resulting in the repossession of an automobile and an outstanding claim for the delinquency for more than \$5,000.00, a delinquent debt to a credit card company for more than \$1,000.00, and a debt to a cable service company unpaid between February 1998 and September 2003. Applicant provided false information about her delinquent debts on her security clearance application. Applicant failed to mitigate the security concerns arising from her financial instability and her false statements on her security clearance application. Clearance is denied.

CASENO: 02-24786.h1

DATE: 08/12/2004

DATE: August 12, 2004

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-24786

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a security receptionist for a defense contractor. During the last seven years she has failed to properly manage her personal finances, resulting in the repossession of an automobile and an outstanding claim for the delinquency for more than \$5,000.00, a delinquent debt to a credit card company for more than \$1,000.00, and a debt to a cable service company unpaid between February 1998 and September 2003. Applicant provided false information about her delinquent debts on her security clearance application. Applicant failed to mitigate the security concerns arising from her financial instability and her false statements on her security clearance application. Clearance is denied.

STATEMENT OF THE CASE

Under Executive Order 10865, *Safeguarding Classified Information Within Industry*, (Feb. 20, 1960), 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 (the "Directive"), the Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On September 3, 2003, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on September 16, 2003. She elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on December 29, 2003. Department Counsel provided a complete copy of the file of relevant material (FORM) to Applicant, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on January 13, 2004, but did not provide additional materials for consideration. The case was initially assigned

to another administrative judge but was transferred to me on August 9, 2004.

FINDINGS OF FACT

Applicant admitted the allegations in paragraphs 1.a, 1.b, and 1.c of the SOR, relevant to Guideline F concerning her delinquent debts. Item 2, Applicant's Answer to SOR, dated September 16, 2003, at 1-2. Those admissions are incorporated herein as findings of fact. She did not admit the allegations in 1.d of the SOR that she has made little effort to resolve her indebtedness. *Id.*; Item 5, Statement of Subject, dated July 3, 2002, at 2. She also denied the allegations in paragraph 2.a of the SOR relevant to Guideline E that she deliberately falsified certain matters relating to her delinquent debts on her security clearance application. Item 2, *supra*, at 2. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 38 years old and works as a security receptionist for a defense contractor. Item 4, Security Clearance Application, dated April 30, 2002, at 1, 2. She completed trade school and received a diploma in 1986. *Id.* at 2.

In 1996, following a period of unemployment, she encountered financial difficulties and was unable to make payments on a revolving charge account to a national retail department store. Item 6, Credit Bureau Report, dated May 9, 2002, at 6. The outstanding debt was reduced to a judgment in December 1996. *Id.* Applicant made regular payments and satisfied the judgment. *Id.*

Applicant took out student loans for education and training. Item 5, *supra*, at 2. Applicant had difficulties making payments on her student loans. Item 6, *supra*, at 3. In about 2002, those debts were consolidated into one loan through the Department of Education. Item 5, *supra*, at 2. Applicant was scheduled to pay \$89.00 per month against this debt, but made arrangements to pay \$25.00 per month to satisfy the debt. *Id.*

Between 1995 and 1998, Applicant became indebted to a national credit card company. Item 6, *supra*, at 5. Applicant did not make full or timely payments on the debt. *Id.* The credit card company charged off about \$1,159.00 as a bad debt in about February 1998. *Id.* Applicant wants to pay some lesser amount in settlement of the debt, but the credit card company is unwilling to accept a lesser payment. Item 5, *supra*, at 2.

Applicant purchased an automobile in early 1998, and took out a loan through a financing company. Item 5, *supra*, at 1; Item 6, *supra*, at 4. After a dispute about the timeliness of the loan payments, she consented to having the vehicle

repossessed. Item 5, *supra*, at 1-2. The loan company subsequently asserted a claim for a balance in excess of \$4,000.00. *Id.* The account was later transferred for collection; additional fees and interest charges raised the claimed balance due to about \$5,556.00. Applicant feels she was not treated fairly, and had no plans to pay off this claimed debt. *Id.*

Applicant also incurred a debt to a cable service provider, but did not make full and timely payments on the debt. Item 6, *supra*, at 6. There was an unpaid balance of \$107.00 in September 1998, and that debt remained unpaid as of July 3, 2002. Item 2, *supra*, at 1. Applicant indicated the debt would be paid in full by September 2003 but provided no proof of payment. *Id.*

Applicant's average monthly income, less deductions, exceeds her normal expenses by more than \$550.00 per month. Item 5, *supra*, at 3. Applicant also incurs occasional, unusual expenses, such as dental bills and car repairs. *Id.* at 2.

On April 30, 2002, Applicant submitted an SF 86, Security Clearance Application. Item 4, *supra*, at 1. Question 38 of the SF 86 was, "Your Financial Delinquencies - 180 Days. In the last 7 years, have you been over 180 days delinquent on any debt(s)?" *Id.* at 7. Applicant answered "No" to that question. *Id.* Question 39 was, "Your Financial Delinquencies - 90 Days. Are you currently over 90 days delinquent on any debts? Applicant answered "No" to that question.

POLICIES

In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only 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 judgment, 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." 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.

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 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.

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.

Guideline F, Financial Considerations.

The Government's documentary matters and Applicant's admissions constitute substantial evidence of two disqualifying conditions under Guideline F of the Directive, specifically ¶ E2.A6.1.2.1, a history of not meeting financial obligations, and ¶ E2.A6.1.2.3, inability or unwillingness to satisfy debts. For several years Applicant failed to meet her financial obligations to an automobile financing company, a credit card company, and a cable service company. As of July 3, 2002, she was unwilling to pay the debt to the automobile financing company, and was unwilling or unable to pay the total amount due to the credit card company. These circumstances raise security concerns.

Certain conditions might mitigate these security concerns, such as if the behavior was not recent (¶ E2.A6.1.3.1), it was an isolated incident (¶ E2.A6.1.3.2), the conditions that caused the problems were largely beyond the person's control (¶ E2.A6.1.3.3), the person received counseling and there are indications the problems are under control (¶ E2.A6.1.3.4), or the person initiated a good-faith effort to resolve the debt (¶ E2.A6.1.3.6). In this case, however, the mitigating circumstances do not apply. These debts are recent-indeed, they continue to be unresolved. These were not isolated incidents; rather they show a pattern of difficulty managing her personal finances. Moreover, there is no evidence the problems with these debts were caused by circumstances beyond Applicant's control, or that she received counseling and can now manage her finances. Finally, Applicant has not made a good-faith effort to resolve these debts. She has made some payments, but considering the amounts paid and the delay in payment, these do not appear to be good-faith efforts. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her history of financial difficulties.

Guideline E, Personal Conduct.

Under the Directive, Guideline E, ¶ E2.A5.1.2.2, it is a potentially disqualifying condition if an applicant deliberately omits, conceals, or falsifies relevant and material facts from a personnel security questionnaire or similar form used to determine security clearance eligibility. On April 30, 2002, in answer to question 38 on her security clearance application, Applicant indicated she had not been more than 180 days delinquent on a debt within the last seven years. In answer to question 39 on the same application, she stated she was not then more than 90 days delinquent on any debts. These answers were not accurate; in fact, Applicant had delinquent debts that were several years old at that time.

Applicant indicated that she did not deliberately give false information on the security clearance application. However, considering all the circumstances, including the amount of the debts, the duration of her financial difficulties, and the referral of some debts for collection, Applicant's response is unpersuasive. I conclude Applicant deliberately omitted, concealed, or falsified relevant and material facts on her security clearance application.

I considered carefully any potentially mitigating conditions. See Directive, ¶ E2.A5.1.3. However, I conclude that these mitigating circumstances do not apply in this case. The information was pertinent to a determination of her judgment, trustworthiness, or reliability (¶ E2.A5.1.3.1), the falsification was recent (¶ E2.A5.1.3.2), Applicant did not correct the falsification before being confronted (¶ E2.A5.1.3.3), and she has not taken positive steps to reduce or eliminate her vulnerability to coercion, exploitation, or duress (¶ E2.A5.1.3.5).

For these reasons I conclude Applicant is not eligible for access to classified information.

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: Against Applicant

Subparagraph 1.d: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: 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