

KEYWORD: Financial; Criminal Conduct

DIGEST: Applicant has a history of delinquent debts and writing worthless checks, some of which were clearly written after she knew her account was closed. Applicant failed to mitigate the financial and criminal conduct security concerns. Clearance is denied.

CASE NO: 02-25003.h1

DATE: 04/26/2004

DATE: April 26, 2004

In re:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-25003

**DECISION OF ADMINISTRATIVE JUDGE
JAMES A. YOUNG**

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esq., Department Counsel

FOR APPLICANT*Pro Se***SYNOPSIS**

Applicant has a history of delinquent debts and writing worthless checks, some of which were clearly written after she knew her account was closed. Applicant failed to mitigate the financial and criminal conduct security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 12 September 2003, DOHA issued a Statement of Reasons (SOR) ⁽¹⁾ detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 26 November 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 5 March 2004. On 16 March 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. ⁽²⁾ DOHA received the hearing transcript (Tr.) on 25 March 2004.

FINDINGS OF FACT

Applicant is a 33-year-old electronics technician for a defense contractor. In 1990, at the age of 19, she married. She and her first husband had three children, now ages 13, 11, and 9. She separated from her husband in November 1998 and divorced him in June 2000. She married again in March 2002. Tr. 24-25; Ex. 1 at 1, 2, 5-6. Her second husband incurred an \$8,000 debt as a result of emergency medical treatment and has not had steady employment.

Applicant's financial difficulties began in 1996 when she and her first husband started to experience marital problems and they separated temporarily on more than one occasion. Tr. 51. Before the final separation, Applicant did not work outside the home. After the separation, Applicant's husband paid for rent for Applicant and the children, but apparently did not pay child support. Applicant fell behind in her bills and wrote many worthless checks. Even after her checking account was closed, Applicant continued, from July 2000 to June 2001, to write checks on it. Answer, attachments.

Applicant has paid many of these delinquent debts. However, in December 2003 and February 2004, her monthly income was not sufficient to meet her expenditures. In January 2004, it took a \$3,900 income tax refund for her to cover her expenses. In March 2004, her projected expenditures exceed her net income (including the court-ordered child support that had not as yet been paid) by almost \$2,000.

Between April 1997 and June 2001, Applicant was arrested, had warrants issued for her arrest, or had misdemeanor complaints issued on at least seven occasions. Applicant has resolved all of these checks offenses through the court system.

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 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 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." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process 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, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at

2 (App. Bd. May 2, 1996).

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 (App. Bd. Dec. 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.

CONCLUSIONS

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant had 50 delinquent debts, several of which were incurred when she wrote checks with insufficient funds in her account to pay them. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established by substantial evidence and Applicant's admissions each of the 50 delinquent debts listed in the SOR. Applicant has a history of not meeting her financial obligations (DC E2.A6.1.2.1.) and has been unable or unwilling to satisfy these debts (DC E2.A6.1.2.3.). One of the most disturbing aspects of this case is that Applicant wrote at least 12 checks between July 2000 and June 2001 on an account that had been closed. Answer. This amounts to check fraud. DC E2.A6.1.2.2.

Many of these debts were caused by circumstances beyond Applicant's control (MC E2.A6.1.3.3.)-her divorce, the failure of her ex-husband to make his child support payments, and the unexpected medical expenses incurred by her second husband. In March 2002, she claimed she would have all her debts paid by June 2002. Ex. 2 at 7. Applicant established she paid many of these debts, including the fraudulent checks, and established payment plans for some of the others. This is some evidence of a good-faith effort to resolve her financial problems. MC E2.A6.1.3.6. But even in months in which Applicant's ex-husband pays the child support, Applicant's expenses exceed her income unless her husband is working. Applicant will not be able to extricate herself from her financial difficulties until her husband gets steady employment.

After carefully reviewing in toto the evidence, as well as the applicable disqualifying and mitigating conditions, and without viewing each debt in isolation, I find against Applicant on all subparagraphs, except ¶¶ 1.cc. and 1.ww.-

Applicant is contesting both of these debts. Applicant failed to demonstrate she has resolved her financial problems.

Guideline J-Criminal Conduct

In the SOR, DOHA alleged Applicant was arrested for, and convicted of, theft (§ 2.a.) and warrants or complaints were issued against her because she issued worthless checks (§§ 2.b.-2.f.). A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive § E2.A10.1.1.

The Government established by substantial evidence and Applicant's admissions each of the criminal offenses alleged in SOR § 2. These multiple lesser offenses are a disqualifying condition under Guideline J. DC E2.A10.1.2.2. The only listed mitigating condition that might apply is the criminal behavior was not recent. MC E2.A10.1.3.1. However, in light of Applicant's continued financial problems and the relatively short period of time between her past criminal conduct and the hearing, I am unwilling to apply it. I find against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraphs 1.a.-1.bb.: Against Applicant

Subparagraph 1.cc.: For Applicant

Subparagraph 1.dd.-1.vv.: Against Applicant

Subparagraph 1.wv.: For Applicant

Subparagraph 1.xx.: Against Applicant

Paragraph 2. Guideline J: 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.: 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.

James A. Young

Administrative Judge

1. Pursuant to Exec. Or. 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.
2. Although the formal notice of hearing was dated 5 March 2004, Applicant had notice of the hearing as early as 27 February 2004, agreed to the hearing date, and stated at the hearing that she was prepared. Tr. 8-9.