

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has a history of incurred delinquent debts between 1998 and 2002, two of which resulted in unsatisfied judgments. They exceed \$49,000.00. Her delinquent debts have not been addressed despite expressed commitments to do so with her available resources. Applicant intentionally omitted her delinquent debts when executing her security clearance application in 2001. Her concealment of her delinquent debts is not mitigated by any showing of a prompt, good faith correction under any of the pertinent mitigation guidelines and raises continuing security concerns about Applicant's judgment and reliability. Clearance is denied.

CASENO: 02-26403.h1

DATE: 04/29/2005

DATE: April 29, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-26403

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of incurred delinquent debts between 1998 and 2002, two of which resulted in unsatisfied judgments. They exceed \$49,000.00. Her delinquent debts have not been addressed despite expressed commitments to do so with her available resources. Applicant intentionally omitted her delinquent debts when executing her security clearance application in 2001. Her concealment of her delinquent debts is not mitigated by any showing of a prompt, good faith correction under any of the pertinent mitigation guidelines and raises continuing security concerns about Applicant's judgment and reliability. Clearance is denied.

STATEMENT OF CASE

On July 8, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on July 30, 2004, and requested a hearing. The case was assigned to me on November 5, 2004, and was scheduled for hearing on January 18, 2005. A hearing was convened on January 18, 2005, for the purpose of considering whether it is clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of eight exhibits; Applicant relied on one witness (herself) and one exhibit. The transcript (R.T.) of the proceedings was received on January 26, 2005.

PROCEDURAL ISSUES

Before the close of the hearing, Applicant requested leave to keep the record open to afford her the opportunity to supplement the record with documented payment arrangements concerning her student loans. There being no objection from Department Counsel, and good cause being demonstrated, Applicant was granted seven days to supplement the record. The Government, in turn, was afforded two days to respond. Applicant failed to supplement the record within the time permitted.

SUMMARY OF PLEADINGS.

Under Guideline F, Applicant is alleged to have incurred delinquent debts exceeding \$49,000.00, two of which were taken to judgment. Under Guideline E, Applicant is alleged to have falsified her security clearance application (SF-86) of August 2001 by omitting (a) a state tax lien of \$309.67 for tax year 1992 and a federal tax lien filed in July 1997, (b) judgments by a health provider and apartment complex and (c) debts delinquent over 90 days.

FINDINGS OF FACT

Applicant is a 42-year-old technical writer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant accumulated a number of debts between 1998 and 2000 while she was in a troubled marriage. Besides debts to assorted creditors she accrued student loans totaling \$32,977.00, or thereabouts. Before her divorce in 2002, she received little support from her husband and fell behind in her debts. Without marital support, she was not able to pay her student loans and other debts and became delinquent in these accounts. For lack of payment, her student loans were placed in collection. A number of her other debts were also referred to collection: six in all totaling more than \$17,000.00. Two of her creditors in this latter group sought and obtained judgments against her: one in January 2004 by a health provider for \$12,821.00 and another in August 1998 by an apartment landlord for \$1,426.00.

When interviewed by DSS agent A in July 2002, she assured she would contact her creditors with whom she had delinquent debts and try to negotiate payment plans with them. With her cited \$625.00 net monthly remainder at the time, she assured Agent A she had the ability to pay off all of her delinquent accounts (*see ex. 2*). This she has failed to do. While she has contacted a couple of her creditors since receiving her SOR, she has not made any payments to any of her listed creditors. Claiming past discussions with her lawyers about pursuing federal bankruptcy protection, she has failed to date to take any action towards petitioning for bankruptcy relief and manifests no credible intention to do so in the foreseeable future.

Asked to complete an SF-86 in August 2001, Applicant omitted both her state and federal tax liens covering tax year 1992. She claims no prior knowledge of either tax lien at the time she executed her SF-86. Absent documentation of notice to Applicant of recorded tax liens by each jurisdiction, her claims of lack of knowledge are accepted.

In the same SF-86, Applicant omitted recorded judgments against her by creditors 1.c and 1.d. While she admitted the underlying debts, she denies any knowledge of entered judgments against her when she executed her SF-86. Her claims have merit. The creditor 1.c judgment entered in October 2000 is not accompanied by any recorded service on Applicant and cannot be presumed to have been served on her at her then place of residence (*see ex. 4*). While the judgment of creditor 1.d shows posting of the judgment on Applicant's door, the judgment itself was not entered until January 2004, over two years after Applicant executed her SF-86. Favorable inferences warrant on the allegations pertaining to her omitting the two judgments entered against her when answering question 37 of her SF-86.

So, too, Applicant omitted her delinquent debts over 90 days delinquent when she answered question 39 of her August 2001 SF-86. Applicant attributes these omissions to her lack of knowledge at the time of any of her debts being over 90 days delinquent. Most of her listed debts were not placed in collection until after August 2001. Of the five listed debts that were referred for collection before August 2001, two of them (creditors 1.a and 1.e) are quite small and are reconcilable with memory lapse. The remaining three, which she acknowledges (creditors 1.b through 1.d), are much larger and cannot be squared with her hearing claims of uncertainty. These three creditors total over \$34,000.00 in the aggregate and were reduced to judgments in two of the three cases. Applicant cannot avert inferences that her omissions of these three debts were knowing and wilful.

In her July 2002 interview with Agent A, Applicant acknowledged her listed debts when shown her credit report revealing her debts. Under the circumstances, Applicant's corrections cannot be considered either prompt or voluntary.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating

Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

The Concern: An individual who is financially overextended is at risk at having to engage in illegal acts to generate funds. Unexplained influence is often linked to proceeds from financially profitable criminal acts.

Personal Conduct

The Concern: 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.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain

or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a

security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant has an apparently satisfactory civilian work record. However, she has accumulated considerable delinquent debt in recent years that she hasn't addressed, in addition to security significant omissions in her SF-86 concerning her delinquent debts. Both her checkered debt history and determined intentional omissions of her delinquent debts serve to impair the confidence in her judgment, reliability and trustworthiness required to continue her eligibility to access classified information.

Financial concerns

Applicant accrued considerable delinquent debt between 1998 and 2002 during an unraveling marriage that ultimately resulted in divorce. Even after her finances permitted modest repayment attempts, she failed to initiate any meaningful repayment efforts. Applicant's listed delinquent debts (10 in all) include two entered judgments and outstanding delinquent debts exceeding \$49,000.00, which for the most part have either been charged off or reduced to judgment with no manifest intention to address or follow up on within the past three years.

Based on Applicant's considerable accumulation of delinquent debt, two of the Disqualifying Conditions (DC) of the Adjudicative Guidelines for Guideline F apply: E2.A6.1.2.1 (*A history of not meeting financial obligations*) and E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*). While her accrued debts are accompanied by some extenuating circumstances (*viz.*, lack of marital support and ensuing divorce), for the most part (since at least 2002) her finances have permitted modest attempts to pay her old creditors with the resources available to her.

Applicant's debts, while extenuated some by her lack of marital support, have never been tangibly addressed with the resources available to her after her debts matured. Significant delinquent debts attributable to an applicant that is not mitigated by good-faith resolution when resources become available raise implicit security risks over the potential for needed funds and recurrent judgment lapses. The government does not have to wait until an individual mishandles or fails to safeguard classified information before it can make an unfavorable security clearance decision. *Cf. Adams v. Laird*, 420 F.2d 230, 238-39 (DC Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970).

In Applicant's case, the circumstances surrounding her marriage and ensuing divorce are sufficient to enable her to invoke E2.A.6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)*). However, with the resources that became available to her following her divorce she made no manifest effort to address her debts, either individually or through a consolidated payment plan. Consequently, she is not in a position to invoke the mitigation benefits of E2.A6.1.3.6 (*The individual initiated good-faith efforts to repay overdue creditors or otherwise resolve debts*) of the Adjudicative Guidelines.

Taking into account all of the circumstances surrounding Applicant's accumulated debts, the absence of sufficient attention she has shown with her debts in the past, and her repeated failures to repay any of her judgments and delinquent debts, Applicant failed to mitigate the Government's security concerns at this time. Unfavorable conclusions warrant, accordingly, with respect to subparagraphs 1.a through 1.k of the allegations governed by the Adjudicative Guidelines pertinent to Guideline F.

Falsification issues

Potentially serious and difficult to reconcile with the trust and reliability requirements for holding a security clearance are the timing and circumstances of Applicant's delinquent debt omissions in her August 2001 SF-86. So much trust is imposed on persons cleared to see classified information that little tolerance is afforded for incidents of trust betrayal (as here).

Applicant's omissions of her debts over 90 days delinquent were knowing, deliberate, and material to a determination about his clearance suitability. They invite application of a Disqualifying Condition (DC) for personal conduct of the Adjudicative Guidelines: E2.A5.1.2.2 (*The deliberate omission, concealment, falsification or misrepresentation of relevant and material facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*).

Mitigation is difficult to credit Applicant with, since she failed to make any prompt, good faith attempts to correct her omissions before she was confronted with her credit report almost a year later. Not only has the Appeal Board found the

use of Mitigating Condition (MC) E2.A5.1.3.2 of the Adjudicative Guidelines for personal conduct (isolated, corrected falsification) to be unavailable to applicants seeking mitigation by treating the omission as isolated, but it has denied applicants availability of E2.A5.1.3.3 (prompt, good faith disclosure) as well in circumstances (as here) where the applicant has failed to take advantage of an earlier DSS interview opportunity. *Compare* ISCR Case No. 97-0289 (January 1998) with DISCR Case No. 93-1390 (January 1995).

Applicant in the present case is on record with failing to come forward to correct her debt omissions until she was shown her credit report in her DSS interview almost a year later (*i.e.*, in July 2002). The Appeal Board has been quite clear for a number of years now that an applicant cannot be credited with a prompt, good faith correction where he or she has waited many months before electing to come forward with corrections in a scheduled DSS interview. *See* DISCR Case No. 93-1390 (January 1995). Applicant, accordingly, may not take advantage of either E2.A5.1.3.2 (isolated omissions) or E2.A5.1.3.3 (prompt, good faith correction of the falsification) of the Adjudicative Guidelines for personal conduct.

Considering all of the evidence produced in this record and the available guidelines in the Directive (inclusive of the E2.2.1 factors), unfavorable conclusions warrant with respect to subparagraph 2.c of Guideline E. By contrast, Favorable conclusions warrant with respect to subparagraphs 2.a and 2.b because of Applicant's ability to successfully refute allegations of falsification regarding her tax liens and judgments.

In reaching my decision, I have considered the evidence as a whole, including each of the E 2.2.1 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE E (FINANCIAL): AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: AGAINST APPLICANT

Sub-para. 1.g: AGAINST APPLICANT

Sub-para. 1.h: AGAINST APPLICANT

Sub-para. 1.i: AGAINST APPLICANT

Sub-para. 1.j: AGAINST APPLICANT

Sub-para. 1.k: AGAINST APPLICANT

GUIDELINE J (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-para. 2.a: FOR APPLICANT

Sub-para. 2.b: FOR APPLICANT

Sub-para. 2.c: AGAINST APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley

Administrative Judge