

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is 47 years old, and works for a defense contractor. She was the president of a drywall contracting business that failed. Applicant filed bankruptcy on her debts, and was discharged from them. She failed to disclose on her security clearance application two liens filed by the Internal Revenue Service for unpaid payroll taxes totaling over \$62,000. She also failed to disclose these debts were over 90 and 180 days delinquent, as were other debts from the business which were discharged in bankruptcy. She failed to mitigate the financial considerations and personal conduct security concerns. Clearance is denied.

CASE NO: 02-26646.h1

DATE: 05/10/2004

DATE: May 10, 2004

In re:

SSN: -----

Applicant for Security Clearance

)
)
)
)
)
)
)
)
)

ISCR Case No. 02-26646

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT*Pro Se***SYNOPSIS**

Applicant is 47 years old, and works for a defense contractor. She was the president of a drywall contracting business that failed. Applicant filed bankruptcy on her debts, and was discharged from them. She failed to disclose on her security clearance application two liens filed by the Internal Revenue Service for unpaid payroll taxes totaling over \$62,000. She also failed to disclose these debts were over 90 and 180 days delinquent, as were other debts from the business which were discharged in bankruptcy. She failed to mitigate the financial considerations and personal conduct security concerns. Clearance is denied.

STATEMENT OF THE CASE

On September 29, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

Applicant submitted a signed statement dated October 12, 2003, and notarized. She admitted the allegations contained in Paragraphs 1 and 2 of the SOR. She requested his case be decided on the written record in lieu of a hearing.

On January 21, 2004, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file a response to the FORM within the scheduled due date of March 4, 2004. The case was assigned to me on March 22, 2004.

FINDINGS OF FACT

Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 47 years old. Applicant is married and has two children. She is currently employed with a defense contractor. (Item 4 at 1 to 3)

Applicant and her husband had a wallboard business. It failed, and as president of the company she was responsible for handling the business debts. She filed bankruptcy in March 2002 and was discharged of \$242,570.05 in debt from the business on June 24, 2002. The strain of the failing business put pressure on her marriage and she separated from her husband. They have reunited. (Items 3, 5, 7, and 8)

The Internal Revenue Service (IRS) placed two liens on Applicant's real estate, her family home, in February and March 2001, to recover unpaid payroll taxes owed by Applicant from her failed business. Applicant attempted to sell her home to pay the debts, but the IRS would not consent and release its liens. The sale ceased and never closed. Applicant was trying, as of October 2003, to apply for an offer in compromise on those debts for unpaid business payroll taxes. The total delinquent debt owed to the IRS is \$62,758. The IRS is the presumed lienor, although Applicant's statement refers to her home state taxing authorities as holding the liens and being the party with whom she is seeking a compromise. (Item 3; Item 6 at 7)

Applicant answered "No" to Questions 36(Liens filed against the Applicant in the past seven years), Question 38 (delinquent debts more than 180 days in the past seven years), and Question 39 (delinquent debts of more than 90 days duration at any time). Applicant says she did not know about the liens until she attempted to sell the house in July 2002. Applicant completed her security clearance application (SCA) on April 9, 2002. Applicant's interrogatories state she had an agreement with the IRS to allow the house to be sold and the liens satisfied, but the IRS backed out of the deal at the last moment, and the sale was not consummated. (Item 3 at 2; Item 4 at 7 and 8; Item 7 at 2)

Applicant sought an Order from the bankruptcy court to allow her home to be sold free of the judgment liens placed on the property by two creditors. The liens were to attach to the proceeds of the sale in their order of priority. There was one unnamed objection to that Order, which was entered on February 20, 2003 by the Bankruptcy Court which had jurisdiction over Applicant's bankruptcy case.

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 judgement, 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* Section 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of:

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation;
- (3) how recent and frequent the behavior was;
- (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 (See Directive, Section E2.2.1. of Enclosure 2).

Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. 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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. See Exec . Or. 12968 Section 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Guideline F - Financial Considerations:

The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive, ¶ E2.A6.1.1.

Applicable conditions that could raise a security concern and may be disqualifying include:

(1) A history of not meeting financial obligations. Directive, ¶ E2.A6.1. 2.1.

(3) Inability or unwillingness to satisfy debts. Directive, ¶ E2.A6.1.2.3.

Applicable conditions that could mitigate security concerns include:

None

Guideline E - 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. Directive, ¶ E2.A5.1.1.

Conditions that could raise a security concern and may be disqualifying also include:

(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; Directive, ¶ E2.A5.1.2.2.

(C) Conditions that could mitigate security concerns include:

None

CONCLUSIONS

I conclude that under Guideline F (Financial Considerations) the Government proved its case. Therefore, the Disqualifying Conditions (DC) 1 (*a history of not meeting financial obligations*) and DC 2 (*an inability or unwillingness to satisfy debts*) apply. Applicant's delinquent financial debts are sizable and were when she completed the SCA. She filed bankruptcy the month prior to the completion of the SCA, and revealed that action in answer to Question 33 on her SCA.

There are no Mitigating Conditions (MC) applicable here to the IRS liens. The filing of bankruptcy, a remedy allowed under Federal law and the U.S. Constitution, is a legitimate method of resolving debts. A compromise of tax debt is also, but Applicant has had since at least July 2002 when she made her statement to an investigator to resolve the lien issue. Therefore, I find against Applicant on this guideline.

Regarding Guideline E (Personal Conduct), I conclude the Government proved its case. The SOR alleges Applicant falsified material facts on the SCA, Question 38 (delinquencies over 180 days) and Question 39 (delinquencies over 90 days) by answering "no" to both questions. DC 2 (*the deliberate, omission, concealment, or falsification of relevant and material facts from any personal security questionnaire or similar form used to determine security clearance eligibility or trustworthiness*) applies to this case.

I conclude there are no MC which apply to these facts. Applicant, who was the president of the business which owed the payroll taxes, had to know they were unpaid and the IRS would seek payment. She also would have received notice in 2001 of the liens being filed so that she could arrange payment and have the liens satisfied, thereby removing them from her credit record and her property. She also knew the payroll tax debts were more than 90 days delinquent. Therefore, I find against Applicant under this guideline.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F: Against Applicant

Subparagraph 1.a.: For 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

Subparagraph 2.b.: Against Applicant

DECISION

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

Philip S. Howe

Administrative Judge