

DATE: December 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-26706

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is an administrative assistant for a defense contractor. She submitted a security clearance application stating that in the last seven years she had no judgments against her and no debts past due over 180 days. A credit bureau report revealed seven significant long standing debts to include three civil judgments and three debts past due over 180 days. Applicant admitted most of the debt and admitted she did not provide the correct information on the security clearance application. Clearance is denied.

STATEMENT OF THE CASE

On June 9, 2004, The Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb 20, 1990), 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 (Directive). Applicant acknowledged receipt of the SOR on June 15, 2004. The SOR alleges security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on June 24, 2004. She admitted most of the allegations under Guideline F but did not provide an answer in response to the allegations under Guideline E. She provided an additional answer on August 2, 2004 admitting to the two allegations under Guideline E. 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 October 5, 2004. Applicant received a complete file of relevant material (FORM) on October 18, 2004 and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. She mailed material in response to the FORM on November 13, 2004. The material was received by DOHA on November 15, 2004. The case was assigned to me on November 19, 2004.

FINDINGS OF FACT

Applicant is a 58-year-old administrative assistant for a defense contractor. As part of her employment, she submitted a security clearance application. In response to question 37 on the application requesting information on any judgements against her in the last 7 years that have not been paid, she responded "NO." In response to question 38 requesting information if she had been over 180 days delinquent on any debt in the last 7 years, she listed only a lien for condominium fees.

A credit bureau report received as part of the security investigation showed Applicant has seven outstanding debts for a total of \$17,566. It also shows she had three civil judgments against her in the last seven years and three debts over 180 days past due in the last seven years. Applicant admitted to six of the debts and is actively contesting an \$842 debt, listed as debt 1g. She presented documentary proof she paid an acknowledged debts of \$3, 596, listed as debt 1b. This still left her owing \$13,128 on five accounts. These five accounts were also listed as delinquent on her latest credit bureau report of May 25, 2004. Applicant recently started making payments on three of the accounts and is still trying to learn more about the other two accounts.

Applicant's financial difficulties started in 1990 when she was laid off from her job. She had other difficulties over the years that affected payment of debts. Most of her debts were incurred in the mid-1990s and are long standing. Applicant's normal living expenses and the payment of some debts leaves her approximately \$50 per month in discretionary spending funds. For part of the time the debts were incurred, Applicant was a single mother with a son and did not receive child support. Her son is no longer in the household but is serving in the Air Force. She also had to provide care for her sick mother and sister for about five years, leaving her unable to hold a job.

Applicant admitted she failed to list the three civil judgments in response to question 37 on the security clearance application. She admitted she failed to list two of her debts past due over 180 days in response to question 38. In her May 29, 2003 response to DOHA Interrogatories (FORM, Item 9), Applicant said her "NO" response to question 37 was unintentional. She stated her failure to list all of the debts over 180 days was because she misunderstood question 38. She thought since the debts had resulted in court ordered liens on her personal property, they were no longer classified as delinquent debts. She did not disclose the proper information until questioned by special agents of the Defense Security Service.

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

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6

"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: (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

applicant'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 of recurrence. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

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, 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. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determination should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

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

Under Guideline F (Financial Considerations), a security concern exists for an individual who is financially irresponsible. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. Directive ¶ E2.A6.1.1. Under Guideline E (Personal Conduct), a security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, *lack of candor*, *dishonesty*, or unwillingness to comply with rules or regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

Applicant's financial situation and her debts brings the matter within Financial Consideration Disqualifying Condition Directive ¶ E2.A6.1.2.2. (*a history of not meeting financial obligations*), and Directive ¶ E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*). Applicant has accumulated significant debt over an extended period of time. Her action in paying off one of the long term debts and civil judgment is commendable. While she is making some attempt to now resolve the remaining debts, these attempts occurred only in the last few months. The extent of her debts and her monthly expenses, together with her limited income, leaves her unable to resolve the debts satisfactorily. I conclude the disqualifying conditions have been established.

The Financial Consideration Mitigating Conditions that may be applicable to Applicant's financial situation are: Directive ¶ E2.A6.1.3.1. (*the behavior was not recent*); Directive ¶ E2.A6.1.3.2. (*it was an isolated incident*); Directive ¶ E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, business downturn, unexpected medical emergency, or a death, divorce or separation)*); and Directive E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant's debts are long standing and not isolated. While she cared for her sick mother and sister and she was a single parent for part of the period of indebtedness, these conditions did not prevent her from resolving her financial problems. While she is making an effort now to pay overdue creditors and resolve debts, the actions are very recent and not significant. I conclude Applicant has not met her burden to mitigate the disqualifying conditions.

Applicant's failure to list the judgments not paid and all debts delinquent over 180 days in response to questions 37 and 38 on the security clearance application brings the matter under Personal Conduct Disqualifying Conditions Directive ¶ E2.A5.1.2.2. (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel*

security questionnaire). Applicant admitted she did not provide the correct answers to the questions. The questions are clear and unambiguous. Applicant's reasons for not providing the correct information are she inadvertently answered "No" to question 37 and misunderstood question 38. Her explanation is insufficient to overcome a determination that her false answers were knowing and deliberate. I conclude the disqualifying condition has been established.

The Personal Conduct Mitigating Conditions that may apply to Applicant are Directive ¶¶ E2.A5.1.3.3. (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*); and Directive ¶ E2.A5.1.3.4 (*omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided*). Applicant did not make a good-faith effort to correct the facts until confronted. She did not ask or seek advise on answering the questions and omitted the information on her own. I conclude Applicant has not mitigated the disqualifying conditions under Guideline E.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: For Applicant

Paragraph 2, Guideline E AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.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.

Thomas M. Crean

Administrative Judge