

KEYWORD: Financial; Criminal Conduct; Personal Conduct

DIGEST: Applicant is a single, 41-year-old employee of a federal contractor, employed as a desktop publisher II. She had delinquent debts. She completed a financial counseling course, has all but one delinquent debt paid, and has adequate income to pay debts with a sizable surplus each month. Financial considerations were mitigated. She embezzled money from an employer, made restitution, and completed probation. She gave a false answer on her security clearance application. Criminal conduct and personal conduct security concerns were not mitigated. Clearance is denied.

CASENO: 03-20014.h1

DATE: 05/31/2006

DATE: May 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-20014

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

David M. Ward, Esq.

SYNOPSIS

Applicant is a single, 41-year-old employee of a federal contractor, employed as a desktop publisher II. She had delinquent debts. She completed a financial counseling course, has all but one delinquent debt paid, and has adequate income to pay debts with a sizable surplus each month. Financial considerations were mitigated. She embezzled money from an employer, made restitution, and completed probation. She gave a false answer on her security clearance application. Criminal conduct and personal conduct security concerns were not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On January 18, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant pursuant to 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. The SOR alleged reasons under Guidelines F (financial considerations), J (criminal conduct), and 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 Applicant's security clearance.

In a written statement dated February 10, 2005, Applicant responded to the allegations in the SOR and requested a hearing. The case was previously assigned to another administrative judge on July 18, 2005, but was reassigned to me on September 23, 2005, due to caseload considerations. Notice of the hearing was issued September 30, 2005, scheduling the hearing for October 27, 2005. The hearing was held as scheduled. The transcript (Tr.) was received November 9, 2005. The transcript (Tr.) was received November 9, 2005. At the hearing, the government offered twelve

exhibits, Applicant submitted six exhibits, the government called one witness, the Applicant called two witnesses, and Applicant testified in her own behalf.

FINDINGS OF FACT

Applicant admitted the allegations in SOR subparagraphs 1.a. through 1.f., 2.b., and part of 3.b. Those admissions are incorporated herein as findings of fact. She denied the remaining allegations. I make the following additional findings of fact:

Applicant is a single, 41-year-old employee of a federal contractor, employed as a desktop publisher II. ⁽¹⁾ She served in the U. S. Air Force from 1984 to 1987, receiving an honorable discharge. ⁽²⁾ She has one daughter from a previous marriage. ⁽³⁾ In 1998, she was injured in an automobile accident and due to injuries was unemployed for a year. She lived on public assistance for rent and utilities, received AFDC, and was given help from friends and family. ⁽⁴⁾

Applicant owed the following delinquent debts listed in the SOR.

SOR ¶	DEBTOR	AMOUNT	CURRENT STATUS
1.a.	Automobile	\$11,000.00	Paying; \$6,000.00 balance ⁽⁵⁾
1.b.	Hospital	\$100.00	Paid ⁽⁶⁾
1.c.	Doctor	\$154.00	Paid ⁽⁷⁾
1.e.	Embezzlement	\$7,281.00	Restitution Paid ⁽⁸⁾
1.f.	Employer office loans	\$1,345.00	Paid ⁽⁹⁾

In July 1993, she filed a Chapter 7 bankruptcy petition, being discharged in December 1993. ⁽¹⁰⁾

On March 3, 1997, her landlord filed a criminal complaint against her for theft of services (failure to transfer utility to her name). ⁽¹¹⁾ She paid these amounts on March 4 and 26, 1997, to the property manager. She was arrested in May 1997, and at arraignment, the charges were dismissed as restitution was paid. ⁽¹²⁾ She denied the SOR allegation in subparagraph 2.a. because the case was dismissed. She had no knowledge that the landlord had filed a complaint, and

the landlord did not know she had paid the property manager. Therefore, there was doubt in her mind that a crime had been committed. [\(13\)](#)

She was employed by an accounting firm from October 1999 until November 2000, when she was laid off. She drew unemployment for three weeks until re-employed. She bought office equipment from her employer, which she paid off in 2005. [\(14\)](#)

From May through September 2002, she worked a second job as a bookkeeper for a real estate title company. [\(15\)](#) While working there, she was in another vehicle accident. She was off work a month. [\(16\)](#) She embezzled \$7,281.00 while employed there. [\(17\)](#) Subsequent to her discharge, she made restitution arrangements with her former employer. [\(18\)](#) In February 2003, final restitution was made from proceeds of the insurance settlement from her 2002 accident. [\(19\)](#) Although given assurances by her former employer that no criminal charges would be filed if she made restitution, she was arrested in May 2003, and charged with nine felony counts. She pled guilty to a reduced misdemeanor count, paid fines and costs of \$520.50, ordered to serve 180 days in jail which was suspended, she was given credit for six days in jail, and placed on two years unsupervised probation. [\(20\)](#) She successfully completed probation on July 29, 2005. [\(21\)](#)

From March 28, 2003, until July 1, 2004, she successfully completed a budget, credit, and home ownership education program with Resources Education Assistance for Community Housing (REACH), a non-profit organization to assist individuals in becoming financially self-sufficient. [\(22\)](#)

In response to Standard Form 86 (SF 86), dated February 21, 2002, **QUESTION 20. YOUR EMPLOYMENT RECORD** "Has any of the following happened to you **in the last 10 years?** If 'Yes,' begin with the most recent occurrence and go backward, providing the date fired, quit, or left, and other information requested. Use the following codes and explain the reason your employment was ended: 1 - Fired from a job 2 - Quit a job after being told you'd be fired 3 - Left a job by mutual agreement following allegations of misconduct 4 - Left a job by mutual agreement following allegations of unsatisfactory performance 5 - Left a job for other reasons under unfavorable circumstances," she answered "No." [\(23\)](#) She was terminated for tardiness, inability and unwillingness to work according to instructions, and personal use of company time and assets. [\(24\)](#)

A personal financial statement prepared by Applicant in October 2005, showed sufficient income to pay outstanding debts, with about 60% of her net income left for living expenses. [\(25\)](#)

POLICIES

"[No] one has a 'right' to a security clearance."⁽²⁶⁾ 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."⁽²⁷⁾ 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 coercion, and willingness and ability to abide by regulations governing use, handling, and protection of classified information."⁽²⁸⁾ Eligibility for a security clearance may be adjudicated using the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel 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 factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.

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.⁽²⁹⁾ 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.⁽³⁰⁾

Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.⁽³¹⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽³²⁾ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁽³³⁾ Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, not actual, risk of compromise of classified information.

Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism.

Having considered the evidence as a whole, I find the following guidelines most pertinent to an evaluation of the facts of this case:

Guideline F: *An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts;*

Guideline J: *A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness; and*

Guideline E: *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.*

CONCLUSIONS

Financial Considerations. The government has established its case under Guideline F. Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. arises where there is *(A history of not meeting financial obligations.)* Similarly, FC DC E2.A6.1.2.3. applies where the information shows an *(Inability or unwillingness to satisfy debts.)* The available information demonstrates Applicant has a history of not meeting her financial obligations. She has been delinquent in payments on numerous accounts. I conclude that FC DC E2.A6.1.2.1. and FC DC E2.A6.1.2.3. apply.

The Directive sets out Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.3. *(The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment or a death or divorce).* Loss of employment with periods of physical therapy following two automobile accidents and becoming a single parent after a divorce account for part of her financial problems. FC MC E2.A6.1.3.3. applies

FC MC E2.A6.1.3.4. *(The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control)* may apply. FC MC E2.A6.1.3.6. also may apply where *(The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve bad debts).* She

completed a financial counseling course. She learned a great deal from the sessions and she is getting her finances under control. All but one of the delinquent debts are paid, and the other is nearly one-half paid. She has made a good-faith effort to bring her fiscal affairs in order. Her financial statement indicates a substantial (nearly 60%) surplus each month after paying her debts. FC MC E2.A6.1.3.4. and FC MC E2.A6.1.3.6. apply.

Applicant has made significant and permanent behavioral changes regarding her finances, and I believe she will have these problems under control in the future. Balancing all the information, I conclude Guideline F for Applicant.

Criminal Conduct The government has established its case under Guideline J. Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1. (*Allegations or admissions of criminal conduct, regardless of whether the person was formally charged*) applies. Applicant failed to transfer her utility account from the landlord to her name, thus causing him to file charges. She meantime paid restitution amounts to the property manager. The case was dismissed. Criminal Conduct Mitigating Conditions (CC MC) E2.A6.1.3.1. *The criminal behavior was not recent*, and CC MC E2.A6.1.3.2. *The crime was an isolated incident* are applicable.

The more serious charge is the embezzlement of monies from her employer. She made restitution before the arrest warrant was served on her. Dishonesty in the workplace will disqualify a person from receiving a security clearance unless there are strong mitigating factors overriding the untrustworthiness of the person. The only mitigating factor that might apply here is that found in CC MC E2.A6.1.3.1. (*The criminal behavior was not recent*). The crime occurred in 2002, she entered her guilty plea in 2003, and was released from probation about three months prior to the hearing. I find the conduct is recent and that CC MC E2.A6.1.3.1. does not apply. I find no other mitigating conditions that apply. I conclude Guideline J against Applicant.

Personal Conduct. The government has established its case under Guideline E. Personal Conduct Disqualifying Conditions (PC DC) include PC DC E2.A5.1.2.2. (*the deliberate omission, concealment, or falsification of relevant 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*) and PC DC E2.A5.1.2.5. (*A pattern of dishonesty*) both apply.

The government questions Applicant's trustworthiness because of her criminal activity and false answer on her SF 86. Applicant was not forthright about her conduct, in particular not providing a truthful answer to question 20 on the SF 86, involving her termination from employment. Even though her employer did not contest her unemployment benefits, the response to her application set forth the reasons for her termination. She was discharged for poor performance which is a material fact in determining suitability for a security clearance.

Mitigation is difficult since she failed to make any attempt to correct her omission within the first six months of her executing her SF-86, and before the information came out at the hearing (over three years later). Not only has the

Appeal Board found the use of Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.2. of the Adjudicative Guidelines (*isolated, corrected falsification*) to be unavailable to applicants seeking mitigation by treating the omission as isolated, but it has denied applicants availability of PC MC E2.A5.1.3.3. (*prompt, good faith disclosure*) as well in circumstances (as here) where the applicant has failed to correct her omission much earlier in a good-faith way. *Compare* ISCR Case No. 97-0289 (January 1998) with DISCR Case No. 93-1390 (January 1995). The Government must be able to repose a high degree of trust and confidence in persons granted access to classified information, and Applicant by her omission does not satisfy those high standards at this time. *See Snapp v. United States*, 444 U.S. 507, 511n.6 (1980).

Even more problematic is Applicant's embezzlement. Employers expect honesty from their employees, and it is a critical factor in determining suitability for a security clearance. In the face of the totality of the evidence, her mitigation of financial considerations, her favorable character evidence, and recent employment contributions are not enough to absorb security concerns extant with the Government over her failure to be truthful in answering her security clearance application and by her dishonesty in the workplace. PC DC E2.A5.1.2.5. (*A pattern of dishonesty*) applies. PC MC E2.A5.1.3.3. and PC MC E2.A5.1.3.2. do not apply. I conclude Guideline E against Applicant.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that although Applicant has made considerable efforts to change her habits regarding finances and I believe that this type conduct is not likely to occur in the future, it has not been sufficiently successful to justify granting a clearance because of the issues of dishonesty. This record raises reasonable and persistent doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Clearance is denied.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a. For Applicant

Subparagraph 1.b. For Applicant

Subparagraph 1.c. For Applicant

Subparagraph 1.d. For Applicant

Subparagraph 1.e. For Applicant

Subparagraph 1.f. For Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph 2.a. For Applicant

Subparagraph 2.b. Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a. Against Applicant

Subparagraph 3.b. 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.

Christopher Graham

Administrative Judge

1. Tr. at 57, 70.
2. Tr. at 58-59.
3. Tr. at 61.
4. Tr. at 65.
5. Tr. at 80.
6. Applicant's Exhibit C (Credit Report, dated October 11, 2005) at 7-8.
7. *Id.*
8. Tr. at 74-75.
9. Applicant's Exhibit C, *supra*, at 1-29.
10. Tr. at 22.
11. Government Exhibit 6 (Court Records on or about March 3, 1997) at 1-5.
12. *Id.*
13. Tr. at 113.
14. Tr. at 67-68.
15. Tr. at 73, 126.
16. Tr. at 73-74.
17. *Id.*
18. Tr. at 74.
19. Tr. at 74-75.
20. Government Exhibit 2 (Applicant's Statement, dated April 13, 2004) at 5.
21. Applicant's Exhibit D (Court Order, *Verification of Completion of Conditionally Discharged Time*, dated June 29, 2005); Tr. at 78-79.
22. Applicant's Exhibit E (Letter from REACH, dated October 11, 2005).
23. Government Exhibit 1 (SF 86, *Security Clearance Application*, dated February 21, 2002) at 6.
24. Government Exhibit 7 (Applicant's Claim for Unemployment Benefits, dated November 2000) at 2.
25. Applicant's Exhibit A (Income and Expense Listing with Debt Ratio, October 2005) at 1-2.
26. *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).
27. *Id.* at 527.

28. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).

29. *Egan, supra*, at 531.

30. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

31. See ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

32. *Id.*, at 3.

33. See *Egan*; Directive ¶ E2.2.2.