

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant owes 13 debts totaling approximately \$11,200, which have not been paid. Applicant admits falsifying two questions on her Security Clearance Application, Standard Form (SF) 86, related to financial delinquencies. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from her unpaid debts and the falsification of her SF 86. Clearance is denied.

CASENO: 03-21281.h1

DATE: 05/27/2005

DATE: May 27, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-21281

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes 13 debts totaling approximately \$11,200, which have not been paid. Applicant admits falsifying two questions on her Security Clearance Application, Standard Form (SF) 86, related to financial delinquencies. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from her unpaid debts and the falsification of her SF 86. Clearance is denied.

STATEMENT OF THE CASE

On July 27, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding ⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On September 15, 2004, Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing.

On January 24, 2005, the Applicant received a complete copy of the government's file of relevant material (FORM) dated January 12, 2005. Applicant was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. On February 23, 2005, Applicant's response to the FORM was due. No response has been received. On March 17, 2005, I was assigned the case.

FINDINGS OF FACT

The SOR alleges security significant Financial Considerations and Personal Conduct. The Applicant admits to the following: she admits all but three of the debts listed in the SOR and admits falsifying her SF 86. Those admissions are incorporated herein as findings of fact. After thorough review of the whole record, I make the following additional findings of fact:

The Applicant is 43 years old, has worked as a customer service representative for a defense contractor since July 2000, and is seeking to obtain a security clearance.

Applicant admitted owing 13 of the 16 debts listed in the SOR, which total \$11,232. She denies owing three debts (Items 1.g, 1.m, and 1.p), which total \$2,617. A summary of those debts follows:

	Creditor	Amount	Current Status
a	Consumer debt	\$1,505	Unpaid. In August 2004, Applicant said she would call to arrange monthly payments.
b	Telephone	\$387	Unpaid. In August 2004, Applicant said will pay off during 2004.
c	Hospital bill	\$50	Unpaid. In August 2004, Applicant said would "pay this right away."
d	Cell Phone	\$1,816	Unpaid. In August 2004 said she would call to arrange monthly payments.
e	Broadband computer connection	\$109	Unpaid. In August 2004, Applicant said she would pay this soon.
f	Uncertain may be emergency room charge	\$166	Unpaid. Uncertain about this debt. In August 2004, Applicant said she would call creditor to get it paid in 2004.
g	Uncertain debt	\$237	Disputes. As of August 2004, Applicant did not know what this was.
h	Telephone	\$344	Unpaid. In August 2004, Applicant said she would call to arrange a payment plan.
i	Credit Card	\$1,447	Unpaid. In August 2004, Applicant said she would call to arrange a payment plan.
j	Department store credit card	\$681	Unpaid. In August 2004, Applicant said she would call to arrange a payment plan.
k	Credit Card	\$496	Unpaid. In August 2004, Applicant said she would call to arrange a payment plan.
l	Gas credit card	\$245	Unpaid. In August 2004, Applicant said she would call to arrange a payment plan.
m	Uncertain debt	\$1,539	Unpaid. Disputed
n	Debt	\$418	Unpaid. Uncertain about this debt. In August 2004, Applicant said she would contact the creditor.
o	Hospital bill	\$3,577	Unpaid. In August 2004, Applicant said she would call to arrange a payment plan.
p	Apartment debt	\$841	Deny
	Total debt listed in SOR	\$13,849	

Applicant's financial problems started with her April 1995 divorce. Following her divorce, she established a new household. She had to get a vehicle and furnish her home. Previously, these types of purchases had been paid using both her and her husband's income, now she had only her income. In July 2003, Applicant was interviewed by a Defense Security Service (DSS) special agent. (Item 5) At that time, she did not recognize three of the debts listed on her credit report. Item 1.f and two other creditors, debts not listed in the SOR. In response to the SOR, Applicant no longer denies she owes the debt listed in item 1.f. Applicant stated she would pay off all of her delinquent accounts when money became available.

In February 2001, Applicant completed a Security Clearance Application, Standard Form (SF) 86. Applicant answered "No" in response to Question 38. Applicant failed to indicate she had ever been more than 180 days delinquent on any debt. She also answered "No" in response to Question 39, which asked her if she was currently more than 90 days delinquent on any debt. In her answer to the SOR, Applicant admits she falsified these questions, but did not explain why she did so.

As of January 2004, Applicant had \$3,627.45 in her company's savings and investment plan.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an applicant's lack of security worthiness.

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. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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." Executive Order 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.

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 which 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. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing her security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue her security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F (Financial Considerations). A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. Under Guideline F, an Applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive E.2.A.6.1.1.

The Applicant admits owing 13 debts totaling approximately \$11,000. Disqualifying Conditions (DC) 1. (E2.A6.1.2.1. *A history of not meeting financial obligations*) and DC 3. (E2.A6.1.2.3. *Inability or unwillingness to satisfy debts*) apply.

Applicant disputed three of the debts: item 1.g (\$237), item 1.m (\$1,539), and an alleged apartment debt, item 1.p (\$841). The file fails to establish Applicant owes these three debts. I find for her as to 1.g, 1.m, and 1.p.

None of the Mitigating Conditions (MC) apply in the Applicant's favor to these 13 debts. MC 1 (E2.A6.1.2.1. *The*

behavior was not recent) does not apply because the conduct is recent since the debts remain unpaid. MC 2 (E2.A6.1.2.2. *It was an isolated incident*) does not apply because there are 13 debts. There was no showing the debts were caused by factors beyond Applicant's control. Applicant mentioned her financial problems started with her 1995 divorce, but that was 10 years ago and she has failed to show the impact of that event on her current ability to pay her debts, some of which are less than \$100. There has been no showing Applicant has received financial counseling nor is there any indication her financial difficulties are under control.

For MC 6 (E2.A6.1.2.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good faith effort to repay. A systematic, concrete method of handling her debts is needed, which is not present here. In July 2003, Applicant stated she "hoped" to pay her delinquent accounts as money became available. In September 2004, she stated she would contact her creditors to either pay the debts or establish a repayment plan. She has produced no documentation she has followed through on her promises. Because she has failed to document payment of her debts, I find against Applicant on the 13 debts and as to financial considerations.

The Government has satisfied its initial burden of proof under guideline E, (Personal Conduct). Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's actions, providing false information to multiple questions on her February 2001 SF 86, poses a serious potential risk to the nation's security precautions.

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance or in other official matters is a security concern.

In February 2001, when Applicant completed an SF 86 she answered "No" to question 38, which asked if, during the prior seven years, she had ever been more than 180 delinquent on any debt. She also answered "No" to question 39, which asked her if she was currently more than 90 days delinquent on any debt. Applicant admits falsifying her answers to these two questions, but provides no explanation as to why she did so.

None of the mitigating conditions apply to her false answers. Her financial delinquencies were pertinent to a determination of judgment, trustworthiness, or reliability. The falsifications were not an isolated incident because she gave false answers to two different questions. There is no showing the Applicant made a prompt, good-faith effort to correct the falsification before being confronted with the facts. There is no indication her omissions were caused by improper or inadequate advice from authorized personnel or based on advice from legal counsel. Because of the serious nature of her falsifications, I find against the Applicant as to Personal Conduct, SOR subparagraph 2.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Financial Considerations: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: Against the Applicant

Subparagraph 1.l.: Against the Applicant

Subparagraph 1.m.: For the Applicant

Subparagraph 1.n.: Against the Applicant

Subparagraph 1.o.: Against the Applicant

Subparagraph 1.p.: For the Applicant

Paragraph 2 Personal Conduct: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the 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 a security clearance for the Applicant. Clearance is denied.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.