

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Twenty-six year old Applicant has a history not meeting her financial obligations totaling about \$21,713 and writing bad checks. There are at least three outstanding warrants for her arrest for nonpayment of the charges related to three bad checks. Court costs related to each charge were imposed as well as fines. Applicant attributes her financial predicament to being unemployed as well as living beyond her means when she was employed. She has no intention to pay off a number of the debts, because she believes the debts will drop off her credit report in the next couple of years. Although she has defaulted on payment of a number of her debts, she vacationed in Mexico on at least nine occasions while her debts went unpaid. Clearly, her priority is not to get her finances in order. Clearance is denied.

CASENO: 03-222044.h1

DATE: 12/31/2005

DATE: December 31, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-22044

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Twenty-six year old Applicant has a history not meeting her financial obligations totaling about \$21,713 and writing bad checks. There are at least three outstanding warrants for her arrest for nonpayment of the charges related to three bad checks. Court costs related to each charge were imposed as well as fines. Applicant attributes her financial predicament to being unemployed as well as living beyond her means when she was employed. She has no intention to pay off a number of the debts, because she believes the debts will drop off her credit report in the next couple of years. Although she has defaulted on payment of a number of her debts, she vacationed in Mexico on at least nine occasions while her debts went unpaid. Clearly, her priority is not to get her finances in order. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), 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 (the Directive). On December 9, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: financial considerations under Guideline F, personal conduct under Guideline E, and criminal conduct under Guideline J. Applicant answered the SOR on December 21, 2004 and requested a decision without a hearing.

Department Counsel submitted the government's written case on March 24, 2005. Department Counsel provided a complete copy of the file of relevant material (FORM) to Applicant, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the allegations. Applicant received the FORM on March 3, 2005. She responded to the FORM on March 19, 2005. The case was assigned to me on April 7, 2005.

FINDINGS OF FACT

Applicant admitted the allegations in ¶¶ 1.b, 1.d., 1.f, 1.h, 1.j-1.r, 1.t-1.gg, 2.b, and 3.a of the SOR. Applicant denied the

allegations in ¶¶ 1.a, 1.c, 1.g, 1.i, 1.s, and 2.a of the SOR.⁽¹⁾ Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the record evidence as a whole, I find it sufficient to establish some of the conduct alleged in the SOR. I make the following additional findings of fact:

Applicant is a single, 26-year-old employee of a federal contractor.⁽²⁾ Currently, she works as an administrative assistant and has been in that position since October 2002. From 1997 to 2002, she worked for numerous other employers in various clerical or administrative positions.⁽³⁾

There are two annual employee performance records for the years 2003 and 2004. Her current employer has no complaints with her work habits. Not only is she a valued member of the team (2003 review), she is also an excellent worker (2004 review).

Applicant has been financially overextended since approximately early 1998, and as a consequence has demonstrated a history of not meeting her financial obligations. There are at least 33 different debts incurred by Applicant over the course of several years totaling approximately \$21,713 as set forth in ¶¶ 1.a-1.gg of the SOR. She denies ¶¶ 1.a, 1.c, 1.e, 1.g, 1.i, and 1.s.⁽⁴⁾ For all the debts she denies, she claims either no knowledge of their source or in the case of 1.e, that the debt has been satisfied.⁽⁵⁾ She attributed her financial predicament to "loss of employment and living beyond my means when I did have a job."⁽⁶⁾ She was unemployed from approximately June 2001 to November 2001.⁽⁷⁾

In recounting her adverse credit information, she stated:

When I was 17 years old, I obtained my first credit card, which was to "a jewelry store." I purchased a watch for my boyfriend and some jewelry for myself. I probably spent \$700.00 to \$800.00, with interest in [sic] late fees it now reflects that I owe \$1121.00. I realize that I purchased these items when I was young and I must be honest, I do not plan on pay [sic] this debt. I feel that it will drop off my credit report in the next two years.⁽⁸⁾

Applicant was charged with writing bad checks on several occasions for merchandise she purchased. Between April 1997 and March 2002, she wrote seven bad checks.

In four instances, after the bad check was issued, a warrant was issued for her arrest. After she paid a fine and/or made restitution, the charge was recalled.⁽⁹⁾

In three instances, after issuing bad checks, she was fined and assessed court costs. As of December 9, 2004, the date of the SOR, warrants for her arrest were issued in three cases and those warrants are still active and outstanding.⁽¹⁰⁾

In another incident involving issuing a bad check in June 2002, she stated: "[d]ue to several bad checks I have written, I can no longer obtain a checking account and I am working on correcting this matter."⁽¹¹⁾

Applicant deliberately falsified the SF 86 by responding incompletely to question 26 "your Police Record - Other Offenses." Applicant answered "Yes" to the question; however, she then failed to disclose the criminal charges (writing bad checks) she faced as set forth in ¶¶ 1.aa-1.dd and 1.gg of the SOR. In her Answer, she stated that she did not deliberately conceal any information regarding her police record because at the time she completed the SF 86 she did not know that she had to list charges that she believed were "dropped" once she made full restitution.

Applicant accessed private personnel records of other employees from her supervisor's computer, without permission, while working for a previous employer. She misused the computer and accessed employees' counseling records approximately 10 times during a six-month period.⁽¹²⁾ Her actions led to her dismissal from this employment. Applicant admits this allegation in her Answer without further explanation.

Applicant likes to travel and appears to have money to travel as well. In 1999, she visited Mexico three times for "pleasure."⁽¹³⁾ In 2000, she visited Mexico four times for "pleasure."⁽¹⁴⁾ She also visited Mexico once in 2001 and once in 2002, again for "pleasure."⁽¹⁵⁾

POLICIES

Each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically, these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation, and (6) the probability that the circumstances or conduct will continue or recur in the future.⁽¹⁶⁾ Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽¹⁷⁾ The government has the burden of proving controverted facts.⁽¹⁸⁾ The burden of proof in a security clearance case is less than a preponderance of the evidence.⁽¹⁹⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.⁽²⁰⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽²¹⁾

No one has a right to a security clearance⁽²²⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²³⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²⁴⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽²⁵⁾ 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.

Based upon consideration of all the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline F - Financial Considerations: a security concern exists when a person has significant delinquent debts. 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 E - Personal Conduct: a security concern exists when 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

Guideline J - Criminal Conduct: a security concern exists when there is a history or pattern of criminal activities that creates doubt about a person's judgment, reliability, and trustworthiness.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR. I will address each guideline separately.

Financial Considerations

I carefully considered all the facts in evidence and the legal standards. Applicant's admissions and the government's documentary matters constitute substantial evidence of two potentially disqualifying conditions under Guideline F of the Directive. Based on all the evidence as a whole, Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1 (*a history of not meeting financial obligations*) and FC DC E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*), apply in this case.

I carefully considered any circumstances that could mitigate security concerns. I find in favor of Applicant on those allegations in ¶¶ 1.a, 1.c, 1.e, 1.g, and 1.i. With the exception of ¶ 1.e, she indicated she had no knowledge of their source. Regarding ¶ 1.e, she indicated this bill was paid on May 21, 2003 and submitted documentation as evidence. The government did not refute her challenges.

It is potentially mitigating if the behavior that caused financial problems was not recent.⁽²⁶⁾ Although some of Applicant's difficulties arose many years ago, many continue until the present time. It is potentially mitigating if the conditions that caused the financial problems were largely beyond a person's control. Some of Applicant's financial problems were exacerbated by her unemployment. Nonetheless, the substantial evidence demonstrates Applicant mismanaged her finances before her unemployment. It is also mitigating if an individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.⁽²⁷⁾ Applicant declared she is trying to pay off her debts but there is no substantial evidence indicating that this is in fact occurring. I conclude Applicant has not mitigated the security concerns arising from her financial difficulties.

Personal Conduct

Based on the record evidence as a whole, the government established its case under Guideline E. Applicant deliberately falsified the SF 86 by responding incompletely to question 26 "your Police Record - Other Offenses." Applicant answered "Yes" to the question; however, she then failed to disclose the criminal charges (writing bad checks) she faced as set forth in ¶¶ 1.aa-1.dd and 1.gg of the SOR. In her Answer, she stated regarding these charges that she did not deliberately conceal any information regarding her police record because at the time she completed the SF 86 she did not know that she had to list charges that she believed were "dropped" once she made full restitution. I am persuaded her answer is truthful. She does admit to the allegations in set forth in ¶¶ 1.aa-1.dd and 1.gg of the SOR. The allegations in ¶¶ 1.aa-1.cc and 1.ee were dismissed after she made restitution. However, there are still three cases (¶¶ 1.dd, 1.ff, and 1.gg) in which there are outstanding warrants for her arrest. So, when she completed the SF 86, she only put down information relating to ¶ 1.ff, since a warrant was still active and outstanding. However, I am puzzled as to why she did not also relay the information in ¶ 1.gg, in which she wrote a bad check on June 26, 2001, whereas in ¶ 1.ff, the check was written on June 23, 2001. Her inconsistencies undermine and undercut her credibility but I conclude that it is plausible she misunderstood the intent of the question.

The second allegation under Guideline E relates to Applicant's abuse of trust and lack of judgment when she accessed

private personnel records of other employees, without permission, while working for a previous employer. Her employment was terminated because of this indiscretion which occurred approximately 10 times over a 6-month period.

Based on Applicant's deliberately false answer about her writing bad checks and termination of her employment because of misuse of a computer to access employee counseling records, Personal Conduct Disqualifying Condition (PC DC) ¶ E2.A5.1.2.2 of the Directive applies against Applicant: *[t]he deliberate omission, concealment, or falsification 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 responsibility.* I have reviewed the mitigating conditions under Guideline E and conclude none apply. [\(28\)](#)

Criminal Conduct

The government has established its case under Guideline J. Applicant's admissions constitute substantial evidence of a disqualifying condition under Guideline J of the Directive, specifically, ¶ E2.A10.1.2.1. This history of criminal activity creates doubt about Applicant's judgment, reliability, and trustworthiness. Applicant has a history of writing bad checks and there are warrants outstanding for her arrest for writing bad checks. Her most recent criminal conduct in writing bad checks was in 2002, so it can be credibly argued that there are no recent offenses and that ¶ E2.A10.1.3.1. applies here. However, I believe that there is not clear evidence of successful rehabilitation and more time needs to elapse before Applicant can show whether she has really changed her way and will not write bad checks in the future.

I considered all the evidence in this case. I also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am persuaded by the totality of the evidence in this case that Applicant has not mitigated the security concerns caused by her financial considerations, personal conduct, and criminal conduct. These offenses were not isolated incidents, [\(29\)](#) the offenses were not coerced or involuntary, [\(30\)](#) and there is no clear evidence of successful rehabilitation. [\(31\)](#)

For these reasons, 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, Financial Considerations (Guideline F): AGAINST APPLICANT

Subparagraph 1.a For Applicant

Subparagraph 1.b Against Applicant

Subparagraph 1.c For Applicant

Subparagraph 1.d Against Applicant

Subparagraph 1.e For Applicant

Subparagraph 1.f Against Applicant

Subparagraph 1.g For Applicant

Subparagraph 1.h Against Applicant

Subparagraph 1.i For Applicant

Subparagraph 1.j Against Applicant

Subparagraph 1.k Against Applicant

Subparagraph 1.l Against Applicant

Subparagraph 1.m Against Applicant

Subparagraph 1.n Against Applicant

Subparagraph 1.o Against Applicant

Subparagraph 1.p Against Applicant

Subparagraph 1.q Against Applicant

Subparagraph 1.r Against Applicant

Subparagraph 1.s Against Applicant

Subparagraph 1.t Against Applicant

Subparagraph 1.u Against Applicant

Subparagraph 1.v Against Applicant

Subparagraph 1.w Against Applicant

Subparagraph 1.x Against Applicant

Subparagraph 1.y Against Applicant

Subparagraph 1.z Against Applicant

Subparagraph 1.aa For Applicant

Subparagraph 1.bb For Applicant

Subparagraph 1.cc For Applicant

Subparagraph 1.dd Against Applicant

Subparagraph 1.ee For Applicant

Subparagraph 1.ff Against Applicant

Subparagraph 1.gg Against Applicant

Paragraph 2, Personal Conduct (Guideline E): AGAINST APPLICANT

Subparagraph 2.a Against Applicant

Subparagraph 2.b Against Applicant

Paragraph 3, Criminal Conduct (Guideline J): AGAINST APPLICANT

Subparagraph 3.a 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.

Jacqueline T. Williams

Administrative Judge

1. Ex. 3, Applicant's Answer, dated December 23, 2004.
2. Ex. 4, Security Clearance Application (SF 86), dated March 31, 2003, at 5.
3. *Id.* at 5-7.
4. *See* Ex. 3, *supra* note 1, at 7.
5. Ex. 3, *supra* note 1, at 7.
6. *Id.* at 1.
7. Ex. 4, *supra* note 2, at 5.
8. Ex. 5, Sworn Statement of Applicant, dated September 8, 2003, at 1-2.
9. Ex. 3, *supra* note 1, at 5.
10. *Id.*
11. Ex. 5, *supra* note 8, at 9.
12. Ex. 4, *supra* note 2, at 10-11.
13. *Id.* at 9-10.
14. *Id.*
15. *Id.*
16. Directive, ¶ E2.2.1.
17. ISCR Case No. 96-0277 (July 11, 1997) at 2.
18. ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
19. *Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988).

20. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
21. ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
22. *Egan*, 484 U.S. at 531.
23. *Id.*
24. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
25. Executive Order 10865 § 7.
26. Directive, ¶ E2.A6.1.3.1.
27. Directive, ¶ E2.A6.1.3.6.
28. Directive, ¶ E2.A10.1.1.1.
29. Directive, ¶ E2.A10.1.3.2.
30. Directive, ¶¶ E2.A10.1.3, E2.A10.1.3.4.
31. Directive, ¶ E2.A10.1.3.6.