

KEYWORD: Financial

DIGEST: Applicant has been employed by a defense contractor for more than 15 years. She has delinquent credit card debts incurred in the early 1990s. She has not paid most of her overdue bills even though her present debts are current. Applicant relied on the running of the statute of limitation in her state to be in a position that her creditors cannot sue her for the debts. Applicant has failed to mitigate the security concerns based on her indebtedness. Clearance is denied.

CASENO: 03-22588.h1

DATE: 07/28/2005

DATE: July 28, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-22588

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has been employed by a defense contractor for more than 15 years. She has delinquent credit card debts incurred in the early 1990s. She has not paid most of her overdue bills even though her present debts are current. Applicant relied on the running of the statute of limitation in her state to be in a position that her creditors cannot sue her for the debts. Applicant has failed to mitigate the security concerns based on her indebtedness. Clearance is denied.

STATEMENT OF THE CASE

On December 3, 2004, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on December 10, 2004. The SOR alleges security concerns under Guideline F (Financial Considerations) of the Directive.

Applicant answered the SOR in writing by an undated letter. She admitted seven of the allegations disputing only the amount of the debt in five of the allegations, and denied two of the allegations. 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 April 22, 2005. Applicant received a complete file of relevant material (FORM) on May 4, 2005, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. She submitted information in response to the FORM in an undated letter, and Department Counsel on June 14, 2005, had no objection to consideration of these matters. The case was assigned to me on June 15, 2005.

FINDINGS OF FACT

Applicant is a 47-year-old unmarried college graduate who has worked for a defense contractor for more than 15 years. She does not have a security clearance and submitted a security clearance application listing delinquent debts.⁽¹⁾ A subsequent investigation, including examination of credit bureau reports, revealed delinquent debts and a SOR was issued for nine allegations under Guideline F for delinquent debts totaling more than \$45,000.

Allegation 1.a. in the SOR is a delinquent credit card debt for \$ 11, 975.00. Applicant admits this debt, but disputes the amount with no explanation for her dispute.⁽²⁾ The debt is not listed on the most recent credit report since it is past the statute of limitations for listing this debt.⁽³⁾ Applicant lists the debt as \$10,230.00 on her monthly income and expense statement.⁽⁴⁾ Since this is the last listed amount, I find the debt to be \$10, 230.00.

Allegation 1.b. in the SOR is a delinquent credit card debt for \$15,101.00. Applicant admits the debt, but disputes the amount with no explanation for her dispute.⁽⁵⁾ The amount of the debt noted by Applicant on her monthly expense statement is \$14,420.00.⁽⁶⁾ The latest credit report lists the debt as \$15,101.00.⁽⁷⁾ I find the amount of the debt is \$15,101.00, as listed on the latest credit bureau report.

Allegation 1.c. in the SOR is a delinquent credit card debt charged off and placed in collection for \$11,622.00. Applicant admits the debt, but disputes the amount of the debt with no explanation for the dispute.⁽⁸⁾ The amount of the debt listed by Applicant is \$9,451.00 as noted in her monthly financial statement.⁽⁹⁾ The latest credit bureau report lists the debt as \$12,125.00. I find the debt is \$12,125.00 as listed on Applicant's latest credit bureau report.⁽¹⁰⁾

Applicant believes she does not have to pay the above three debts. The debts have exceeded the statute of limitation in her state for collection of the debts. Since she cannot be sued by the creditors, Applicant stated will not pay these debts.⁽¹¹⁾

Allegation 1.d. in the SOR is a delinquent debt for \$831.00 placed in collection. Applicant states she does not owe this debt, but offers no explanation. This debt is listed on Applicant's latest credit bureau report as \$512.00, and is not satisfied. ⁽¹²⁾ I find the debt to be valid for \$512.00.

Allegation 1.e. in the SOR is for \$1,268.00 in collection for a telephone bill. Applicant admits she owes the debt, but disputes the amount with no explanation. ⁽¹³⁾ The debt is listed as \$1,268.00 on Applicant's monthly financial statement. ⁽¹⁴⁾ I find the debt to be valid for \$1,268.00.

Allegation 1.f. in the SOR is a credit card debt in collection for \$4,265.00. Applicant admits to this delinquent debt, but disputes the amount of the debt with no explanation. ⁽¹⁵⁾ The same amount for this debt is listed by Applicant on her monthly financial statement. ⁽¹⁶⁾ The debt is listed on Applicant's latest credit bureau report as \$3,350.00. ⁽¹⁷⁾ I find the debt to be valid and for \$3,350.00.

Allegation 1.g. is a delinquent debt for \$47.00 on a gas company credit card. Allegation 1.h. is a delinquent debt for \$100.00 to a department store. Applicant admits both of these debts, but states she is making arrangements to pay them. ⁽¹⁸⁾ Applicant presented no evidence the debts have been satisfied except for a statement that a small gas company credit card has been paid. ⁽¹⁹⁾ Since Applicant has presented no information to substantiate these debts have been satisfied, I find they are still outstanding unsatisfied delinquent debts.

Allegation 1.i. in the SOR is a charged off delinquent department store debt for \$148.00. Applicant disputes this debt and refuses to pay it. Applicant states she paid the debt to the department store on time and this amount is for a late fee. Since she feels her payment was timely, she refuses to pay the bill. ⁽²⁰⁾ The bill is listed on her latest credit bureau report. ⁽²¹⁾ This is a valid debt since it is on her latest credit report and Applicant presented no information that the bill was paid on time and the late fee wrongly incurred.

Applicant worked with a credit consolidation agency to resolve her credit problems. She was able to resolve some, but not all of her debt problems through them. Applicant's mortgage and automobile bills are current and her only credit card debt is current. Rather than pay past due debts, Applicant feels her money is better spent paying present living expenses and keeping current the payments on her present debts. ⁽²²⁾

POLICIES

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."⁽²³⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁽²⁴⁾

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 and mitigating conditions 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. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽²⁵⁾ 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.⁽²⁶⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.⁽²⁷⁾ 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.⁽²⁸⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽²⁹⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽³⁰⁾ "[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."⁽³¹⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽³²⁾

Based upon a consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation

of the facts in this case:

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.

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

CONCLUSIONS

I have 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.

The government has established its case under Guideline F. Applicant's delinquent debts brings the matter under Financial Considerations Disqualifying Conditions E2.A6.1.2.1 (*a history of not meeting financial obligations*); and E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*). Applicant admitted to seven of the nine delinquent debts even though she disputed the amount of the debt in five allegations. Both of the debts she denies are listed on her credit bureau report and she offers no explanation for denying the debts. I conclude Applicant owes all nine debts listed in the SOR in the amount of almost \$43,000.00, and the above financial consideration disqualifying conditions have been established.

I have considered Financial Consideration Mitigating Condition E2.A6.1.3.1 (*the behavior was not recent*) as raised by Applicant, and E2.A6.1.3.6 (*the individual initiated a good faith effort to repay the overdue creditors or otherwise resolve debts*). While Applicant's debts may have been incurred in the early 1990s, Applicant still owes those debts so they are current and recent. Applicant presented limited information concerning efforts she initiated to resolve her indebtedness. She tried a credit collection agency but it did not resolve all of her indebtedness. She relied on the statute of limitation running for creditors to sue her rather than repay the debts. She has decided it is better to keep her present bills current rather than pay past due bills. These actions are not a good-faith effort to resolve indebtedness or pay overdue creditors. While keeping her present debts current is commendable, it does not mitigate the security concerns for her indebtedness.

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.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: 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

1. Item 4 (Security clearance application, dated Oct. 15, 2002).
2. Item 3 (Applicant's answer to SOR, undated).
3. Item 8 (Credit bureau report, dated Apr. 22, 2005).
4. Item 5 (Applicant's statement, dated Aug. 21, 2003) at 5.
5. Item 3, *supra*, n.2.
6. Item 5, *supra*, n.4.
7. Item 8, *supra*, n.3.
8. Item 3, *supra*, n.2.
9. Item 5, *supra*, n.4.
10. Item 8, *supra*, n.3.
11. Item 5, *supra*, n.4.
12. Item 8, *supra*, n.3.
13. Item 3, *supra*, n.2.
14. Item 8, *supra*, n.3.
15. Item 3, *supra*, n.2.
16. Item 5, *supra*, n.4.
17. Item 8, *supra*, n.3.
18. Item 3, *supra*, n.2.
19. Applicant's answer to FORM, undated.
20. FORM, Item 5 (Applicant's statement, dated Aug. 21, 2003) at 3.
21. Item 8, *supra*, n.3.
22. Applicant's answer to FORM, undated.

23. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
24. Directive ¶ E2.2.1.
25. *Id.*
26. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
27. *See* Exec. Or. 10865 § 7.
28. Directive ¶ E3.1.14.
29. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
30. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
31. ISCR Case No. 95-0611 (App. Bd. May 2, 1996) at 2, (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
32. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.