

KEYWORD: Financial

DIGEST: Applicant is 43 years old, married with three children, and works as a printer for a defense contractor. Applicant filed Chapter 7 bankruptcy in 1996. Since then, she has incurred four delinquent credit card accounts and an unpaid \$56 power company judgment rendered in 1997. Applicant failed to mitigate the financial considerations security concern. Clearance is denied.

CASENO: 03-22684.h1

DATE: 05/27/2005

DATE: May 27, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-22684

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Eddie Carpenter, Esq.

SYNOPSIS

Applicant is 43 years old, married with three children, and works as a printer for a defense contractor. Applicant filed Chapter 7 bankruptcy in 1996. Since then, she has incurred four delinquent credit card accounts and an unpaid \$56 power company judgment rendered in 1997. Applicant failed to mitigate the financial considerations security concern. 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. On September 23, 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on November 24, 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on January 13, 2005. On April 21, 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. Applicant was given until May 6, 2005, to submit additional documentation to support her contentions. Applicant's counsel submitted a letter dated May 6, 2005, declining to submit additional evidence. DOHA received the hearing transcript (Tr.) on May 9, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 43 years old, married, with three children. She works as a printer in a facility that prints government materials, and for her job she is required to have a security clearance. Applicant was divorced in 1996, and discharged her debts of \$35,968 in a Chapter 7 bankruptcy in 1996. Applicant's monthly post-tax income is \$2,200, and that of her current husband is \$3,600. (Tr. 11, 25, 35, 44, 47; Exhibits 1 and 2)

Since 1996, Applicant has been married twice more, and resides with her current husband whom she married in 2002. He filed Chapter 7 bankruptcy in 2004. Applicant and her husband are both employed and own their own home. They did not have to make a down payment on the home, and the mortgage payments are \$538 monthly, benefitting from a state program for first-time homeowners. They own two cars. (Tr. 11, 13, 14, 226-37; Exhibits 2, 3, 4)

Applicant borrowed \$4,000 so she and her husband could vacation at a southern gambling resort. She pledged her vehicle as collateral for the loan. They gambled away \$1,000 of that loan. Applicant has five credit cards, on which she currently owes about \$4,000. She makes minimum monthly payments of \$25 to \$40, believing she is responsibly handling her debt with those payments. The credit card debts are \$500, \$1500, \$300, \$500, and \$1500, respectively. She has other monthly expenses that she pays from the family income, and the net family income is about \$1,300 to \$1,800 monthly, depending on her husband's commission income. From that net income she buys gas and groceries. Applicant has a \$2,000 Christmas loan from a loan company, and a \$2,500 personal loan from another loan company. Applicant currently owes about \$13,000. From her monthly net income Applicant saves \$200 monthly for real estate taxes on her home, and \$40 is deposited into a Christmas club at her bank. The remaining net income use is not specified. Applicant received a tax refund of \$1,700 for 2004 and \$2,200 for 2003. This money was spent on a bowling trip for her husband and other personal expenses. She did not use any of these tax refunds or her net monthly income to pay off current loans faster. Applicant pays 18% interest on her loans and credit card debts because of her credit history and bankruptcy. (Tr. 26-36, 46-57; Exhibits 2, 3, 4)

Applicant has not paid the October 1997 \$56 judgment from the local electric and gas power company. That debt is delinquent. Applicant claims she knew nothing about the judgment until the government investigator told her about it during the security clearance interview in April 2004. Because she has power from that company now, she thought she owed nothing to it. She is waiting for the company to collect from her instead of her paying the court judgment as she stated she would do in her April 2004 statement. (Tr. 17, 20, 21, 38-41; Exhibit 2)

Applicant admits the existence of delinquent debts, including a bank credit card debt of \$1,393 (account opened in June 1995), a credit card debt of \$3,753 (account opened in November 1997), a bank debt of \$13,518 (account opened in May 1995), and a credit card debt of \$2,769 (account opened in October 2001). She claims her current husband owes those debts, but they were opened prior to her marriage to him in 2002. Applicant further claims she is not responsible for these debts, but they appear on her credit reports as her obligations. Applicant wrote to the creditor of the \$13,518 credit card debt, who responded to her that it would notify the credit reporting agencies that the debt should be removed from her credit profile, but does not state a reason for doing so. The bankruptcy department of the credit card owner of the \$3,753 debt wrote back to Applicant that this debt was not her obligation. (Tr. 15, 18, 21-23, 41, 44, 59-66; Exhibits 2, 3, 4, A, and B)

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

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. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual'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 or recurrence (*See* Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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, 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. 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. See ISCR Case No. 95-0611 at 2 (App. Bd. ay 2, 1996). All that is required is proof of facts and circumstances that 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. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. See Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline F: Guideline F:Financial Considerations: *The Concern*: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. E2.A6.1.1

CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR, except paragraph 1.d. Applicant has a history of financial mismanagement. She filed Chapter 7 bankruptcy in 1996 to discharge \$35,698 worth of debts. She now owes another \$13,000 on which she makes minimal monthly payments. She has net income of about \$1,000 monthly that could pay off all that debt in less than two years and still give her a sizeable savings account. In the context of her financial ability to pay off loans from her net income, she has four delinquent debts. The creditor's letter regarding the paragraph 1.d. \$3,753 debt meets Applicant's burden of proof on that debt alone. Her other exhibit on the \$13,518 debt is not persuasive because the credit report entry could be deleted for other reasons than the debt was paid or the debtor was not obligated on the debt, and Applicant has not met her burden on that allegation. Accordingly, I conclude the Disqualifying Conditions (DC) applicable are DC 1 (a history of not meeting financial obligations) and DC 3 (inability or unwillingness to satisfy debts).

At the hearing, Applicant had no persuasive reason for not paying the \$56.00 judgment. She also attempted to transfer liability for the credit card debts to her husband and his bankruptcy. But her conflicting testimony between first acknowledging her liability, then trying to shift liability to her husband, finally testifying her name may have been on the cards but the cards were really her husbands, coupled with her April 2004 statement acknowledging the debts, when balanced against the credit report evidence, does not make Applicant credible. I conclude these debts are hers and she should have repaid them before now, or make installment payment arrangements for these delinquent debts. She did not do so. Therefore, after considering all the evidence, I conclude there are no itigating Conditions (MC) applicable here. I

conclude this guideline against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: 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.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 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 (Directive).