

DATE: September 28, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-24793

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 31 years old and has been employed by a federal contractor since 2001. Applicant was terminated in 2001, from a job at a bank for misusing their computer system by conducting transactions on her own accounts. Applicant was attempting to manipulate her accounts to cover insufficient funds. It was a violation of bank policy for an employee to handle transactions on her personal accounts. Applicant was having financial problems at the time and continues to have numerous delinquent debts. Applicant failed to mitigate the security concerns regarding personal conduct and financial considerations. The government failed to meet its burden under Guideline M, misuse of information technology systems because the computer Applicant was misusing was not used for classified or sensitive information. Clearance is denied.

STATEMENT OF CASE

On August 31, 2004, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guidelines M, misuse of information technology systems, Guideline E, personal conduct, and Guideline F, financial considerations. [\(2\)](#)

In a sworn answer dated September 29, 2004, Applicant responded to the SOR and admitted some of the allegations and denied others, while providing explanations in both instances. Applicant elected to have her case decided on the written record in lieu of a hearing. Department moved to amend the SOR on June 22, 2005, by adding subparagraph p. to Guideline F. Department Counsel submitted a copy of her motion and a complete copy of the file of relevant material (FORM) on June 23, 2005, and it was received by Applicant on June 25, 2005. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation to the FORM and the motion. Applicant did not object to either, but did provide additional material. The government did not object to the additional material. The government's motion is granted. The case was assigned to me on August 2, 2005.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, statements, and the record, I make the following findings of fact:

Applicant is 31 years old and has been employed by a federal contractor since 2001. Applicant is married, but separated from her husband in 2001. She has one child and has received no child support since 2001 when the child was born. Applicant helps support her mother and a brother.

Applicant was employed by Bank A from 1997 to 2001. While employed at Bank A, Applicant used a coworker's computer terminal and bank identification numbers, to perform transactions involving her personal bank accounts, without authorization and when specifically prohibited by company rules, procedures and guidelines. She was terminated from employment in September 2001 for violating company policy.

Applicant began transferring funds between her bank account and her mother's bank account because her finances were tight and she was struggling to make ends meet. (3) She did this over a 2-3 month period. (4) Applicant would use a coworker's computer to make the transactions. (5) She claimed she had an agreement with the coworker to conduct this business, but was to leave a copy of the transaction for the coworker. (6) On several occasions she failed to leave the transaction copy. Applicant did these transactions and transfers because she had insufficient money in her account to cover checks she had written and was struggling financially. (7) Applicant would draw checks against uncollected funds at other institutions, resulting in multiple return items against her deposit account at her bank. Her actions violated Bank A's policy.

After being terminated from employment with the bank, Applicant's worked two jobs, but her salary was half of what she had been previously making. (8) She subsequently became overextended in her credit to meet her living expenses. (9) She claims she is currently living within her means. (10)

Applicant's debts and their status are listed below in the chart.

Debt	Nature & Amount	Current Status	Record
SOR 3.a.	Creditor, \$1,077.00, charged off January 2000.	Admits, unpaid.	Answer
SOR 3.b.	Insurance claim, \$159.00, collection June 2002.	Admits, claims attempting to resolve. Unpaid.	Answer, Item 5 at 3.
SOR 3.c.	Credit Bureau, \$266.00, collection April 2003.	Denies, no information provided as to resolution.	Answer
SOR 3.d.	Telephone \$125.00, collection, August 2003.	Denies, no information provided as to resolution.	Answer.
SOR 3.e.	Credit card, \$2,539.00, charged off January 2002.	Admits, unpaid.	Answer.
SOR 3.f.	Credit card, \$649.00, charged off January 2002.	Admits, unpaid.	Answer.
SOR 3.g.	Bank, \$100.00 charged off, February 2002.	Denies. Claims closed account, but will pay if owes.	Answer, Item 5 at 4.
SOR 3.h.	Credit card, \$1,141.00, charged off ay 2002.	Admits, claims set up payment plan and has sent payment. No documents provided to verify.	Answer, Item 5 at 3.
SOR 3.i.	Credit card, \$1,125.00, charged off July 2002.	Admits, claims set up payment plan and has sent payment. No documents provided to verify.	Answer, Item 5 at 3.
SOR 3.j.	Creditor, \$702.00, charged off, October 2002.	Admits, unpaid.	Answer, Item 5 at 3.

SOR 3.k.	Collection Agency, \$2,195.00, charged off November 2002.	Admits, unpaid.	Answer.
SOR 3.m.	Credit card, \$1,784.00, judgment February 2003.	Admits, unclear if satisfied. Provided a document of a judgment that was paid, but no verification it is this one.	Answer, Item 5 at 3.
SOR 3.n.	Financial Corporation, \$1,086.00, judgment August 2003.	Admits, through garnishment satisfied December 29, 2004.	Answer, documents attached.

Applicant provided documents to show that she has satisfied a judgment. The amount shown on the judgment does not match any of the allegations and has another person's name listed. Applicant failed to specifically detail which debt/allegation this debt refers to and how it belongs to her. ⁽¹¹⁾ Applicant also provided a document showing correspondence with a collection company and apparently a payment plan arrangement. However, Applicant again failed to detail what specific debt it refers to. Applicant provided a personal financial statement that indicates she has approximately \$597.00 remaining at the end of the month after she has paid her monthly expenses. ⁽¹²⁾

Applicant is well thought of by her coworkers who describe her as loyal, reliable, and a dedicated employee who carries out her duties with total aplomb and charisma. She is considered a dependable, sincere, honest person whose moral standard is beyond reproach. She works with pride, efficiency and effectiveness.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline M, pertaining to misuse of information technology systems, Guideline E, personal conduct considerations, and Guideline F, financial considerations, with their respective DC and MC, apply in this case. Additionally, 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. 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 determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. ⁽¹³⁾ The government has the burden of proving controverted facts. ⁽¹⁴⁾ The burden of proof is something less than a preponderance of evidence. ⁽¹⁵⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him. ⁽¹⁶⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. ⁽¹⁷⁾

No one has a right to a security clearance ⁽¹⁸⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ⁽¹⁹⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. ⁽²⁰⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. ⁽²¹⁾ 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 the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline M-Misuse of information technology systems and noncompliance with rules, procedures, guidelines or regulations pertaining to these systems may raise security concerns about an individual's trustworthiness, willingness, and ability to properly protect classified systems, networks, and information. Information technology systems include all related equipment used for the communication, transmission, processing, manipulation, and storage of classified or sensitive information.

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 or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation 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.

Guideline E-Personal Conduct is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that could indicate that the person may not properly safeguard classified information.

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

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline E and Guideline F, but has failed to establish a *prima facie* case for disqualification under Guideline M.

Based on all the evidence, under Guideline M, the government failed to establish its case, as none of the four disqualifying conditions apply. Applicant's actions while working for Bank A involved poor judgment and violation of Bank A's policy which resulted in her termination, but the evidence does not show her actions involved using an "information technology system," defined as "all related equipment used for the communication, transmission, processing, manipulation, and storage of classified or sensitive information," (22) which is a necessary element of each of the four disqualifying conditions. Given this failure of proof, Guideline M is decided for Applicant.

Considering the evidence, Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.4 (*Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities, which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*) and PC DC E2.A5.1.2.5 (*A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*) apply in this case. Applicant violated Bank A's policy and rules regarding conducting transactions when dealing with employees' personal accounts. Her conduct spanned a 2-3 month period and was for her personal interests.

I have considered all the mitigating conditions and specifically considered Personal Conduct Mitigating Condition (PE MC) E2.A5.1.3.5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*) and conclude it does not apply.

Applicant's actions and violations were done over a significant period of time, two to three months, and were not a one time aberration. Prior to each time Applicant completed an unauthorized transaction she had to think about what she was doing and make a knowing and conscious decision to proceed, fully aware she was violating the bank's rules and misusing the bank's systems for her own benefit. In addition, she involved another employee in her scheme. Applicant demonstrated a serious pattern of bad judgment and unwillingness to comply with Bank A's policy and rules. Working in a bank with computer access to accounts Applicant was placed in a position of trust that she not only violated, but violated for her own benefit. Applicant has failed to mitigate the security concerns regarding his personal conduct.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), FC DC E2.A6.1.2.2 (*Deceptive or illegal financial practices such as embezzlement,*

employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust) and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*), apply in this case. Applicant got behind in her debts when she and her husband separated. Coinciding with that event she also was terminated from her bank job because she violated her position of trust with her bank and its policies. Applicant's new jobs paid her significantly less than she was making at the bank. Applicant accumulated significant delinquent debts and has only satisfied one judgment through garnishment. Regarding the other debts she has failed to provide documentation that she has set up payment plans or has made payments toward resolving them.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2 (*It was an isolated incident*), 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, a business downturn, unexpected medical emergency, or a death, divorce or separation)*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). I conclude none apply in this case.

Applicant is supporting her son, mother and brother. She and her husband separated in 2001 and she has been the sole provider. Although her separation and its financial ramifications were somewhat beyond her control, it was the loss of her bank job that spun her into financial crisis. She lost her job because of her unauthorized actions and violations. Applicant admits after she was discharged from the bank she was receiving half the pay of what she had been receiving. Applicant's numerous debts are still recent because most are still unpaid and therefore not an isolated incident. Although Applicant stated in some instances she intended to pay the debt, she has shown only a minimal effort or ability, in doing so. Applicant did satisfy a judgment she owed, but it was completed through an action of garnishment. I have considered the fact that Applicant provided some documents that show correspondence with a collection company and there is some attempt to resolve a debt, but am uncertain as to which debt it refers to. In any event, even giving Applicant the benefit of the doubt that she is in a payment plan on one of her debts, she still has many more she has not taken any action on. Applicant's personal financial statement reflects a net remainder at the end of each month, but no indication that she is attempting to apply it towards her outstanding debts. Applicant has failed to mitigate the security concerns regarding her financial situation.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I have considered Applicant is the sole provider for her family and the comments provided by her coworkers. Applicant's conduct involved serious lack of judgment and a violation of trust. She violated the rules to manipulate the system for her own financial benefit. These actions took place over a period of 2-3 months and were not isolated. Applicant continues to have financial problems and has substantial debt. The risk is too great that a similar temptation may arise. Applicant has failed to mitigate the security concerns regarding her personal conduct and financial considerations.

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 Misuse of Information Technology FOR THE APPLICANT

Systems (Guideline M)

Subparagraph 1.a. For the Applicant

Paragraph 2 Personal Conduct (Guideline E) AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b Against the Applicant

Paragraph 3 Financial Considerations (Guideline F) AGAINST THE APPLICANT

Subparagraph 3.a. Against the Applicant

Subparagraph 3.b. Against the Applicant

Subparagraph 3.c. Against the Applicant

Subparagraph 3.d. Against the Applicant

Subparagraph 3.e. Against the Applicant

Subparagraph 3.f. Against the Applicant

Subparagraph 3.g. Against the Applicant

Subparagraph 3.h. Against the Applicant

Subparagraph 3.i. Against the Applicant

Subparagraph 3.j. Against the Applicant

Subparagraph 3.k. Against the Applicant

Subparagraph 3.l. Against the Applicant

Subparagraph 3.m. Against the Applicant

Subparagraph 3.n. For the Applicant

Subparagraph 3.o. Against the Applicant

Subparagraph 3.p. 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 Applicant. Clearance is denied.

Carol. G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

2.

3. Item 6 at 1.

4. *Id.*

5. *Id.*
6. *Id.*
7. *Id.*
8. Item 5 at 2.
9. *Id.*
10. *Id.*
11. Answer dated July 20, 2005 and attachments.
12. Item 5 at 7.
13. ISCR Case No. 96-0277 (July 11, 1997) at 2.
14. ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
15. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
16. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
17. ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
18. *Egan*, 484 U.S. at 531.
19. *Id.*
20. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
21. Executive Order 10865 § 7.
22. Directive E2.A13.1.1.