

DATE: June 21, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-32698

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Marc E. Curry Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 42-year-old employee of a defense contractor who incurred approximately \$9,000.00 in delinquent debts. She did not reveal their existence on her application for security clearance (SF 86). In her answer she admitted all of the debts and the failure to report them. She did not offer sufficient evidence or argument concerning the allegations in her answer or her statement to the investigator to mitigate the allegations. Clearance is denied.

STATEMENT OF CASE

On October 3, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement dated November 3, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on January 12, 2004. A complete copy of the file of relevant material (FORM) was provided to the Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond and the case was assigned to me on March 29, 2004.

FINDINGS OF FACT

After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 42-year-old employee of a defense contractor who incurred approximately \$9,000.00 in delinquent debts. In her answer she admitted all of the debts and did not offer any evidence or argument concerning them. In her statement to the investigator she admitted that she was unable to pay the debts with her current income and responsibilities for a son for whom she was not receiving child support.

Applicant failed to acknowledge the delinquent debts on questions 38 on her SF 86. In her answer she admitted the omission but in her statement to the investigator she said she did know about all of them.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the 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. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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* Executive Order No. 12968 § 3.1(b)

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

Applicant's extensive delinquent debts prompted the allegation in the SOR of violation of Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) include the fact that the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.) and that the conditions resulting in the problems were largely beyond the person's control such as divorce. (E2.A6.1.3.3.)

Under Guideline E, conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. Directive. (E2.A5.1.1.) The Government has established by evidence and Applicant's admissions that she has omitted relevant and material facts from her personnel security application (SF 86) (E2.A5.1.2.2.)

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

Applicant has acknowledged the six delinquent debts and the fact that she omitted to report them on her SF 86. She has

offered some reasons as to why they were incurred but admits her inability to pay them. Thus, no mitigating conditions are applicable.

She has also admitted that the debts were omitted from her SF 86 without offering a credible reason. No mitigating conditions are applicable.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

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

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge