

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has ten delinquent debts. Two of these debts that were delinquent by 90 days or more were not disclosed on her security clearance application (SCA) signed on July 3, 2000. Applicant did not mitigate the financial considerations and personal conduct security concerns. Clearance is denied.

CASENO: 03-00600.h1

DATE: 09/30/2004

DATE: September 30, 2004

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 03-00600

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco J. Mendez, Esq., Department Counsel

**FOR APPLICANT**

### **SYNOPSIS**

Applicant has ten delinquent debts. Two of these debts that were delinquent by 90 days or more were not disclosed on her security clearance application (SCA) signed on July 3, 2000. Applicant did not mitigate the financial considerations and personal conduct security concerns. Clearance is denied.

### **STATEMENT OF THE CASE**

On October 24, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR detailed reasons under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) 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 referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

Applicant submitted a signed and sworn statement dated December 19, 2003, in answer to the SOR. She admitted all the allegations contained in the SOR, except denied subparagraph 1.i.. She requested a hearing.

This case was assigned to me on February 3, 2004. This case was originally scheduled for hearing on February 23, 2004, but continued because Applicant wanted to obtain an attorney. A Notice of Hearing was issued on March 23, 2004, setting the hearing for April 19, 2004. On April 19, 2004, I convened the hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government presented 10 exhibits which were admitted into evidence. Applicant appeared, testified, and submitted two exhibits, which were admitted into evidence. I received the transcript of the hearing on April 29, 2004.

## **RULINGS ON PROCEDURE**

The SOR was amended at the hearing by deleting in subparagraph 2.a. the words "date 39" and substituting therefor the words "July 3, 2000", being the date Applicant signed her security clearance application (SCA).

## **FINDINGS OF FACT**

Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 40 years old, legally separated from her husband, and works for a government contractor as a data entry clerk. Applicant filed for Chapter 13 bankruptcy in 1992 and was discharged in July 1997 (SOR subparagraph 1.a.). Applicant intended to file bankruptcy again in July 2003, but did not do so (SOR subparagraph 1.1). (Exhibit 1; Tr. 66, 67, 73, 94)

Applicant owed a credit card debt as alleged in SOR subparagraph 1.b., and it was more than 90 days delinquent when she signed her SCA on July 3, 2000. Applicant thought that not receiving a bill or telephone call from her creditor meant the debt was not owed, which is not a reasonable belief. Applicant settled this debt for less than originally owed, and paid it off on February 20, 2004. (Exhibits B, 6; Tr. 47, 56 to 60, 85, 90 to 93, 112, 119)

Applicant owes \$186 for her telephone bill as alleged in SOR subparagraph 1.c. She had the telephone disconnected in November 1999. Applicant says she has been trying to contact the company about payment since 1999 to no avail. (Tr. 74, 87, 89, 112)

The medical bills alleged in SOR subparagraphs 1.d., 1.f., and 1.g. are the mutual obligation of Applicant and her insurance carrier. Applicant is obligated for at least 20% of these amounts. The anesthesia bill in subparagraph 1.f. has been owed since 2001, and the other two bills are owed from 2003. Applicant had a medical procedure in 1999, another

operation in 2003. She also took care of her mother during an illness in early 2000 and was not paid for her time off from work. Applicant asserts she has tried since 2000 to contact the insurance company to resolve these debts but is only referred to her previous employer. These debts remain unpaid by Applicant. (Tr. 65, 67, 98, 112, 118; Exhibit 2 at 3, Exhibits 3 through 6, 10)

The delinquent debt alleged in SOR subparagraph 1.e. Applicant denies knowing about at the hearing, yet admitted it in her Answer. Applicant tried to recant all her admissions at the hearing, claiming she did not realize what an admission to a debt was. (Tr. 76, 77, 79; Exhibits 3, 4, and 10; Answer)

Applicant is paying \$25 monthly on a bill of \$250 to her local village government. This debt is alleged in SOR subparagraph 1.h. and was delinquent until Applicant arranged an installment payment plan. (Tr. 78, 113)

Applicant owes \$464 to a telephone company as alleged in SOR subparagraph 1.i., but denies she ever had telephone service with that company. This delinquent debt appears on 2002 and 2004 credit bureau reports submitted in evidence. Applicant did not offer any evidence beyond her assertion to dispute this debt, and no evidence of any efforts on her part to remove this debt from her credit reports. (Tr. 78, 109; Exhibits 3, 6, and 10)

The debt alleged in SOR subparagraph 1.j. is for Applicant's automobile. She denies she is delinquent on this debt, and asserts she has only four payments more to make of \$395. (Tr. 78, 110, 111; Exhibit 10)

Applicant has a delinquent debt as alleged in SOR subparagraph 1.k. for a credit card she opened in November 1999. Applicant did not disclose this delinquency in answer to Question 39 of the SCA she signed on July 3, 2000, as she should have done. Applicant thought that the debt was paid because she did not receive a response from the credit card company when she tried to contact them, nor did she receive a bill. Applicant stopped using that credit card in December 1999, but tried to send the creditor \$25 or \$30 periodically, but could not show when the payments were made. The debt remains owing, and the current balance is \$842. (Tr. 49, 50, 56, 57, 90 to 93, 110; Exhibits 3, 4, 6, and 10)

Applicant incurred three other credit card debts since November 2001 that are now delinquent. Applicant is paying \$100 per month on a debt principal of \$10,000. (Tr. 100 to 115; Exhibits 3 and 10)

Applicant did not answer all the interrogatory questions submitted by the Government on June 19, 2003, nor did she

supply the financial documentation requested by those interrogatories. Applicant stated on that interrogatory that she "recently applied for Chapter 13 to help pay off my debts", but in fact she never did file for Chapter 13 bankruptcy then, nor did she hire the attorney she cited in her answer to the interrogatory. Applicant's personal financial statement submitted with that interrogatory showed she had \$534 of net income with which to pay debts. Applicant asserts her medications taken after major surgery at that time made her sleepy and she could not get the information together, but

Applicant did complete the personnel financial statement portion of the interrogatory. (Tr. 66 to 68; Exhibit 2)

## 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 restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgement, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* Section 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

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 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of:

- (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.

Initially, the Government must establish, by substantial 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. 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 Section 3.1(b).

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

**Guideline F - Financial Considerations:**

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive, ¶ E2.A6.1.1.

Applicable conditions that could raise a security concern and may be disqualifying include:

(1) A history of not meeting financial obligations. Directive, ¶ E2.A6.1.2.1.

(3) Inability or unwillingness to satisfy debts. Directive, ¶ E2.A6.1.2.3.

Applicable conditions that could mitigate security concerns include:

None

**Guideline E - Personal Conduct:**

(A) The Concern: 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. Directive, ¶ E2.A5.1.1.

(B) Conditions that could raise a security concern and may be disqualifying also include:

(2) The 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 responsibilities. E2.A5.1.2.2.

(5) A pattern of dishonesty or rule violations. E2.A5.1.2.5.

(C) Conditions that could mitigate security concerns include:

None

## CONCLUSIONS

I conclude that under Guideline F (Financial Considerations) the Government proved its case. Therefore, the Disqualifying Conditions (DC) 1 (*a history of not meeting financial obligations*) and DC 2 (*an inability or unwillingness to satisfy debts*) apply. Applicant's delinquent financial debts are \$10,000, by her own admission, on which she pays \$100 monthly. Assuming no interest accumulation, it would take Applicant about 10 years to pay off her debts at that rate. Furthermore, Applicant's belief that because she did not hear from her credit card creditors, assuming that statement is true, that her debts were nullified is unreasonable. Applicant may have stopped using certain cards, but the evidence shows she would later open other credit card accounts, incur debts, and then stop paying them. She tries to tie her inability to repay debts to two operations, but I am not persuaded. She had an obligation to only incur such debts as she could reasonably repay. Her prior bankruptcy put her on notice of the dangers of financially over extending herself.

I have considered the possible Mitigating Conditions that might apply in this case. I can find none based on Applicant's past performance on her debts. However, Applicant did pay one credit card debt, is paying on her car loan, and arranged an installment payment plan on a village debt. But these efforts do not rise to the good-faith effort level to counter her overall failure to pay her debts in a timely manner and responsibly. Therefore, I conclude this guideline against Applicant.

Regarding Guideline E (Personal Conduct), I conclude the Government proved its case. The SOR alleges Applicant falsified material facts on the SCA, Question 39 (delinquencies over 90 days) by answering "no" to Question 39. Applicant's belief that because her creditors did not bill her or call or write her periodically they must have cancelled or nullified the debts is unreasonable. She knew she had at least two credit card debts delinquent by more than 90 days by July 2000, and should have disclosed them on her SCA. She did not. Applicant also did not answer the interrogatories sent her by the Government in June 2003. She again tried to hide her financial condition from the Government. She had a duty to answer those interrogatories truthfully and fully, and assertions that for 10 weeks she was so incapacitated she could not do so, while completing the personnel financial portion of the interrogatories, is not persuasive. Applicant engaged in a pattern of deception about her debts to mislead the government. Then, at the hearing, she claimed she did not understand what an admission to the SOR allegations meant. I do not find it persuasive or credible that an adult does not know what an admission is on a legal document. I conclude DC 2 and DC 5 apply here.

Considering the facts, and the possible MC that might apply to those facts, and Applicant's testimony at the hearing, I find no MC applicable here. I conclude this guideline against Applicant.



## **FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F: Against Applicant

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For 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.: For Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Paragraph 2 Guideline E: Against Applicant

Subparagraph 2.a.: Against Applicant

**DECISION**

In light of all the circumstances and facts presented by the record in this case, it is not clearly consistent with the interest of national security to grant a security clearance to Applicant. Clearance is denied.

Philip S. Howe

Administrative Judge