

DATE: May 12, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02034

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a utility technician for a defense contractor. In 1999, Applicant's debts were discharged in bankruptcy. She continued to accumulate delinquent debt, and she again petitioned for discharge in bankruptcy in January 2004. She acknowledged delinquent debts, but did not provide information to mitigate the security concerns for financial considerations. Applicant deliberately did not include a vehicle repossession in response to a question on her security clearance application. Applicant has not mitigated security concerns under Guidelines F and E. Clearance is denied.

STATEMENT OF THE CASE

On December 31, 2003, 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 January 26, 2004. The SOR alleges security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in an undated response admitting the allegations under Guideline F and denying the allegation under Guideline E. 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 October 26, 2004. Applicant received a complete file of relevant material (FORM) on November 7, 2004, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Her response was due December 8, 2004, but as of December 29, 2004, she had not responded. The case was assigned to another administrative judge on December 29, 2004, and reassigned to me on May 5, 2005.

FINDINGS OF FACT

Applicant is a 55-year-old utility technician for a defense contractor. She was granted a security clearance in 1976. Applicant and her husband petitioned for Chapter 7 bankruptcy protection in 1998, and their debts were discharged on February 24, 1999. Applicant and her husband continued to have financial problems after the discharge in bankruptcy, and they again petitioned for bankruptcy in January 2004.⁽¹⁾ Applicant provided no further information on this bankruptcy.

There are four debts alleged in the SOR under Guideline F. Debt 1.a. in the SOR is for an unpaid judgment resulting from a credit card debt Applicant has not paid off or satisfied. Applicant acknowledged this debt but provided no information on the status of the debt. Debt 1.b. in the SOR is for medical care in a hospital. Applicant acknowledges the debt, has stated she would pay it off, but has provided no information on the status of the debt.⁽²⁾ Debt 1.c. in the SOR is for delinquent mortgage payments for Applicant's residence. Applicant acknowledged this debt but provided no information on the status of the debt. Debt 1.d. in the SOR is the remainder of a debt owed on a vehicle repossessed in 1998.⁽³⁾ The vehicle was included in the 1998 discharge in bankruptcy as exempt property. Subsequent credit reports note that the vehicle was listed in the bankruptcy.⁽⁴⁾ SOR 1.e. is the 1998 bankruptcy.⁽⁵⁾

Applicant attributes her and her husband's financial problems to her husband's medical condition that occasionally prevents him from working. Applicant's husband is self-employed in a lawn care business. She admits they do not put resources aside to cover times her husband cannot work.⁽⁶⁾

In her March 2000 security clearance application, Applicant answered "No" to question 35 asking if she had any repossessions in the last seven years. In fact, Applicant's vehicle was repossessed in 1998 and debt remaining from the repossession was addressed in the 1998 bankruptcy discharge.⁽⁷⁾

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."⁽⁸⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁽⁹⁾

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.⁽¹⁰⁾ 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.⁽¹¹⁾

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.⁽¹²⁾ 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.⁽¹³⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽¹⁴⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽¹⁵⁾ "[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."⁽¹⁶⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽¹⁷⁾

Based upon a consideration of the evidence, I find the following adjudicative guidelines 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.

Guideline E - Personal Conduct: A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person 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 section below.

CONCLUSIONS

I 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 within Financial Considerations Disqualifying Conditions Directive ¶ E2.A6.1.2.3 (*a history of not meeting financial obligations*), and Directive ¶ E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*). Applicant's debts were discharged in bankruptcy in 1999. By 2003, Applicant had accumulated more delinquent debt, and she again petitioned for a discharge in bankruptcy in January 2004. Bankruptcy is a legal and permissible means of resolving debts. However, a discharge in bankruptcy does not preclude consideration of the security significance of the actions leading to the delinquent debts. ⁽¹⁸⁾ This repeated indebtedness and two bankruptcy petitions in five years shows a history of not meeting financial obligations and an unwillingness or inability to satisfy debts. The debt for the vehicle should have been eliminated in the discharge in bankruptcy and Applicant does not owe this debt. The above disqualifying conditions have been established as to allegations 1.a., 1.b., 1.d., and 1.e.

Applicant has not presented any information to mitigate the disqualifying conditions for financial concerns. She has not presented sufficient information to raise the Financial Considerations Mitigating Condition Directive ¶ E2.A6.1.3.3 (*the conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment . . . unexpected medical emergency)*). While she states her husband has a medical condition that occasionally prevents him from working, she presents no information establishing how often he is unable to work and the extent it affects their finances. Applicant has not present information to establish Financial Considerations Mitigating Condition Directive E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant has turned twice to bankruptcy to resolve her financial problems. While bankruptcy is a legal means of resolving debt, the underlying circumstance is Applicant continues to accumulate delinquent debt. She has not attempted to resolve her indebtedness by restructuring her finances, paying past due creditors, or otherwise trying to satisfy her debts.

The government has established its case under Guideline E. Applicant's "NO" answer to question 35 regarding any repossessions in the last seven years brings the matter under Personal Conduct Disqualifying Condition Directive ¶ E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personal security questionnaire, personal history statement, or similar form used to conduct investigations. . . determine security clearance eligibility or trustworthiness. . .*). There was a vehicle repossessed in 1998 and the remaining debt was addressed in the 1998 bankruptcy. Applicant's explanation for the false answer falls far short of establishing the Personal Conduct Mitigating Condition Directive ¶ E2.A5.1.3.3 (*the falsification was an isolated incident, was not recent, and the individual subsequently provided correct information voluntarily*). Applicant's explanation for the false answer was she had no reason to lie and her answer was an error. The vehicle was repossessed shortly before Applicant completed the application and it was addressed in the bankruptcy. It was a fact well known to Applicant and she has not provided a valid reason for omitting the information. I conclude Applicant deliberately omitted the information from her security clearance application.

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 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.: For Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: 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. FORM, Item 4 (Security clearance application, dated Mar. 16, 2000); FORM, Item 3 (Applicant's answer to SOR, undated).
2. FORM, Item 5 (Applicant's statement, dated Oct. 23, 2002).
3. FORM, Item 3 (Applicant's answer to SOR, undated).
4. FORM, Item 6 (Bankruptcy file, dated Feb. 24, 1999) at 17.
5. *Id.*
6. FORM, Item 5 (Applicant's statement, dated Oct. 23, 2002) at 2.
7. FORM, Item 4 (Security clearance application, dated Mar. 26, 2000).
8. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
9. Directive ¶ E2.2.1.
10. *Id.*
11. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
12. *See* Exec. Or. 10865 § 7.
13. Directive ¶ E3.1.14.
14. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
15. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
16. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

17. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

18. ISCR Case No. 01-26675 (App. Bd. Jun. 13, 2003), at 3. *See*, ISCR Case No. 97-0016 (App. Bd. Dec. 13, 1997).