

DATE: May 12, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02850

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a logistics specialist for a defense contractor. She accumulated delinquent debts starting in 1994, including two debts related to car repossessions. After submitting a security clearance application and being interviewed by security investigators, Applicant started to pay some of her delinquent debts. The day after receiving the SOR, Applicant used her savings and money borrowed from her mother to pay off almost all her small delinquent debts but did not satisfy her larger debts. Applicant did not initiate a good-faith effort to pay past due creditors or satisfy debt. She deliberately did not include a car repossession on her security clearance application. Applicant did not mitigate security concerns under Guidelines F and E. Clearance is denied.

STATEMENT OF THE CASE

On August 19, 2004, the Defense Office of Hearings 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 August 24, 2004. The SOR alleges security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on September 13, 2004. She fully admitted five allegations, fully denied four allegations, and admitted part and denied part of 19 allegations under Guidelines F. She denied the allegation under Guideline E. She requested a hearing before an administrative judge and the request was received by DOHA on September 15, 2004. Department Counsel was prepared to proceed with the case on March 2, 2005, and the case was assigned to me on March 15, 2005. A notice of hearing was issued on April 7, 2005, and the hearing convened on April 25, 2005. Ten government exhibits, eleven Applicant exhibits, and the testimony of the Applicant were received during the hearing. The transcript was received on May 5, 2005.

FINDINGS OF FACT

Applicant is a 45-year-old logistics specialist for a defense contractor. She has been continuously employed since at least 1992, except for two six month periods of unemployment between jobs. There were also short periods of sickness when she did not work and did not receive her full salary. She is married with two children who are no longer at home. Applicant received her bachelor's degree in 2004 after attending college part-time.⁽¹⁾ Applicant presented letters of appreciation and commendation from her present defense contractor for her work.⁽²⁾

Applicant now has sufficient monthly income to meet her expenses and adequate financial resources to pay overdue creditors. Applicant purchased a new car in 2003 and is current on payments for this car. At the time of the car purchase, Applicant had debts from two repossessed cars she still owed but had not paid.⁽³⁾ Applicant has been current on her bills since 1999 but she did not pay her prior debts.⁽⁴⁾

There are 28 allegations of delinquent debt. Debt 1.a. in the SOR is a debt placed in collection in August 1994 paid in full in June 1995. Debt 1.b. in the SOR is a medical bill placed in collection in 1994 paid in full in August 2004.⁽⁵⁾ Debt 1.c. in the SOR is a medical bill incurred in 1995 Applicant was unaware of until August 2004 when she received the SOR. Applicant paid the debt in full in August 2004.⁽⁶⁾

Debts 1.d. and 1.f. in the SOR are duplicates for a check returned in 1995 for insufficient funds. Debt 1.g. is for another check returned in 1996 for insufficient funds. Applicant paid the checks and a fine for fraudulent check after being charged by local authorities.⁽⁷⁾

Debt 1.e. in the SOR is a telephone bill from 1996 Applicant paid in full in August 2004. Debt 1.h. in the SOR is a medical bill incurred in May 1996. Applicant contacted the creditor but they could not provide information to pay the debt.⁽⁸⁾ Debt 1.i. in the SOR is a medical bill incurred in 1996 paid in full in August 2004.⁽⁹⁾

Debt 1.j. in the SOR is the remaining debt for a car repossessed in May 1996. Applicant discussed the debt in August 2004 with the creditor who wanted a lump sum payment to settle the debt. Applicant did not talk to the creditor prior to August 2004. Since Applicant could not make the lump some payment, she has not paid the debt and will let it lapse so it will be removed from her credit report.⁽¹⁰⁾

Debt 1.k. in the SOR is an account placed in collection in 1997 paid in full in August 2004. Debt 1.l. is a medical bill incurred in 1997 paid in full in August 2004.⁽¹¹⁾ Debts 1.m. and 1.n. in the SOR are from an insurance company placed in collection in 1997. Applicant never had insurance with the company and disputes the debts. Applicant did not know the debts existed until receiving the SOR in August 2004. She last spoke to the collection agency in August 2004 to obtain further information on the debt.⁽¹²⁾

Debt 1.o. in the SOR is a medical bill incurred in January 1998 paid in full in August 2004. Debt 1.p. in the SOR is a medical bill incurred in October 1998 paid in full in April 2003. Debt 1.q. in the SOR is a medical bill incurred in March 1999 paid in full in August 2004.⁽¹³⁾

Debt 1.r. in the SOR is the remainder of a debt from a car repossession in May 1999 that has not been satisfied. Applicant and her husband cosigned on the car loan and the creditor obtained a judgment against them in December 2002. Applicant stated she did not know the debt belonged to her since it was for a vehicle only her husband drove. Applicant and her husband contacted the creditor in August 2004 to determine a process for paying off the debt. There is no agreement with the creditor to pay off the debt.⁽¹⁴⁾

Debt 1.s. is a medical bill incurred in January 2000 paid in full in August 2002. Debt 1.t. in the SOR is a medical bill incurred in January 2000 paid in full in August 2004. Debt 1.u. in the SOR is a medical bill placed in collection in January 2000 paid in full in April 2003. Debt 1.v. in the SOR is a medical bill placed in collection in March 2000 paid in full in August 2004. Debt 1.x. is a medical bill incurred in August 2000, the creditor agreed to settle for a lesser amount, paid in full in September 2004. Debt 1.y. in the SOR is a medical bill incurred in July 2001 paid in full in August 2004. Debt 1.z. in the SOR is a medical bill incurred in May 2002 paid in full in August 2004.⁽¹⁵⁾

Debt 1.aa. in the SOR is a medical bill placed in collection in October 2002. The health care provider submitted the bill to the wrong insurance company. When it was not paid, the health care provider submitted the bill for collection. The bill was resubmitted to the correct insurance company and subsequently paid. Applicant disputes this debt since it was paid by the health insurance company.⁽¹⁶⁾ Debt 1.bb. in the SOR is a utility bill placed in collection in October 2003 paid in full in August 2004.⁽¹⁷⁾

Applicant paid most of her small debts on August 25, 2004, the day after receiving the SOR. She user funds from her savings account and funds borrowed from her mother to pay the debts.⁽¹⁸⁾

Applicant listed only one 1997 car repossession in response to question 35 on her 2002 security clearance application asking in the last seven years
⁽¹⁹⁾

if she had any property repossessed. Applicant also had a car repossessed in 1999.

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."⁽²⁰⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁽²¹⁾

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.⁽²²⁾ 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.⁽²³⁾

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.⁽²⁴⁾ 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.⁽²⁵⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽²⁶⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽²⁷⁾ "[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."⁽²⁸⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽²⁹⁾

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 starting in 1994 brings the matter within Financial Considerations Disqualifying Conditions Directive ¶ E2.A6.1.2.2 (*a history of not meeting financial obligations*), and Directive ¶ E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*). Applicant has been accumulating delinquent debt since 1994. Some of these debts were small and some were large debts, such as the remainder from car repossessions. Applicant made no effort to pay the debts, even the small ones, until she started the security clearance process and received the SOR in August 2004. Applicant's debts and history of not paying her financial obligations until recently shows a history of not meeting financial obligations and an unwillingness or inability to satisfy debts. I conclude the above disqualifying conditions have been established.

Applicant's debts, starting in 1994, ranged from unpaid medical bills to car repossessions. Financial Considerations Mitigating Conditions Directive E2.A6.1.3.1 (*the behavior was not recent*), and Directive ¶ E2.A6.1.3.2 (*it is an isolated incident*) do not apply because of the long term nature and diversity of Applicant's delinquent debts. Applicant raised the issue that she had medical problems at times that occasionally prevented her from working a full schedule affecting her pay. However, she did not present any information about income lost to the extent of raising Financial Consideration 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; ; ;)*). Further, she failed to show she could not have resolved the debts after they arose. I conclude Applicant did not establish conditions beyond her control that affected her ability to meet financial obligations. I considered 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 submitted her first security clearance application in 1999 and another in March 2002. She was interviewed by a Defense Security Service agent on October 31, 2002. Applicant paid some of her delinquent debts in April 2003. Applicant received the SOR on August 2004 and paid a majority of her delinquent debts on August 25, 2004. She paid these debts using resources from her saving account and borrowing money from her mother. Applicant did not attempt to pay delinquent debts until confronted with the potential her delinquent debts would adversely affect a security clearance determination. She had savings and access to funds to pay her debts but chose not to do so until confronted with the adverse security clearance determination. There was no effort by Applicant to resolve the debts over the extended time there was debt. This is not a good faith effort to pay overdue creditors or other wise satisfy debts. Applicant has not mitigated security concerns for the debts she paid after the start of the security clearance process.

The government has established its case under Guideline E. Applicant's failure to list the car repossession in 1999 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*). Applicant stated she did not list the repossession because she thought the debt was solely her husband's debt. However, she did sign the loan for the vehicle and she had to appear in court in an action brought by the creditor. When she completed the security clearance applications less than two years later, she had to know she was a debtor on the repossession of the vehicle. I conclude Applicant deliberately omitted the 1999 repossession 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 set forth 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.: For Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: For Applicant

Subparagraph 1.n.: For Applicant

Subparagraph 1.o.: Against Applicant

Subparagraph 1.p. Against Applicant

Subparagraph 1.q.: Against Applicant

Subparagraph 1.r.: Against Applicant

Subparagraph 1.s.: Against Applicant

Subparagraph 1.t.: Against Applicant

Subparagraph 1u.: Against Applicant

Subparagraph 1.v.: Against Applicant

Subparagraph 1.w.: Against Applicant

Subparagraph 1.x.: Against Applicant

Subparagraph 1.y.: Against Applicant

Subparagraph 1.z.: Against Applicant

Subparagraph 1.aa.: For Applicant

Subparagraph 1.bb.: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

DECISION

In light of all of the circumstances presented in 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. Tr. 20-23; Tr. 50; Applicant exhibit E (Monthly income statement, dated Mar. 23, 2005); Applicant exhibit F (College transcript and diploma, dated Fall 2004).
2. Applicant exhibits A, B, C, D, and H (Letters of commendation, various dates).
3. Tr. 47.
4. Tr. 53.
5. Tr. 31.
6. Tr. 32.
7. Tr. 33-34; Tr. 57-59.
8. Tr. 35.
9. Tr. 36.
10. Tr. 36-37.
11. Tr. 37.
12. Tr. 37-38.
13. Tr. 39.
14. Tr. 24; Tr.40.
15. Tr. 41-42.
16. Tr. 43-44.
17. Tr. 44.
18. Tr. 44-45.
19. Tr. 45; Tr. 55-56.
20. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
21. Directive ¶ E2.2.1.
22. *Id.*
23. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
24. *See* Exec. Or. 10865 § 7.
25. Directive ¶ E3.1.14.

26. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

27. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

28. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

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