

DATE: January 7, 2004

In Re:

SSN: -----

Applicant for Trustworthiness Determination

P Case No. 03-03661

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has an extensive history of financial delinquencies. She has failed to make any effort to resolve her many debts, and had not made a single payment on any of them as of the date of the hearing. She also failed to disclose her delinquent accounts in the Public Trust Position Application (SF 85P) she submitted on November 9, 2001. Applicant has failed to mitigate the security concerns caused by her financial irresponsibility, personal conduct, and the related criminal conduct that arises from the falsification of the SF 85P. Trustworthiness determination is denied.

STATEMENT OF THE CASE

On June 9, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's eligibility to occupy a sensitive position requiring ADP clearance.⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F for financial considerations, Guideline J for criminal conduct, and Guideline E for personal conduct.

Applicant submitted a sworn answer to the SOR that was received on July 22, 2003, and requested a hearing. Applicant admitted all allegations contained in the SOR.

This case was assigned to me on October 30, 2003. A notice of hearing was issued on November 24, 2003, scheduling the hearing for December 9, 2003. The hearing was conducted as scheduled. The government submitted four documentary exhibits at the hearing that were marked as Government Exhibits (GE) 1-4 and admitted into the record without an objection. Applicant testified at the hearing, did not call any witnesses on her behalf, and did not submit any documentary evidence. The transcript was received on December 19, 2003.

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, and testimony, I make the following findings of fact:

Applicant is 34 years old, single, and the mother of a ten-year-old son. She has been employed by a defense contractor since June 2002, first as an agency temporary, and since July 2003 as a permanent employee. She has an associate degree in business administration and has been gainfully employed at all time since at least March 1996.⁽²⁾

The SOR alleges sixteen delinquent accounts totaling \$ 4,996.77, all of which have been submitted for collection. The accounts range from a \$27.00 account that was placed for collection in February 2001 to a \$ 2,261.00 credit card debt that was placed for collection in August 1995. Applicant has been aware of the security significance of these accounts since at least the time she was interviewed by a special investigator from the Office of Personnel Management on August 1, 2002. She has had the ability to make at least some effort to begin to resolve these accounts, but has failed to do so.

Applicant submitted a Public Trust Position Application (SF 85P) on November 9, 2001 in which she answered "No" to question 20: *Your Financial Record - 180 Day Delinquencies - Are you now over 180 days delinquent on any loan or financial obligations?* At least eleven of Applicant's delinquent accounts had been placed for collection more than 180 days prior to the time she submitted the SF 85P.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a trustworthiness position. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. 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. Considering the evidence as a whole, Guideline F, pertaining to financial considerations, Guideline J, pertaining to criminal conduct, and Guideline E, pertaining to personal conduct, with their respective DC and C, are most relevant in this case.

BURDEN OF PROOF

The sole purpose of a trustworthiness determination is to decide if it is clearly consistent with the national interest for an applicant to be granted eligibility to hold a position requiring such trust. The government has the burden of proving controverted facts. The burden of proof is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. 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. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

The clearly consistent standard indicates that trustworthiness determinations should err, if they must, on the side of denials. Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.

CONCLUSIONS

Under Guideline F, a security concern exists when a person has significant unpaid 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.

Applicant has approximately \$5,000.00 in delinquent accounts that have been submitted for collection. She has failed to make an effort to resolve any of the accounts despite having the ability to at least make nominal payments toward their

resolution. Disqualifying Conditions (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts* apply in this case.

Applicant did not provide any reasonable excuse for falling into her present abysmal financial condition. She acknowledges having the means to at least make some payments toward the satisfaction of her debts, and the ability to have sought out part-time employment that would have provided with her additional income to relatively quickly satisfy all the debts. Inexplicably, she has done nothing that would indicate she is on the road to becoming a financially responsible individual. I do not find that any Mitigating Condition (MC) applies under Guideline F, and it is accordingly decided against Applicant.

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Applicant deliberately failed to disclose her many delinquent accounts when she submitted the SF 85P. DC 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* applies in this case.

The only justification Applicant provided for falsifying the SF 85P is that she was unhappy and somewhat stressed out at work, was given a relatively short time to submit the SF 85P, and just wanted to get it done and turned in. She admits knowing the answer she provided about her financial condition was false. I do not find that any Mitigating Condition applies under Guideline E, and it is accordingly decided against Applicant.

Under Guideline J, criminal conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Willingness to abide by rules is an essential qualification for eligibility for access to the Nation's secrets. A history of illegal behavior indicates an individual may be inclined to break, disregard, or fail to comply with regulations, practices, or procedures concerning safeguarding and handling classified information.

Section 1001 of title 18, United States Code makes it a crime punishable by a fine, imprisonment, of both to knowingly and willfully make a false statement on a SF 85P. The SF 85P submitted by Applicant clearly informed her of the possible consequences for making a knowing and willful false statement such as she did. Despite having been so warned, Applicant deliberately submitted the false SF 85P. DC 1: *Allegations or admission of criminal conduct, regardless of whether the person was formally charged* applies in this case.

There is nothing in the record that would indicate Applicant has engaged in criminal activity at any other time in her life. Further, her testimony strongly indicates that although she knew her answer was false, she provided that answer out of frustration as opposed to some sinister criminal motive. MC 2: *The crime was an isolated incident* applies to Applicant's conduct under Guideline J. Under the circumstances present in this case, I find that Applicant has mitigated the security concern caused by her criminal conduct, and Guideline J is decided for Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline F: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Subparagraph k: Against the Applicant

Subparagraph l: Against the Applicant

Subparagraph m: Against the Applicant

Subparagraph n: Against the Applicant

Subparagraph o: Against the Applicant

Subparagraph p: Against the Applicant

Subparagraph q: For the Applicant

SOR ¶ 1-Guideline E: Against the Applicant

Subparagraph a: Against the Applicant

SOR ¶ 1-Guideline J: For the Applicant

Subparagraph a: For 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 Applicant's eligibility to occupy a sensitive position requiring an ADP clearance.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. GE 1 lists a period of unemployment between February and June 2001. However, Applicant testified that she actually worked during that time frame.