

DATE: December 20, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-06028

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a security guard for a defense contractor. She has five significant debts totaling in excess of \$34,000 written off as bad debts or in collection. Applicant claims she has settled most of these debts and is working on a payment plan for the remaining debts, but offered no information to establish she settled or resolved the debts. She did not list all of these debts on her security clearance application but did fully and completely discuss them with a Defense Security Service special agent. Applicant did not mitigate the allegations of financial considerations, but did mitigate the allegations of personal conduct and criminal conduct. Clearance is denied.

STATEMENT OF THE CASE

On March 26, 2004, The Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on April 21, 2004. The SOR alleges security concerns under Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct).

Applicant answered the SOR in writing on April 23, 2004, and admitted all of the allegations in the SOR with an explanation. She did not specifically request a hearing in her response to the SOR.

Department Counsel submitted the government's written case on September 21, 2004. Applicant received a complete file of relevant material (FORM) on October 18, 2004, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Her response was due November 17, 2004. As of November 24, 2004, she had not responded. The case was assigned to me on November 30, 2004.

FINDINGS OF FACT

Applicant is a 32-year-old security guard for a defense contractor. On August 5, 2002, Applicant submitted a security clearance application. In response to question 38, she listed she was delinquent in the last 7 years on one debt over 180 days, and in response to question 39 she listed she was currently delinquent over 90 days on the same debt. In fact, Applicant's credit history revealed she was delinquent on five separate debts, four in excess of 180 days in the last 7 years, and currently delinquent over 90 days on a different debt than listed by Appellant. Applicant admitted she was currently delinquent over 90 days on student loans for \$23,620 to the Department of Education. Applicant admitted that in the last 7 years she was over 180 days delinquent on a \$1,750 credit card account charged off; \$2,896 on an account for a computer purchase sent for collection; \$3,632 for a car loan classified as a bad debt; and \$2,500 for a bank loan classified as a bad debt. She was questioned by a special agent of the Defense Security Service on December 11, 2002 and provided details admitting each debt and her intent to pay the debt when able.

Applicant was married but her husband had a gambling problem that created financial issues. Applicant divorced her husband but still had significant debt. The husband is required to pay child support but is delinquent. She was also laid off from her job for six months and was unable to cover her debts. She is now employed and her monthly income is now approximately \$2,416 with monthly expenses of \$1,559 leaving \$857 for expenses and debt payment.

Applicant stated as of January 2004, all debts were satisfied except for the student loans owed to the Department of Education. She stated her mother was killed in an automobile accident in March 2002, and she used the insurance settlement to pay her creditors. She stated payment on the student loans is being deferred by the Department of Education. Applicant provided no documentary information or evidence she paid the debts and that they are satisfied or the student loans are deferred.

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* § 3.1 (b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

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 (DC) and mitigating conditions (MC) 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." Directive ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* 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. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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 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. "[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." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determination should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

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:

Under 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. Directive ¶ E2.A6.1.1. Under 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 or regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information. Directive ¶ E2.A5.1.1. Under Guideline J (Criminal Conduct), there is a security concern for a history or pattern of criminal activity which creates doubt about a person's reliability and trustworthiness. Directive ¶ E2.A10.1.1.

Applicant's financial situation and her debts brings the matter within Financial Consideration Disqualifying Condition Directive ¶ E2.A6.1.2.1. (*a history of not meeting financial obligations*); and Directive ¶ E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*). Applicant admitted she had more than \$34,000 in debts either past due, for collection, or listed as bad debt. Her statement to the DSS Special Agent shows she has a history of bad debt and an inability to satisfy the debt. I conclude the disqualifying conditions have been established.

The mitigating conditions that may be applicable to Applicant are: 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, business downturn, unexpected medical emergency, or a death, divorce or separations)*); and Directive ¶ E2.A6.1.3.6. (*the individual initiated a good-faith effort to pay overdue creditors or otherwise resolve debts*). The husband's gambling habit may have contributed to some of the debt. Applicant's statement to the DSS special agent reveals debts were mostly the result of Appellant's actions and not the husband's gambling. Appellant stated she paid off all but the student loans from an insurance settlement from her mother's death. However, Applicant provided no documentary information or evidence concerning payment of these debts. Without such information from Applicant, she has not met her burden to present relevant and material information to mitigate the disqualifying conditions. I conclude Applicant has not met her burden to mitigate the disqualifying conditions.

Applicant's failure to correctly list all of her debts currently delinquent over 90 days and delinquent over 180 days in the last 7 years in response to questions 38 and 39 on the security clearance application 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 personnel security questionnaire*). This disqualifying condition also leads to the criminal offense of violating 18 U.S.C. 1001 for knowingly and willfully making any materially false, fictitious, or fraudulent statement or representation in a security investigation. This action brings the matter under Criminal Conduct Disqualifying Condition Directive ¶ E2.A10.1.2.2. (*a single serious crime...*). Applicant listed one debt in response to question 38 and one debt in response to question 39 and completely filled out the space provided on the form. When questioned by the special agent, she readily provided accurate and detailed information on all debts. I conclude

Applicant did not deliberately or knowingly omit, conceal or falsify relevant and material facts on the security clearance application and the disqualifying conditions under Guidelines E and J have not be established.

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 allegation 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.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Paragraph 2, Guideline E FOR APPLICANT

Subparagraph 2.a.: For Applicant

Paragraph 3, Guideline J FOR APPLICANT

Subparagraph 3.a.: For Applicant

DECISION

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

Thomas M. Crean

Administrative Judge