

DATE: May 4, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-06264

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

Erin C. Hogan, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a self-employed food service consultant for a defense contractor. She has delinquent debts, including for federal and state taxes, she has not satisfied. Applicant did not file federal tax returns for two years which is a criminal offense under a federal statute. Applicant deliberately did not provide correct answers to questions on her security clearance application concerning debts past due over 180 days in the last seven years and currently past due over 90 days. Clearance is denied.

STATEMENT OF THE CASE

On June 8, 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 July 12, 2004. The SOR alleges security concerns under Guideline F (Financial Considerations), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on July 26, 2004, and November 24, 2004. She admitted to all of the allegations, except for denying part of one allegation under Guideline F, and denied the allegations under Guidelines E and J. Her request for a hearing before an administrative judge was received by DOHA on November 26, 2004. Department Counsel was prepared to proceed with the case on January 27, 2005, and the case was assigned to me on February 1, 2005. A notice of hearing was issued on February 22, 2005, for a hearing on March 21, 2005. Applicant requested a delay of the hearing and the hearing convened on March 29, 2005. Six government exhibits, one Applicant exhibit, and the testimony of the Applicant were received during the hearing. The record was held open for Applicant to submitted additional documentary information, but she did not submit additional information. ⁽¹⁾ The transcript was received on

April 8, 2005.

FINDINGS OF FACT

Applicant is a 39-year-old self-employed food service consultation. She receives assignments from a defense contractor to consult on food service. She is employed full-time as a contracts manager for another company that is not a defense contractor. A security clearance is required for the food service consulting business. [\(2\)](#)

Applicant has delinquent debts dating from 1996. Debt 1.a. in the SOR is for a 1996 trash collection bill. Applicant stated the debt was paid and she would provide documentary information of the payment. Debt 1.b. in the SOR is a 1997 credit card bill applicant stated she was paying and would provide documentary information of the payments. Applicant did not provide documentary information to confirm she is making payments on these debts. [\(3\)](#)

Debt 1.c. in the SOR is a 1997 city personal property tax bill for \$11,708 for a car. Applicant alleges she owes the city only \$2,219 since the vehicle was not located in the city for the entire time the tax was assessed and that she made payments on the tax. Applicant agreed but did not provide documentary information of the reduced tax and payments made to the city. [\(4\)](#)

Debt 1.d. in the SOR is taxes owed the Internal Revenue Service for tax year 1997. [\(5\)](#) Debt 1.e. in the SOR is taxes owed State A for tax year 1997. This tax was payed by tax refund offset in a later tax year. [\(6\)](#) Debt 1.f. in the SOR is taxes owed State B for tax year 1997. Both State A and State B placed a tax lien against Applicant for 1997 taxes. Applicant stated she has payment arrangements with the Internal Revenue Service and State B but provide no documentary information of an arrangement. [\(7\)](#)

Debt 1.g. in the SOR is a 1998 telephone bill Applicant stated was paid. Applicant did not provide any documentary information the bill was paid. [\(8\)](#)

Debt 1.h. in the SOR is an Internal Revenue tax bill for tax year 1998. Debt 1.i. in the SOR is a State B tax bill for tax year 1998. State B placed a tax lien against Applicant for the 1998 taxes. Applicant stated she is making payments on these tax debts but provided not documents to support her claim. [\(9\)](#)

Debt 1.j. in the SOR is for payment of equipment leased by Applicant in 1999. Debt 1.k. in the SOR is for the rent of an apartment in 1999. Applicant stated she has attempted to make arrangements with the creditors on these two debts but was unsuccessful. Applicant provided no documentary information on her attempts to make arrangements with the creditors. [\(10\)](#)

Debt 1.l. in the SOR is taxes owed State B for tax year 2000. Applicant states she has arrangement with the state to pay the tax arrears but provided no documentary information of the arrangements. [\(11\)](#)

Applicant did not file federal income tax returns for tax years 1999 and 2000. A willful failure to file federal tax returns violates 26 United States Code, Section 7203. Applicant stated she did not willfully fail to file the tax returns but had extra money taken from her paycheck to cover her federal and state taxes. Applicant did not provide documentary evidence of the money taken from her pay or the federal tax returns for 1999 and 2000 that she did eventually file. [\(12\)](#)

Applicant completed a security clearance application in March 2002. In response to question 36 asking if there were any tax liens in the last seven years, Applicant listed a tax lien for State A but not the two tax liens for State B. Applicant stated she did not know there were tax liens from State B because she had moved and she did not receive the notices. Additional state taxes for State B were being withheld from her pay so she did not believe State B would initiate a tax lien. Applicant provided not documentary information of the amount of taxes for State B withheld from her pay. [\(13\)](#)

On her March 2002 security clearance application, Applicant listed one debt in response to question 38 asking in the last seven years if there had been debts delinquent over 180 days, and answered "no" to question 39 asking if there were any

debts currently over 90 days delinquent. In fact, there were numerous debts in the last seven years delinquent over 180 days and a number of debts currently over 90 days delinquent. She stated she accidentally answered the questions incorrectly. [\(14\)](#)

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." [\(15\)](#) Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. [\(16\)](#)

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. [\(17\)](#) 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. [\(18\)](#)

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. [\(19\)](#) 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. [\(20\)](#) Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts. [\(21\)](#) An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." [\(22\)](#) "[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." [\(23\)](#) "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." [\(24\)](#)

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 J - Criminal Conduct: A history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness.

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 dating from 1996 brings the matter within Financial Considerations Disqualifying Conditions 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 has been accumulating delinquent debt since 1996. Some of these debts are for small amounts and some are large amounts, particularly for unpaid taxes. Applicant has not satisfied her delinquent debts even though she says she will and claims she is trying to make arrangements with creditors. Applicant's debts show a history of not meeting financial obligations and an unwillingness or inability to satisfy debts. I conclude the above disqualifying conditions have been established.

The only Financial Considerations Mitigating Condition that could apply to Applicant is Directive ¶ E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant stated she either paid some of her delinquent debts, made arrangements to pay delinquent debts, or attempted unsuccessfully to make arrangements with creditors to pay debts. Applicant did not produce any documents to verify her claims of satisfied debts or arrangements to satisfy debts. The only document she provided shows a tax refund in a later year for State A applied to her past due taxes to State A. The debt has been satisfied even if by forced application of a tax refund. I conclude Applicant has not met her burden to establish that she initiated a good-faith effort to satisfy the remainder of her debts and mitigate allegations for financial considerations.

The government has established its case under Guideline J. Applicant's failure to file federal tax returns for tax years 1999 and 2000 in violation of a federal criminal statute brings the matter under Criminal Conduct Disqualifying Conditions Directive ¶ E2.A10.1.2.1 (*allegations or admission of criminal conduct, regardless of whether the person was formally charged*); and Directive ¶ E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*). Applicant's failure to file federal income tax returns for two tax years is a federal criminal offense so the government has established the disqualifying condition.

Applicant presented no information to mitigate the Criminal Conduct Disqualifying Conditions. The Criminal Conduct Mitigating Conditions to be considered for Applicant's case are Directive ¶ E2.A10.1.3.1 (*the criminal behavior was not recent*); Directive ¶ E2.A10.1.3.2 (*the crime was an isolated incident*); and Directive ¶ E2.A10.1.3.6 (*there is clear evidence of successful rehabilitation*). The failure to file two years of federal tax returns four and five years ago is not recent and not isolated, but her failure to pay is recent. Applicant claims she is paying the back taxes but provided no proof to back-up her claim. She presented no documentary information tax returns have been filed and payment made on past due taxes. There is no indication of successful rehabilitation from Applicant. Applicant has not presented information to mitigate the security concern for criminal conduct.

The government has established its case under Guideline E. Applicant's failure to list all of the tax liens and all delinquent debts past due over 180 days in the last seven years and all current delinquent debts over 90 days brings the matter under Personal Conduct Disqualifying Conditions Directive ¶ E2.A5.1.2.2 (*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 security clearance eligibility or trustworthiness*). When Applicant listed on the security clearance application only a tax lien from State A, she had not received a notice of tax liens from State B because she had moved. She also had extra withholding for State B's taxes taken from her pay. It is reasonable to conclude Applicant did not know of the State B tax liens. Her failure to list the tax liens from State B in response to question 36 was not a deliberate attempt to omit, conceal or falsify her response, and I find for her as to this allegation. However, Applicant did know she had numerous delinquent debts over 180 days past due in the last seven years and currently had debts past due over 90 days. Even though she did not know the exact debts and the amounts of

indebtedness, she knew debts existed and she made no attempt to learn the facts before completing the security clearance application. I conclude Applicant deliberately omitted, concealed or falsified her responses to questions 38 and 39. Since Applicant did not provide correct information voluntarily or before being confronted with the facts, she did not established the Personal Conduct Mitigating Conditions under Directive ¶ E2.A5.1.3 (*the falsification was an isolated incident, not recent, and the individual has subsequently provided correct information voluntarily*); and Directive ¶ E2.A5.1.3.3 (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*).

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.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h. Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Paragraph 2, Guideline J: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Paragraph 3, Guideline E: AGAINST APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: Against Applicant

DECISION

In light of all of the circumstances presented in the record of 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. Applicant was given until Apr. 15, 2005 to submit her additional information. As of May 4, 2005, she has not submitted any information.
2. Tr. 33-34; Government exhibit 1 (Security clearance application, dated Mar. 17, 2002).
3. Tr. 23.
4. Tr. 24; Tr. 36.
5. Tr. 25; Government exhibit 5 (US Treasury tax information, dated Jul. 30, 2002).
6. Tr. 25; Applicant exhibit A (Tax offset letter, dated Jun. 1, 2004).
7. Tr. 25-26; Tr. 37-39: Government exhibit 6 (State tax liens, dated Jul. 14, 2000).
8. Tr. 26-27.
9. Tr. 27; Tr. 38.
10. Tr. 28-29; Tr. 39-40.
11. Tr. 29-30; Tr. 38.
12. Tr. 30-31.
13. Tr. 31-32.
14. Tr. 32-33.
15. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
16. Directive ¶ E2.2.1.
17. *Id.*
18. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
19. *See* Exec. Or. 10865 § 7.
20. Directive ¶ E3.1.14.
21. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
22. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
23. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
24. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.