

DATE: August 22, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-08804

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Mary Todd, Esq.

SYNOPSIS

Applicant is a 25-year-old employee of a government contractor working as a personnel security specialist at a non-defense agency who failed to report on her security clearance application (SF 86) her discharge from a previous employment in 2001 for unsatisfactory performance (Question 20), and that she was 90 days delinquent on six different debts totaling approximately \$2,500.00 (Question 39). Applicant admitted that the first omission was deliberate in an effort to protect her security clearance and avoid embarrassment. Clearance is denied.

STATEMENT OF CASE

On December 30, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On January 14, 2005, Applicant responded to the allegations in her answer, and requested a hearing. The matter was assigned to me on March 25, 2005. A notice of hearing was issued on June 3, 2005, and a hearing was held on June 20, 2005. Six government exhibits and two Applicant exhibits were admitted into evidence at the hearing in addition to the 11 exhibits submitted with Applicant's answer. The Applicant and one witness on her behalf testified. The government withdrew two allegations at the hearing. The transcript was received on June 27, 2005.

FINDINGS OF FACT

Applicant admitted all of the allegations with explanation. After a complete review of the evidence in the record and upon due consideration of the record the following findings of fact are made:

Applicant is a 25-year-old employee of a government contractor working as a personnel security specialist at a non-defense department who failed to report on her security clearance application (SF 86) her discharge from a previous employment in 2001 for unsatisfactory performance (Question 20), and that she was 90 days delinquent on six different debts totaling approximately \$2,500.00 (Question 39). Applicant admitted that the discharge was deliberately omitted to avoid the possibility of losing her security clearance. No effort was made to correct the information after the filing was made.

Five of the Applicant's debts totaled \$1,350.00 while one delinquent debt of \$1,169.00 was an overdue portion of a loan for \$4,100.00 from a federal credit union. Applicant made the loan to help a relative with rent and it was being paid in installments. Applicant denied the delinquent debts were deliberately omitted contending she believed some had been written off and the largest one was being paid through a payment program. All of the five smaller debts have been paid and the installments are now current on the largest debt.

Applicant is well regarded by her employer and her supervisor at the department where she works and has shown dedication to her work and no difficulties with complying with security requirements (Exhs. K and L). Since 2000 she has worked for three different contractors doing different types of work at the same government department. She has held a clearance the entire time. Her discharge by the first employer was followed by two subsequent successful employments.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the 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. The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved

in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

The government has alleged personal conduct security considerations under Guideline E of the Directive, relating to questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations that could indicate the person may not properly safeguard classified information. (E2.A5.1.1.) The Government has established that Applicant deliberately omitted and concealed relevant and material facts about her discharge by a former employer for unsatisfactory performance. (E2.A5.1.2.2.) Applicant disputed the reasons given by the employer for the discharge and questioned the manner in which it was handled by the staff of the employer. While this may have

been true, and her successful performance in her current job lends some supports to her argument, the fact that she was discharged was established and the SF 86 clearly required it to be listed at Question 20.

The fact she omitted information about her discharge from her former employment indicates she hoped to preclude the government from finding out about the discharge and the reasons for it. She admitted that her omission was motivated by fear of the loss of her clearance if the information was provided, and, the fact that a fellow employee was monitoring her input of information for the SF 86 on the colleague's computer. Applicant was embarrassed to let her know of the event. Applicant failed to ameliorate the problem by correcting the application after the electronic submission.

The omission of information about her debts appears to have been prompted by a mistaken belief that, since some of the debts had been charged off and the largest one other was being paid in installments, it was not necessary to include the information on the application. While Applicant is a young woman who might have had such beliefs, she should have realized the seriousness of requirement to provide accurate information and to insure the information was correct. That she did not do, but I find, based on her testimony, that she did not withhold the information deliberately. Since there is no allegation of concerning financial considerations under Guideline F, the fact that the debts have now largely been paid or being paid is technically not relevant, but that fact does indicate a level of honesty on the part of Applicant that can be recognized.

Guideline J (Criminal Conduct) is also alleged in the SOR. The Government has established a sufficient basis that Disqualifying Condition E2.A10.1.1. might be applicable to Applicant in that she deliberately omitted the information on the SF 86 relating to her discharge could be construed as criminal conduct in violation of 18 U.S.C. 1001. It could be mitigated by application of the facts in the case to certain of the Mitigating Conditions (MC). However, the fact the omission was deliberate and that she signed a certification of accuracy, leads me to conclude that mitigating factors are not applicable.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. While Applicant impressed me as a sincere and honest person, the fact that she deliberately omitted information concerning her employment discharge causes me to conclude that the standards for ruling in her favor applying the whole person concept have not been met. Her omission of the delinquent accounts may not have been deliberate but reflected too casual an approach to the requirements completing a security clearance application.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude it is not clearly consistent with the national interest to grant a security clearance to her.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Withdrawn

Subparagraph 1.d.: Withdrawn

Subparagraph 1.e.: For Applicant

Paragraph 2 Guideline J: 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 renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

Administrative Judge