

KEYWORD: Financial, Personal Conduct; Criminal Conduct

DIGEST: Applicant is a 49-year-old warehouse production specialist who has worked for 12 years for a federal contractor. She held a secret clearance for part of that time. In 2003, she had \$93,000 in delinquent debts discharged in bankruptcy. She could not have her back taxes or criminal fines discharged and still owes taxes for four years listed on the Statement of Reasons and for 4-5 years not listed. Applicant failed to honestly answer questions on her security clearance application about her finances. Applicant has failed to mitigate security concerns under Guideline F, financial considerations, Guideline E, personal conduct, and Guideline J, criminal conduct. Clearance is denied.

CASE NO: 03-10676.h1

DATE: 06/23/2006

DATE: June 23, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-10676

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 49-year-old warehouse production specialist who has worked for 12 years for a federal contractor. She held a secret clearance for part of that time. In 2003, she had \$93,000 in delinquent debts discharged in bankruptcy. She could not have her back taxes or criminal fines discharged and still owes taxes for four years listed on the Statement of Reasons and for 4-5 years not listed. Applicant failed to honestly answer questions on her security clearance application about her finances. Applicant has failed to mitigate security concerns under Guideline F, financial considerations, Guideline E, personal conduct, and Guideline, J, criminal conduct. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On November 22, 2005, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline F (financial considerations), Guideline E (personal conduct) and Guideline J (criminal conduct) of the Directive. Applicant answered the SOR in writing on March 1, 2006, and elected to have a hearing before an administrative judge. In her answer, Applicant admitted all of the allegations under Guidelines F except ¶ 1.f. She denied the allegations in SOR ¶¶ 2.a, 2.b, 3.a, and 3.b. The case was assigned to me on May 1, 2006. A notice of hearing was issued on May 18, 2006, scheduling the hearing for June 8, 2006. I conducted the hearing as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance. The Government offered thirteen exhibits for admission in the record and they were marked as Government Exhibits (GE) 1-13. The exhibits were admitted into evidence without objection. Applicant testified on her own behalf, and offered one exhibits for admission in the record. It were marked as Applicant's Exhibits 1 and was admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on June 20, 2006.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful

review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 49 years old and has worked for a defense contractor as a warehouse production specialist for 12 years. She has held a secret clearance since 1994. She is married, but is presently estranged from her husband. She has two adult children.

In December 1999, Applicant filed for bankruptcy under Chapter 13. In August 2001, her petition was dismissed. She again filed for bankruptcy in June 2003, under Chapter 7 and more than \$93,000 in debt was discharged in October 2003. She still has delinquent debts remaining after the bankruptcy, to the Internal Revenue Service (IRS) for tax years 1994, 1995, 1999, and 2002, for taxes she failed to pay during those years, as alleged in the SOR. Although not alleged she did not pay her taxes for tax years 1998, 2000, and 2001.⁽³⁾ She contacted the IRS in November 2005, and set up a payment plan and pays \$275 a month towards her delinquent taxes.⁽⁴⁾ She owes more than \$14,000 in taxes, penalties and interest for these tax years.⁽⁵⁾ She admitted that she has also not paid her taxes for tax years 2004 and 2005.⁽⁶⁾ She claimed that the reason she owes money on her taxes is that she did not have enough money withheld from her pay.⁽⁷⁾ She claimed she increased the withholdings, but it was not enough and continued to make the same mistake year after year.⁽⁸⁾ Her explanation for not paying her taxes each year is that she did not have the money. In accordance with the installment plan she has with the IRS, it states: "If you have any new or additional taxes that become due during the term of this agreement, you must pay them in full and on time. If necessary adjust your withholding or estimated tax payments to cover your tax year. New or additional taxes that become due and are not paid will default or terminate this agreement."⁽⁹⁾ It is unclear if the IRS has taken any further action regarding Applicant's latest failure to pay her taxes, but clearly they may deem the agreement is in default and terminate it.

Applicant believes the reason she is in financial difficulty was because she did not get along with her spouse.⁽¹⁰⁾ She provided no further explanation. She claimed she filed for bankruptcy because in 2002 her husband needed back surgery and was out of work, so they were unable to meet their expenses.⁽¹¹⁾ No explanation was provided why she filed for bankruptcy in 1999. They filed under Chapter 13 in 1999, but were unable to make payments as required.⁽¹²⁾

Applicant claimed she has paid the debts listed in SOR ¶¶ 1.c, 1.d, and 1.e, which were all for bad checks she had written.⁽¹³⁾ A warrant had been issued in each case for failing to pay those debts. Each warrant was eventually quashed after she appeared in court and agreed to pay. She failed to comply and arrest warrants were again issued. She appeared in court, agreed to pay and again failed to comply. She claims she eventually paid the fines associated with the debts, but provided no proof of that or that she paid restitution to the creditors to whom she wrote the bad checks.⁽¹⁴⁾ The check that she bounced as alleged in SOR ¶ 1.e pertains to a check she wrote to pay for her son's child support payment. He was to repay her within five days so she could cover the check. He did not repay her for six years. Sometime after she received his payment in approximately January 2006, she paid the state the delinquent amount.⁽¹⁵⁾ Applicant claimed that she had paid the fines and restitution regarding the debts in SOR ¶¶ 1.c and 1.d. However, because she had failed to pay the debt in SOR ¶ 1.e, the court considered all the debts under the one warrant and kept it open, despite each offense having its own docket number. Applicant's testimony was not credible nor supported by the evidence.⁽¹⁶⁾ She failed to provide any documentation to show her warrants were no longer outstanding. Applicant claims she has a budget, but did not provide a copy. She claims she has approximately \$150 left after paying her monthly expenses.

When providing an affidavit to an Office of Personnel Management investigator she stated she had one bad check and conviction, and that she was not aware of any other bad checks. However, she was aware at that time that she had two other bad check convictions and warrants for her arrest for bad checks. Applicant did not know why she said that and later claimed that she could not remember the circumstances. Later in her affidavit she then recalled that she had the other two bad checks. She claims she did not try and mislead the investigator and could not recall if she just forgot about the convictions. Applicant's testimony was not credible. ⁽¹⁷⁾

With regard to the debt in SOR ¶ 1.f she claims she contacted the creditor and was told they did not have a record of the debt. Applicant did not provide any supporting documentation. The debts in SOR ¶¶ 1.g, 1.i, and 1.k have not been paid. Regarding the debt in SOR ¶ 1.j. she claimed she attempted to contact the creditor, but did not receive a response.

Applicant was aware that when she completed her security clearance application (SCA) and signed it on February 2, 2002, ⁽¹⁸⁾ that it would involve a background check and she knew she was required to tell the truth. ⁽¹⁹⁾ When answering questions 38 and 39 she was to list those debts that were either 180 or 90 days delinquent. She responded "no" to the questions indicating she did not have any delinquent debts. Her explanation for failing to list her debts was that the debts were included in the bankruptcy. ⁽²⁰⁾ Her 1999 bankruptcy had been dismissed on August 21, 2001 and her more recent bankruptcy was not filed until June 18, 2003, over a year after she had filled out her SCA. She listed her 1999 bankruptcy on her SCA and indicated her liabilities were \$28,000. They were actually approximately \$138,000. ⁽²¹⁾ She had "no idea" why she listed the amount incorrectly. ⁽²²⁾ Applicant's testimony regarding her failure to list her debts was not credible. Applicant deliberately failed to provide inaccurate and untruthful information on her SCA, in violation of Title 18 U.S.C. § 1001, a felony.

Applicant is considered loyal, considerate and dependable by her former sister-in-law. ⁽²³⁾ One coworker considers her a valued employee and has no cause for concern regarding her honesty and integrity. ⁽²⁴⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and

surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁵⁾ The government has the burden of proving controverted facts.⁽²⁶⁾ The burden of proof is something less than a preponderance of evidence.⁽²⁷⁾ 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.⁽²⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽²⁹⁾

No one has a right to a security clearance⁽³⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽³¹⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽³²⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽³³⁾ 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.

Based upon 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 because an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts. 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.

Guideline E-Personal Conduct is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that could indicate that the person may not properly safeguard classified information.

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.

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 below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guidelines E, F and J.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*), apply in this case. Applicant had a significant amount of debt discharged in bankruptcy in October 2003. Since then she has accumulated more delinquent debts and failed to pay her taxes for many years. Based on her long history of financial problems, inactions and her budget, I find she has a long history of not meeting financial obligations and is both unwilling and unable to meet her financial obligations

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2 (*It was an isolated incident*), FC MC E2.A6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)*), FC MC E2.A6.1.3.4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant's debts are recent because she has failed to pay them. Although she recently set up a payment plan for delinquent back taxes owed, she disregarded paying her taxes and failed to properly adjust her withholdings so she would not be confronted with the deficiency each year. She has existing delinquent debts that she has not paid, so her financial problems are not isolated. Hence, FC MC E2.A6.1.3.1 and FC MC E2.A6.1.3.2 do not apply. Applicant failed to provide evidence to show her financial situation was due to conditions beyond her control. She had her delinquent debts discharged in bankruptcy in October 2003, less than three years ago, and again finds herself in financial difficulty. She was aware that she should increase her withholdings for her income taxes, but each year failed to cover herself and failed to pay her taxes. She recently set up a payment plan to the IRS. Because she did not pay her 2004 and 2005 taxes, she has technically already defaulted on the agreement. She did not provide any proof that she has maintained her

payment plan with the IRS. She continues year after year to disregard paying her taxes. She has not provided any evidence she is receiving counseling or that there is a clear indication that the problem is being resolved. To the contrary, she continues to neglect her debts and disregard her responsibilities regarding her taxes. Although she claims she has paid some debts, she has not provided any proof. I find none of the mitigating conditions apply.

The deliberate omission of relevant and material facts from a security clearance determination is a concern and may be disqualifying under Personal Conduct Disqualifying Condition (PC DC) E2A5.1.2.2 (*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 employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or aware fiduciary responsibilities*). Information is material if it would affect a final agency decision or, if incorrect, would impede a thorough and complete investigation of an applicant's background. ⁽³⁴⁾ An applicant's financial history is a matter that could affect a final agency decision on whether to grant the applicant a clearance, and an applicant's failure to disclose it would impede a thorough investigation of her background. At the time she completed the SCA Applicant was aware of her delinquent debts yet she deliberately failed to list this information on her SCA. Hence, the above disqualifying condition applies.

I considered all the mitigating conditions and especially considered Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), and PC MC E2.A5.1.3.5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*). There is no evidence to support any Applicant effort to correct the falsifications before being confronted with the facts or that she has taken any steps to reduce her vulnerability. Applicant's answers on her SCA regarding her debts were deliberate falsifications with the intent to mislead. She repeated that conduct while testifying at her hearing and her testimony was not credible. I find she intentionally and deliberately meant to mislead when she provided false answers on her SCA. None of the personal conduct mitigating conditions apply.

Based on all the evidence, Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*Allegations or admissions of criminal conduct, regardless of whether the person was formally charged*), and CC DC E2.A10.1.2.2 (*A single serious crime or multiple lesser offenses*), apply. Applicant had 3 convictions and warrants for her arrest for writing bad checks and repeatedly failed to comply with the court orders. Applicant intentionally and deliberately lied on her SCA, a violation of Title 18 U.S.C. § 1001, a felony.

I have considered all the mitigating conditions and especially considered Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.1 (*The criminal conduct was not recent*), CC MC E2.A10.1.3.2 (*The crime was an isolated incident*) CC MC E2.A10.1.3.4 (*The person did not voluntarily commit the act and /or factors leading to the violation are not likely to recur*), and CC MC E2.A10.1.3.6 (*There is clear evidence of successful rehabilitation*). Applicant's conduct is recent in that she only recently paid her last fine. She provided no proof that all of her warrants have been satisfied. In addition, she deliberately and intentionally lied on her SCA and provided testimony at her hearing that was not credible. Therefore, CC MC E2.A10.1.3.1 and E2.A10.1.3.2 do not apply. There is no evidence that her actions were committed involuntarily. Applicant has not shown any evidence of successful rehabilitation. She continued to attempt to mislead the government with her testimony and had no real explanation for repeatedly violating court orders. Her actions show little regard for following rules and regulations and being forthright. I find none of the mitigating conditions apply.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered the whole person and considered all of the facts and information provided by both sides. I considered Applicant's demeanor when testifying and her forthrightness. Based on her conduct and testimony I have serious concerns about her honesty, trustworthiness and judgment. I find Applicant has failed to mitigate Guidelines F, E and J. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F, E and J are decided against Applicant.

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: Against 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

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against Applicant

DECISION

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

Carol G. Ricciardello

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960) as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2,

1992), as amended and modified.

3. Tr. 19-120.

4. Answer; Tr. 18.

5. *Id.*

6. This information is not considered for disqualifying purposes, but is considered under the whole person concept, and Applicant's ability to pay her debts.

7. Tr. 15.

8. Tr. 24-26.

9. Answer.

10. Tr. 15.

11. Tr. 21.

12. Tr. 22.

13. Tr. 14-15.

14. Answer.

15. GE 4.

16. GE 4, 5, and 6.

17. Applicant's testimony does not specifically relate to any allegation or disqualifying condition, however, it is relevant in analyzing the whole person concept and in accessing the issues related to Guideline E and whether her omissions were deliberate and intentional.

18. GE 1.

19. Tr. 31.

20. Tr. 31.

21. These facts were not alleged as disqualifying conditions, and will not be considered for disqualifying purposes. In addition, in her sworn affidavit she also failed to divulge the warrants for her bad checks until they were brought to her attention by the investigator. Her testimony for why she failed to provide complete information to the investigator was not credible. These fact are only used to evaluate the "whole person" and to determine if Applicant's failure to provide accurate and complete information on her SCA was intentional.

22. Tr. 32.

23. AE 1.

24. AE 1.

25. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).

26. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

27. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
28. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
29. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
30. *Egan*, 484 U.S. at 531.
31. *Id.*
32. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
33. Executive Order 10865 § 7.
34. ISCR Case No. 01-06870, 2002 WL 32114535 (App. Bd. Sep. 13, 2002).