

KEYWORD: Financial

DIGEST: Applicant is an account manager for a defense contractor. A credit bureau report revealed Applicant has five bad debts totaling approximately \$12,000. Her monthly expenses also exceed her monthly income preventing her from making good-faith efforts to resolve her indebtedness. Applicant was discharged in bankruptcy in 1993 and within ten years accumulated her latest indebtedness, and she is financially overextended. Clearance is denied.

CASENO: 03-12324.h1

DATE: 01/13/2005

DATE: January 13, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-12324

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is an account manager for a defense contractor. A credit bureau report revealed Applicant has five bad debts totally approximately \$12,000. Her monthly expenses also exceed her monthly income preventing her from making good-faith efforts to resolve her indebtedness. Applicant was discharged in bankruptcy in 1993 and within ten years accumulated her latest indebtedness, and she is financially overextended. Clearance is denied.

STATEMENT OF THE CASE

On June 10, 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 June 25, 2004. The SOR alleges security concerns under Guideline F (Financial Considerations) of the Directive.

Applicant answered the SOR in writing on June 29, 2004. She admitted five, denied two, and did not answer one of the allegations under Guideline F. She requested a hearing before an administrative judge. The request for a hearing was received by DOHA on July 5, 2004. Department Counsel was prepared to proceed with the case on August 10, 2004, and the case was initially assigned to another judge on August 12, 2004, and reassigned to me on November 10, 2004. A notice of hearing was issued on November 10, 2004, and amended on November 17, 2004. The hearing was held on December 15, 2004. Eight government exhibits, four Applicant exhibits, and the testimony of the Applicant were received during the hearing. The record was held open for 15 days and additional Applicant exhibits were received on December 28, 2004. The transcript was received on January 4, 2005.

FINDINGS OF FACT

Applicant is a 50-year-old account manager for a defense contractor. She submitted a security clearance application on November 13, 2002. A credit report revealed Applicant had approximately \$14,750 in delinquent debt. Applicant's earlier debts had been discharged in bankruptcy in 1993. Applicant presented documentary evidence that she paid off two of these debts reducing her indebtedness to approximately \$12,000. Applicant presented documentary evidence of continued payment on two of the other debts. Of the remaining debt, \$10,000 was for payment of damages and excess mileage on a car lease Applicant co-signed for her son.

Applicant's monthly income is approximately \$2,750 which includes \$350 rent from her daughter. Applicant's monthly expenses total approximately \$3,255. Applicant stated her financial problems stem from her being a single mother receiving no financial assistance from her spouse.

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. Applicant's financial situation and her debts brings the matter within Financial Consideration Disqualifying Conditions Directive ¶ E2.A6.1.2.2. (*a history of not meeting financial obligations*); and Directive ¶ E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*). Applicant has accumulated significant debt over a period of time. She was discharged in bankruptcy and within ten years she was again in significant debt. Her monthly bills exceed her monthly income. While she has paid some of the debts, is paying on others, and the biggest debt is basically owed by her son, Applicant still has long term significant financial problems. The extent of her debt and her monthly expenses, together with limited income, leaves her unable to resolve the debts satisfactorily. Applicant has a history of not meeting her financial obligations. While she is willing to satisfy her debts, she is unable to do so. I conclude the financial considerations disqualifying conditions have been established.

The Financial Consideration Mitigating Conditions that may be applicable to Applicant's financial situation are: Directive ¶ E2.A6.1.3.1. (*the behavior was not recent*); Directive ¶ E2.A6.1.3.2. (*it was an isolated incident*); Directive ¶ E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the person's control*); Directive ¶ E2.A6.1.3.4. (*the person has received counseling for the problem and there are clear indications that the problem is being resolved or is under control*); and Directive ¶ E2.A6.1.3.6. (*the individual initiated a good faith effort to repay overdue creditors or other wise resolve debts*). Applicant's present financial situation is neither not recent nor isolated. She has been in financial difficulty since filing bankrupt over ten years ago. While some of her financial difficulties stem from being a single mother, her financial problems are not based on a situation beyond her control. She has limited income, but still accumulates debt she cannot satisfy. There is no indication Applicant has sought or received financial counseling. While she has paid some of her debts, she has not demonstrated a good-faith effort to resolve her debts. I conclude Applicant has not mitigated the financial considerations disqualifying conditions.

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 2, Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: 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 continue a security clearance for Applicant. Clearance is denied.

Thomas M. Crean

Administrative Judge