

KEYWORD: Financial

DIGEST: Applicant is a 50-year-old employee of a defense contractor. For more than 10 years, she has had eight delinquent debts totaling \$21,931; she timely pays all of her other accounts. Applicant states the delinquent debts were incurred because she took care of her mother financially, after her mother's stroke in about 1994 through 2000 when her mother died. Her financial situation was aggravated by Applicant's heart attack in 2002. Applicant presents a current financial picture of stability. Her assets are listed at \$269,700. She feels that she is still in a precarious financial situation and will not pay off the delinquent debts until she is more financially solvent. She also falsified information on her security clearance application. Applicant has failed to meet the ultimate burden of persuasion. Clearance is denied.

CASENO: 03-13096.h1

DATE: 06/13/2005

DATE: June 13, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-13096

**DECISION OF ADMINISTRATIVE JUDGE**

**JACQUELINE T. WILLIAMS**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 50-year-old employee of a defense contractor. For more than 10 years, she has had eight delinquent debts totaling \$21,931; she timely pays all of her other accounts. Applicant states the delinquent debts were incurred because she took care of her mother financially, after her mother's stroke in about 1994 through 2000 when her mother died. Her financial situation was aggravated by Applicant's heart attack in 2002. Applicant presents a current financial picture of stability. Her assets are listed at \$269,700. She feels that she is still in a precarious financial situation and will not pay off the delinquent debts until she is more financially solvent. She also falsified information on her security clearance application. Applicant has failed to meet the ultimate burden of persuasion. 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 under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), 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 (the "Directive"). On June 3, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Applicant answered the SOR on August 23, 2004.

Department Counsel submitted the government's written case on December 20, 2004. Department Counsel provided a complete copy of the file of relevant material (FORM) to Applicant, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the allegations. Applicant received the FORM on December 30, 2004. She responded to the FORM on January 24, 2005. The case was assigned to me on February 11, 2005.

### **FINDINGS OF FACT**

Applicant admitted all of the factual financial considerations allegations contained in the SOR under Guideline F.

However, she denied the falsification allegation under Guideline E. Those admissions and denial are incorporated herein as findings of fact. I make the following additional findings of fact:

Applicant is a 50-year-old employee of a defense contractor. She works as a configuration management specialist and has been with her current employer since 1995.

The SOR alleges and Applicant admits she has eight delinquent debts for about \$21,931. All of these debts were incurred between 1993 and 1996. Some of the debts have been charged off as bad debts but all of the debts continue to appear on her credit report.

Applicant states that the delinquent debts were incurred because she took care of her mother, a widow, financially after she had a stroke in about 1994 until she passed away in 2000. Not only did she pay her mother's mortgage, she purchased her mother's medical supplies, prescriptions, insurance, and any other necessities. She was her mother's only source of financial support besides the \$350 Social Security income her mother received each month. The financial situation was aggravated by Applicant's heart attack in 2002 and she was out of work for four months without pay.

In response to Question 39 on the security clearance application she answered "no" indicating she had no financial delinquencies over 90 days. She states: "I deny that I deliberately failed to disclose delinquent debts as set forth in subparagraph 1.b, 1.c, 1.d, 1.e, and 1.g [of the SOR]." She further explains:

I admit that Radio Shack was the only past due account that I listed on the Security Clearance Request form . . . In my haste to complete the paperwork my conclusion was that anything not listed would be reviewed in my credit report. I viewed this as the government's way of making certain that they got a complete history I was fully aware that a credit report would be obtained and the data provided verified. The only way that I could have been 100% certain that I had listed everything that would be reviewed would have been to request a copy of my credit report and list any items verbatim from that report. I never considered requesting my credit report. It would have been an absurd assumption on my part to conclude that anything could be kept hidden due to the rigorous and thorough screening process. [\(1\)](#)

Applicant's assets are valued around \$269,000. These tangible assets consist of: a house valued at about \$203,000; a 401K account valued at approximately \$55,700; a truck valued at about \$6,000; a savings account with approximately \$5,000. Applicant indicates that the money in the savings account is to cover real estate taxes and homeowner's insurance. She indicates that she is unable to refinance her home due to significant out of pocket costs. She feels that even if expenses related to refinance were rolled into the loan "there would be no funds available for distribution to cover the delinquent debts." [\(2\)](#)

## 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. Considering the evidence as a whole, Guideline F, pertaining to financial considerations and Guideline E, pertaining to personal conduct, with its respective DC and MC, apply in this case. 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 decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(3)</sup> The government has

the burden of proving controverted facts.<sup>(4)</sup> The burden of proof in a security clearance case is less than a preponderance of the evidence.<sup>(5)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.<sup>(6)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(7)</sup>

No one has a right to a security clearance<sup>(8)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(9)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(10)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(11)</sup> 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 all the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

**Guideline F - Financial Considerations:** a security concern exists when a person has significant delinquent debts. 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.

**Guideline E - Personal Conduct:** conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rule and regulations 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 below.

### CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a case for disqualification under Guideline F. Based on all the evidence, Financial Considerations Disqualifying Conditions (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 accumulated significant delinquent debt totaling approximately \$21,934 and owes eight creditors. These debts occurred almost 10 years ago. Even though she has substantial financial assets, Applicant feels that her financial situation at the current time would be jeopardized if she paid any of the old debts. Her plan is to let the old debts stay on her credit report and make sure that she timely pays all of her other debts.

I have considered all the Financial Considerations Mitigating Conditions (FC MC) and find that 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)*) applies in this case. Based on the record evidence, because of Applicant's financial support to her mother for several years and due to Applicant's own health problems, her accumulation of debts was largely beyond her control. However, once Applicant had those events behind her, her failure to take any action to resolve the debts since then fails to substantially mitigate the security concerns. The evidence does not suggest that Applicant's financial problems are under control. These accounts have been delinquent for years with little to no action taken by her to pay or otherwise resolve them. Accordingly, Guideline F is decided against Applicant.

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully.

Here, based on the record evidence as a whole, the government established its case under Guideline E. I am convinced Applicant fraudulently and deliberately omitted information about her finances because she did not readily have the information; she divulged the only account she remembered and just assumed the government would learn of her other delinquent accounts when a credit check was done. Applicant did not even bother to annotate the question by indicating she had several delinquent debts for a number of years but could not recall them individually, but collectively they totaled about \$22,000. I think her behavior was more than carelessness and a deliberate attempt to commit fraud and mislead the government.

I have reviewed all the Personal Conduct Mitigating Conditions and conclude none apply. Falsification of a security clearance application is a serious matter and it is not easily mitigated or explained away. Accordingly, Guideline E is decided against Applicant.

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am persuaded by the totality of the evidence in this case that it is clearly consistent with the national interest to grant Applicant a security clearance. Applicant has mitigated the security concerns caused by his financial considerations. Accordingly, Guideline F, pertaining to financial considerations and Guideline E, pertaining to personal conduct 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., Financial Considerations (Guideline F) AGAINST THE APPLICANT**

Subparagraph 1.a Against the Applicant

Subparagraph 1.b Against the Applicant

Subparagraph 1.c Against the Applicant

Subparagraph 1.d Against the Applicant

Subparagraph 1.e Against the Applicant

Subparagraph 1.f Against the Applicant

Subparagraph 1.g Against the Applicant

Subparagraph 1.h Against the Applicant

#### **Paragraph 2., Personal Conduct (Guideline E) AGAINST THE APPLICANT**

Subparagraph 2.a Against the 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.

Jacqueline T. Williams

Administrative Judge

1. Item 3, Applicant's Answer, dated August 23, 2004, at 5.
2. Applicant's Objections to the Government's Response dated December 20, 2004, dated January 24, 2005.
3. ISCR Case No. 96-0277 (July 11, 1997) at 2.
4. ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
5. *Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988).
6. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
7. ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
8. *Egan*, 484 U.S. at 531.
9. *Id.*
10. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
11. Executive Order 10865 § 7.