

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Over the past 14 years, Applicant has acquired 25 debts and three judgments totaling approximately \$50,000.00. She falsified her security clearance application (SCA) and her answers to interrogatories. She continues to deny any knowledge of the debts. Applicant has failed to mitigate the governments security concerns about her financial indebtedness, personal conduct, and criminal conduct. Clearance is denied.

CASENO: 03-13048.h1

DATE: 09/30/2005

DATE: September 30, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-13048

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Over the past 14 years, Applicant has acquired 25 delinquent debts and three judgments totaling approximately \$50,000.00. She falsified her security clearance application (SCA) and her answers to interrogatories. She continues to deny any knowledge of the debts. Applicant has failed to mitigate the government's security concerns about her financial indebtedness, personal conduct, and criminal conduct. Clearance is denied.

STATEMENT OF CASE

On February 6, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, amended April 4, 1999, issued a Statement of Reasons (SOR) to Applicant. The SOR 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant furnished her answer to the SOR on March 15 and May 5, 2004. Applicant elected to have her case decided on a written record. The Government provided Applicant a copy of the File of Relevant Material (FORM) on October 1, 2004. Applicant received the FORM on October 17, 2004. Her two-page response to the FORM was transmitted to DOHA by facsimile on November 16, 2004. The case was assigned to me on November 19, 2004.

FINDINGS OF FACT

The SOR alleges financial considerations (Guideline F), personal conduct (Guideline E), and criminal conduct (Guideline J). Applicant admitted the 28 financial allegations but denied the three personal conduct allegations and one criminal conduct allegation. Applicant is 41 years old and employed as a security officer by a defense contractor. She seeks a secret security clearance.

Paragraph 1a. through 1.k. of the SOR shows Applicant petitioned for Chapter 13 bankruptcy 11 times between 1992 and 1996. After her final bankruptcy was dismissed in July 1996, Applicant was barred from filing another petition for 180 days. In her answer to the SOR, Applicant cited emotional and mental problems coupled with the fact that all petitions were filed without counsel. In her supplemental answer, Applicant noted the only reason she filed was to protect her house as her former husband was not paying court-ordered alimony and child support. No other information was provided regarding the petitions. What is known is that none of the overdue debts or judgments have been fully or partially paid. Applicant claimed she had paid one of the telephone companies but provided no proof of payment.

In response to the bankruptcy question (33) of her SCA (paragraph 2) Applicant answered "YES" but provided information about one bankruptcy that she filed in February 1996. Applicant answered "NO" to question 37 requiring information about unpaid judgments, even though she had three judgments described in subparagraphs 1.n. through 1.p. Applicant answered "NO" to question 37 requiring information about delinquent debts over 180 days in the last 7 years, and debts over 90 days delinquent. Her explanation (Item 5, answers to interrogatories) for answering "NO" and disclosing none of the debts was that, "I didn't know about them." Her explanation of being unaware of her debts does not seem logical when weighed against the fact she listed the same debts 11 times in 11 successive Chapter 13 petitions between 1992 and 1996.

In her response to the FORM, Applicant recalled her divorce hearing that required her former husband to pay alimony, child support and health insurance. Applicant then claimed her former husband deceived the mortgage company by telling them Applicant had abandoned the house and moved with her two children to the southeastern part of the United States (U.S.). Applicant originally filed the Chapter 13 petition because she wanted to maintain ownership of the house. She continued to file petitions because she: "either missed the [filing] date or was late getting down to the office with the payment." The only creditor that contacted her was the mortgage company advising her it was going to foreclose on the house.

She first became aware the 11 Chapter 13 filings were considered separate filings when she received the SOR in February 2004; she maintains she only heard from one of the other creditors. She stated, "after the dismissal none had contacted me except the mortgage company telling me when the sale was going to be, and the date I needed to be out of the house."

Applicant believes in honesty and integrity. She has been in the ministry of a number of years and has five references who will vouch for her.

POLICIES

Enclosure 2 of the Directive sets forth guidelines for determining eligibility for access to classified information. Each guideline lists disqualifying conditions (DC) and mitigating conditions (MC). which must be given binding consideration in making security clearance determinations. These conditions must be considered in every case according to the pertinent guideline and the general factors of the whole person concept. The general factors include: (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 the participation; (6) the presence or absence of rehabilitation or 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 E2.2.1.1. 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 Sec. 7. It is merely an indication that the applicant has not met the strict guidelines established for issuing a security 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. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988). "[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 her security clearance." ISCR Case No. 01 20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive E2.2.2.

CONCLUSIONS

An inability to pay debts when they are due increases an individual's vulnerability to pressure and the real possibility of engaging in illegal acts to generate funds. Financial considerations (FC) DC E2.A6.1.2.1. (*a history of not meeting financial obligations*) applies to these circumstances as Applicant's indebtedness extends to 1992, indicating she owed approximately \$50,000.00 that she still owed in April 2003 to 28 creditors or collection agencies. Three of those debts are judgments. The passage of the 14 years without any documentation demonstrating an effort to repay or actual repayment to any of the creditors also falls within the scope of FC DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*).

Applicant has presented insufficient evidence under the mitigating conditions to overcome the history of financial irresponsibility. FC MC E2.A6.1.3.1. (*the behavior was not recent*) will mitigate circumstances that show the underlying behavior leading to the debt problems has ended. Applicant has provided no evidence to show she has modified her behavior to prevent the current financial problems from persisting indefinitely. FC MC E2.A6.1.3.2. (*it was an isolated incident*) applies to indebtedness that is low in amount and modest in number of creditors. The large number of creditors and amount of past due debts militates against the application of FC MC E2.A6.1.3.3.

Applicant has indicated without independent support that the debts were not paid because her husband would not fulfill his responsibilities of complying with the divorce decree by paying child support, alimony and health insurance. Even though her statements lack support, she is entitled to limited extenuation under E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the person's control*) for not being able to address her debts between 1992 and 1996. However, after 1996, Applicant should have been considering other ways to address her creditors in order to demonstrate her intentions to eventually resolve her debts. Due to the passage of more than seven years since 1996, FC MC E2.A6.1.3.3.3. has minimal current application to the circumstances of this case.

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*) does not apply to these circumstances as there is no evidence of financial counseling and there are no indications of the problem being resolved or under control. One of the first principles learned in financial counseling is to contact overdue creditors and initiate a negotiation process for repayment in addition to learning other tools to restore financial responsibility. FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolved debts*) does not apply to these circumstances because there has been no good-faith effort to repay even her smaller past due debts, such as subparagraph 1.y., 1.e.e., and 1.ff. The 11 Chapter 13 petitions she filed between 1992 and 1996 would have translated to mitigation and extenuation had Applicant made some payments under the petitions. Applicant's history of not meeting her financial obligations has not been mitigated.

The primary focus of the personal conduct (PC) guideline is poor judgment or dishonesty. Applicant omitted material relevant information from her October 2000 SCA and in her answers to interrogatories submitted on August 15, 2003. In both answers and her response to the FORM, dated November 16, 2005, she also denies she deliberately omitted any

information. Her ongoing refusal to acknowledge she lied to the government about her petitions, the judgments, and the debts is simply incomprehensible given the number of debts and the times she was required to list the debts and judgments on 11 Chapter 13 petitions. The omissions from the SCA fall within the scope of PC DC E2.A5.1.2.2. (*the deliberate omission of relevant and material facts from any personnel security questionnaire or similar form used to conduct investigations, security clearance eligibility or trustworthiness*). Having to repeat the exercise of listing the creditors 11 times should have increased her recall about the creditors and judgments she owed. Applicant's dishonest conduct continued with her handwritten responses (answers to interrogatories) that she was unaware of the creditors or the judgments. In both the SCA and the answers to interrogatories, the omitted information was material and relevant to the government's investigation into Applicant security qualifications.

None of the mitigating conditions under the PC guideline are applicable since Applicant continues to deny she omitted important information about her finances. Financial information is always germane to security qualifications, so PC MC E2.A5.1.3.1. (*the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness or reliability*) is not applicable for mitigation. PC MC E2.A5.1.3.2. (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*) and PC MC E2.A5.1.3.3. (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*) do not apply to the circumstances of this case because Applicant continues to deny she intentionally omitted any information from the two forms. Having weighed all the evidence, I find against Applicant under the PC guideline.

Criminal Conduct (CC) is defined as a history of criminal activity that creates doubt about a person's judgment, reliability and trustworthiness. The deliberate omission of most of her financial problems from the two security forms makes CC DC E2.A10.1.2.1. (*allegations or admission of criminal conduct, regardless of whether the person was formally charged*) applicable based on a violation of Title 18 United States Code (U.S.C.) 1001. The information that Applicant intentionally omitted was material in that it was likely to change the direction of the government security investigation. The fact that Applicant provided false information on two occasions, and continues to deny she omitted the information exacerbates her behavior under 18 U.S.C. 1001.

There are three mitigating conditions under the CC guideline that are potentially applicable under the circumstances. However, none apply. CC MC E2.A10.1.3.1. (*the criminal behavior was not recent*) and CC MC E2.A10. 1.3.2. (*the crime was an isolated incident*) do not apply as Applicant continues to deny her deliberate omissions. CC MC E2.A10.1.3.6. (*there is clear evidence of successful rehabilitation*) cannot be considered either because successful rehabilitation begins with the full recognition by Applicant she deliberately lied about her financial problems. She has not accepted the fact she has provided false information to the government. The lack of mitigating evidence warrants a finding against Applicant under all three guidelines and the general factors of the whole person concept.

FORMAL FINDINGS

Paragraph 1 (Financial Considerations, Guideline F): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.
- h. Against the Applicant.
- i. Against the Applicant.
- j. Against the Applicant.
- k. Against the Applicant.
- l. Against the Applicant.
- m. Against the Applicant.
- n. Against the Applicant.
- o. Against the Applicant.
- p. Against the Applicant.
- q. Against the Applicant.
- r. Against the Applicant.
- s. Against the Applicant.
- t. Against the Applicant.
- u. Against the Applicant.
- v. Against the Applicant.
- w. Against the Applicant.
- x. Against the Applicant.
- y. Against the Applicant.
- z. Against the Applicant.

- aa. Against the Applicant.
- bb. Against the Applicant.
- cc. Against the Applicant.
- dd. Against the Applicant.
- ee. Against the Applicant.
- ff. Against the Applicant.
- gg. Against the Applicant.
- hh. Against the Applicant.
- ii. Against the Applicant.
- jj. Against the Applicant.
- kk. Against the Applicant.
- ll. Against the Applicant.

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

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.

Paragraph 3 (Criminal Conduct, Guideline J): AGAINST THE APPLICANT.

- a. Against the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance.

Paul J. Mason

Administrative Judge