

KEYWORD: Personal Conduct; Financial

DIGEST: Applicant is a 45-year-old employee of a defense contractor. Prior to her present employment she was unemployed from August 2001 to January 2002. During that time she had difficulties staying current on her bills. When filling out her security clearance application she was untruthful when she denied she had any judgments filed against her or any debts more than 180 days. Applicant has failed to mitigate the personal conduct security concerns. Clearance is denied.

CASENO: 03-13248.h1

DATE: 01/04/2005

DATE: January 4, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-13248

**DECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 45-year-old employee of a defense contractor. Prior to her present employment she was unemployed from August 2001 to January 2002. During that time she had difficulties staying current on her bills. When filling out her security clearance application she was untruthful when she denied she had any judgments filed against her or any debts more than 180 days. Applicant has failed to mitigate the personal conduct security concerns. Clearance is denied.

**STATEMENT OF THE CASE**

On June 8, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. <sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F for financial considerations, and Guideline E for personal conduct.

In a sworn statement, dated June 29, 2004, Applicant responded to the SOR allegations, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the government's case on September 30, 2004. A complete copy of the file of relevant material (FORM) was received by Applicant on October 18, 2004. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM, but provided additional material dated November 5, 2004. Department Counsel did not object to the additional material submitted by Applicant. The case was assigned to me on November 19, 2004.

## ADMINISTRATIVE ISSUES

The SOR reads from paragraph 1 to 3, skipping paragraph 2. I have changed paragraph 3 to paragraph 2, so the paragraphs are sequential.

## FINDINGS OF FACT

Applicant is a 45-year-old defense contractor employee. From 1992 to 2001, Applicant was employed. Her job was eliminated and she was unemployed from August 2001 to January 2002. Applicant found employment for six months from January 2002 to July 2002 as a security officer, before beginning work with her present employer in August 2002. During the period of unemployment, Applicant had difficulties maintaining her finances and fell into debt. Applicant admits she is responsible for the debts alleged in subparagraphs 1.a. through 1.l. in the SOR. Applicant filed for Chapter 7 bankruptcy in November 2003, and her debts listed in the SOR subparagraphs 1.a. through 1.k. were discharged in February 2004. Many of Applicant's debts became delinquent during her period of unemployment. However, the allegation in subparagraph 1. b. is a judgment for \$2,234.00 that was issued against Applicant in November 1997. In addition, the allegations in subparagraphs 1.h. for \$611.00 and 1.i. for \$478.00 were charged off as bad debts in July and January 1997, respectively. Since having her debts discharged in bankruptcy, Applicant is attempting to stay current on all of her bills.

Applicant submitted a security clearance application (SF 86) and swore to its accuracy on August 16, 2002. Question 37 asked: *In the last 7 years, have you had any judgements against you that have not been paid?* Applicant answered "No." Question 38 asked: *In the last 7 years, have you been over 180 days delinquent on any debt(s)?* Applicant answered "yes" and provided information on one credit card debt for \$820.00 that was incurred in 2001 and satisfied in March 2003. All of Applicant's debts listed in the SOR were delinquent on the date she filled out her SF 86. Applicant had two unsatisfied judgments on the date she filled out her SF 86. Applicant claims she omitted the required information because she "did not know the details of a lot of them and didn't want to put in the wrong information." She also stated that she filled out the SF 86 "to the best of my knowledge."

## 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. Considering the evidence as a whole, Guideline F, pertaining to financial considerations and Guideline E, pertaining to personal conduct apply.

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.<sup>(2)</sup> The government has the burden of proving controverted facts.<sup>(3)</sup> The burden of proof is something less than a preponderance of evidence,<sup>(4)</sup> although the government is required to present substantial evidence to meet its burden of proof.<sup>(5)</sup> Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.<sup>(6)</sup> 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.<sup>(7)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(8)</sup>

No one has a right to a security clearance<sup>(9)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(10)</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>(11)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(12)</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.

## CONCLUSIONS

Applicant admits the debts alleged in the SOR. These debts were discharged in bankruptcy. Applicant was unemployed for a period of six months that contributed to her delinquent debts. However, the judgment issued against Applicant in subparagraph 1. b. of the SOR was prior to her period of unemployment, as were the delinquent debts in subparagraphs 1.h. and 1.i. No explanation was provided for why Applicant failed to satisfy the judgment or the debts.

Under Guideline F, a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. 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.

Based on all the evidence, under Guideline F, I find Disqualifying Condition (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts*, apply in this case. I have considered all the mitigating conditions under Guideline F, and specifically considered mitigating conditions MC 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)*, and conclude it applies to subparagraphs 1.a. and 1.c. through 1.g. Applicant's delinquent debts in 1.h. and 1.i. and the judgment in 1.b., date back to 1997, prior to her period of unemployment. Applicant's failure to satisfy the judgment and resolve these debts for a period of over 6 years is troubling. Her other debts occurred while she was unemployed. Applicant filed for bankruptcy in November 2003 and had all her debts discharged in February 2004. Bankruptcy is a legitimate means to resolve overwhelming financial difficulties. Applicant mitigated the allegations 1.a, 1.c. through 1.g. and 1.j through 1.l. Applicant failed to mitigate the allegations in 1.b., 1.h., and 1.i. An insufficient amount of time has elapsed since Applicant's debts were resolved through bankruptcy to ensure she maintains a consistent record of financial responsibility. 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. Personal conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Applicant, failed to report her delinquencies and judgments on her SF 86 in August 2002. She stated on her security application that she only had one debt that had been more than 180 days past due, and it was satisfied. Applicant denied having any judgments against her. Applicant knew she had many debts that were more than 180 days past due since she had been unemployed and unable to pay many of her bills. Applicant later filed for bankruptcy, which indicates she knew her debts were delinquent. Applicant's admission that she did not want to provide wrong information is disingenuous and supports the fact that she knew she had outstanding debts and made a conscious decision not to report them. Instead of admitting to her numerous delinquencies, she omitted all of them, in what she claims is an attempt to not provide wrong information. Guideline E, DC 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 award fiduciary responsibilities*, applies in this case.

Under Guideline E, I have considered all the mitigating conditions and specifically considered, MC 2: *The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*, and conclude it does not apply. When Applicant filled out her SF 86, she was aware that she had many delinquent debts and two judgments that she did not list. It was not until April 16, 2003, when she was confronted by the Defense Security Service investigator that she admitted her omissions. Applicant had ample time between August 16, 2002 and April 16, 2003 to provide accurate and complete information regarding her delinquencies and judgments. She failed to take appropriate action regarding her omissions. Applicant's lack of candor regarding her financial situation raises security concerns and Guideline E is 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 THE APPLICANT

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. For the Applicant

Subparagraph 1.g. For the Applicant

Subparagraph 1.h. Against the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. For the Applicant

Subparagraph 1.k. For the Applicant

Subparagraph 1.l. For the Applicant

### Paragraph 2. Guideline E AGAINST THE APPLICANT

Subparagraph 2.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 or continue a security clearance for Applicant. Clearance is denied.

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Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Section E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p.3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p.2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, Section E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Section E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id.* at 531.
11. *Egan*, Executive Order 10865, and the Directive.
12. Executive Order. 10865. § 7.