

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 29-year-old employee of a defense contractor who, after a 1997 bankruptcy, incurred over \$3,500.00 in delinquent debts and failed to fully answer questions relating to the debts on her application for a security clearance (SF 86). While the largest delinquent debt is being paid in monthly payments that began only in January 2004, other small debts have not been paid. Applicant provided information on the largest two debts on her SF 86 and the omission of the others was not deliberate. Clearance is denied.

CASENO: 03-15479.h1

DATE: 08/06/2004

DATE: August 6, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-15479

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Erin Hogan, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 29-year-old employee of a defense contractor who, after a 1997 bankruptcy, incurred over \$3,500.00 in delinquent debts and failed to fully answer questions relating to the debts on her application for a security clearance (SF 86). While the largest delinquent debt is being paid in monthly payments that began only in January 2004, other small debts have not been paid. Applicant provided information on the largest two debts on her SF 86 and the omission of the others was not deliberate. Clearance is denied.

STATEMENT OF CASE

On November 10, 2003, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On December 8, 2003, Applicant, in a sworn written statement, responded to the allegations set forth in the SOR, and requested a hearing. The matter was assigned to me on May 3, 2004. A notice of hearing was issued on May 10, 2004, and a hearing was held on May 27, 2004. The Government introduced seven exhibits and the Applicant introduced six exhibits in addition to the one exhibit attached to her answer. One post-hearing exhibit was offered. All exhibits were admitted into evidence. The Applicant testified. The transcript was received on June 4, 2004.

FINDINGS OF FACT

Applicant is a 29-year-old employee of a defense contractor who admitted all but one of the specific allegations in the SOR relating to debt and denied those relating to falsification on her application for a security clearance (SF 86). She disagreed with all of the conclusions reached in the SOR based on the allegations.

After a complete review of the evidence in the record and upon due consideration of the record, the following additional findings of fact are made:

Applicant petitioned for Chapter 7 bankruptcy in 1997 because of extensive medical bills as a result of an automobile accident. Her non-secured debts of \$20,000.00 were discharged that year.

Since the bankruptcy Applicant has incurred over \$3,500.00 in debts ranging in amount from \$25 to over \$2,000. At the time of the hearing only the largest debt was being paid by five payments of \$150.00 each since January 2004. One debt cited on the SOR (Par. 1.f.) was in error because of identity theft (Exh. A). An automobile was paid off in February 2004 but it was not the subject of a debt in the hearing.

Applicant had been enrolled in a consumer credit counseling service but was dropped from the program for failure to make payments.

Applicant failed to report all delinquent debts at on her security clearance application (SF 86) when she submitted it in May 2002. She did report the two largest debts on Question 38 relating to debts that were 180 days delinquent but none on Question 39 relating to 90 day delinquencies.

Applicant is highly regarded by her supervisors for her integrity, dependability, and work ethic (Exh. C-G).

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and 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. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the 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. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

CONCLUSIONS

Applicant's extensive delinquent debts prompted the allegation of violation of Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) include the fact that the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.) Applicant has not successfully mitigated this issue.

Applicant's inability or unwillingness to completely satisfy even the smallest of the delinquent debts shows a disregard of her financial obligations. Her answer to the SOR indicated that she would contact the creditors but at the hearing six months later she acknowledged that such had not been done.

She started payments to the largest creditor, and the only one to be paid, just one month after her answer was filed. Evidence showed that one debt was erroneous because of a documented identify theft.

While Applicant is a trusted and valuable employee, she has not shown the proper response for resolution of her financial obligations. Having once undertaken bankruptcy for good reason, she was obliged to fulfill her financial responsibilities thereafter. She has failed to do so.

Also alleged is Applicant's failure to report certain of the offenses under Guideline E that might indicate questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information (E2.A5.1.1.). Specifically, the deliberate omission, concealment, or falsification of relevant and material facts from a personnel security application could raise a security concern and be disqualifying. (E2.A5.1.2.2.)

Her explanation for not answering correctly the questions about debts 90 and 180 days delinquent was that she thought the questions related to current bills. The explanation is not credible since she did list the two largest debts in answer to Question 38 constituting approximately 75% of her delinquent debts. While both questions clearly ask about delinquent debts, I believe that she did not deliberately falsify the information as required by the guideline.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that while the Applicant has made some efforts to change her habits regarding her financial situation, it has not been sufficiently successful and was not undertaken early enough to justify granting a clearance. It is premature to grant her a clearance.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

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.: For Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For 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 renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

Administrative Judge