

KEYWORD: Financial

DIGEST: Applicant owes almost \$16,000 for six delinquent debts. The only action to repay or otherwise resolve these accounts has been an involuntary wage garnishment on the largest of the debts - a \$13,000 student loan - begun in May 2004. Appellant has failed to present sufficient evidence to mitigate the security concerns as expressed in Guideline F (financial considerations). Clearance is denied.

CASENO: 03-16521.h1

DATE: 04/26/2005

DATE: April 26, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16521

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Edward W. Loughren, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes almost \$16,000 for six delinquent debts. The only action to repay or otherwise resolve these accounts has been an involuntary wage garnishment on the largest of the debts - a \$13,000 student loan - begun in May 2004. Appellant has failed to present sufficient evidence to mitigate the security concerns as expressed in Guideline F (financial considerations). Clearance is denied.

STATEMENT OF THE CASE

On June 15, 2004, in accordance with DoD Directive 5220.6, as amended (Directive), the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns about her adverse financial history. The SOR further informed her that, based on information available to the government, DOHA adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.⁽¹⁾

On July 14, 2004, Applicant responded to the SOR (Answer) and admitted to all of the allegations except for subparagraph 1.a. She also requested a determination without a hearing. On September 24, 2004, Applicant received a file of relevant materials (FORM) submitted by DOHA Department Counsel in support of the government's preliminary decision. Applicant was afforded 30-days to submit additional information. However, she did not respond to the FORM and the case was assigned to me on November 16, 2004.

FINDINGS OF FACT

Applicant's aforementioned admissions are incorporated herein as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact:

Applicant is a 28-year-old employee of a defense contractor who requires a security clearance to perform her duties. The government's investigation into her background required to assess her suitability for access revealed she has six delinquent debts totaling nearly \$16,000. The largest single debt is a student loan for about \$13,000. (SOR ¶1.a) It is currently being repaid through an involuntary garnishment of Appellant's pay.

The next largest debt is for a delinquent credit card account totaling about \$2,100. (SOR ¶1.b) The creditor charged this off as a business loss in January 2002 and Appellant has not paid or otherwise tried to resolve this debt. Appellant's remaining four delinquencies are each less than \$300. One, a collection account for a 2002 medical bill is for only \$53 but remains unpaid.

Appellant's response to interrogatories in December 2003 included a personal financial statement (PFS). After paying regular monthly expenses, the aforementioned wage garnishment, and two other monthly credit accounts not listed in the SOR, Appellant has a negative monthly cash remainder. Her parents sometimes help her make her rent payments.

POLICIES

The Directive sets forth adjudicative guidelines⁽²⁾ to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed under Guideline F (financial considerations).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽³⁾ for an

Applicant to either receive or continue to have access to classified information. The government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden, it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion. ⁽⁴⁾

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. ⁽⁵⁾

CONCLUSIONS

Under Guideline F, a security concern exists where it is shown an individual is financially overextended, thus being at risk of having to engage in illegal acts to generate funds. ⁽⁶⁾ Also, an inability to properly manage one's finances may indicate that person may not have the judgment or reliability necessary to protect classified information. Department Counsel has presented sufficient evidence in the FORM to establish a *prima facie* case for disqualification under this guideline. I conclude that Guideline F disqualifying condition (DC) 1 ⁽⁷⁾ and DC 3 ⁽⁸⁾ apply here. Applicant has delinquent accounts dating back to 2001 that have not been paid or at least addressed in some fashion. The only tangible effort at resolution evident in this record is an involuntary garnishment of Applicant's wages begun less than 12 months ago to satisfy the largest of the debts listed in the SOR. Given the lack of action to satisfy these debts and Applicant's negative cash flow, it is not likely Applicant will improve her financial condition anytime soon. Accordingly, there is no basis for application of any of the listed mitigating conditions. I conclude Guideline F against the Applicant.

I have carefully weighed all of the available evidence, and I have applied the appropriate disqualifying and mitigating conditions. Further, I have tried to make a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. This record raises reasonable doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Applicant's poor financial condition - excess delinquent debt and little ability to correct these circumstances - raise doubts about Applicant's judgment and put her at risk for engaging in illegal acts to generate funds to pay her debts. Absent substantial information about how she intends to resolve her debts, which Applicant failed to provide, I cannot conclude she has overcome the government's case.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

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

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 the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Directive, Enclosure 2.
3. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
4. *See Egan*, 484 U.S. at 528, 531.
5. *See Egan*; Directive E2.2.2.

6. Directive, E2.A6.1.1.

7. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;

8. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;