

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 48-year-old truck driver who has worked for a federal contractor for eight years. Applicant has over \$13,000 in delinquent debt dating back to 1997. Applicant does not have a budget, plan, means or resolve to pay back her debt. Applicant admittedly lied on her Security Clearance Questionnaire because she thought she could get away with it. Applicant failed to mitigate the security concerns regarding financial considerations and personal conduct. Clearance is denied. CASENO 03-16639.h1

DATE: 06/29/2005

DATE: June 29, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16639

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Rita O'Brien, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 48-year-old truck driver who has worked for a federal contractor for eight years. Applicant has over \$13,000 in delinquent debt dating back to 1997. Applicant does not have a budget, plan, means or resolve to pay back her debt. Applicant admittedly lied on her Security Clearance Questionnaire because she thought she could get away with it. Applicant failed to mitigate the security concerns regarding financial considerations and personal conduct. Clearance is denied.

STATEMENT OF CASE

On October 5, 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. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F, financial considerations, and Guideline E, personal conduct.

In a sworn statement, dated November 15, 2004, Applicant responded to the SOR allegations, and requested a hearing. In her SOR response, Applicant admitted the allegations in subparagraphs 1.a. through 1.j., and denied the allegations in subparagraphs 2.a. and 2.b.

The case was assigned to me on December 22, 2004. A notice of hearing was issued on February 1, 2005, scheduling the hearing for February 24, 2005. The hearing was canceled on February 23, 2005, at the request of Applicant due to her unavailability. A new notice of hearing was issued on April 1, 2005, scheduling the hearing for May 12, 2005. The hearing was conducted as scheduled. The government submitted six exhibits that were marked as Government Exhibits (GE) 1-6, and admitted into the record. The Applicant testified on her own behalf, and submitted two exhibits that were marked as Applicant's Exhibit (AE) A and B, and were admitted without objection. The record was held open until May

23, 2005 to allow Applicant to submit additional exhibits. No additional documents were received and the record was closed. The transcript was received on June 21, 2005.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 48 years old and has worked as a truck driver for eight years for a federal contractor. Applicant admitted she owes all the debts alleged in the SOR. Applicant is married and her husband does not work. Applicant owns her own truck. Applicant made her final monthly payment on her truck in February 2003. Her monthly payments were \$2,245.78. Applicant stated in May 2003, that she intended to use the excess income to pay off her debts. ⁽²⁾ Applicant's income varies month to month.

Applicant and her husband do not have health insurance. Applicant's husband has heart problems that require medical attention and medicines that they must pay for. Applicant took out a loan to pay for her husband's medical expenses. She completed paying the loan back in May 2003. Applicant and her husband have outstanding debts for other medical expenses.

Applicant's financial problems began in 1994, when the truck she owned had problems and the engine had to be replaced three times. During the time the truck was being repaired she was unable to work. Applicant's husband had to stop driving trucks because he lost his license.

Applicant has ten delinquent accounts alleged in the SOR, totaling over \$13,000.00. These delinquencies range from 1997 through 2004. Eight of ten of the delinquent accounts in the SOR, are credit card debts. Applicant is making two payments on two credit card accounts. One payment is for \$50.00 a month and the other is for \$60.00 a month. On each of these accounts \$58.00 is charged monthly to cover past due fees and over limit fees. So Applicant's payment of \$50.00 to one account does not even cover all the fees. Applicant is not paying any of the other outstanding debts. Applicant is unaware of how much she actually owes to each creditor. Applicant admits she has not paid any other creditors. Applicant provided information regarding other delinquent debts she has that were not part of the SOR. Applicant bought a truck for personal use in 2004, and is current on the monthly payment of \$706.00.

Applicant hired an extra driver in 2002, so she could make more money. They worked as a team until November 2004. Applicant paid her a percentage of the gross pay Applicant received. Applicant estimated she made up to \$5,000.00 gross pay some months. Other months that amount would be less. Applicant wants to pay her delinquent debts, but it is

difficult because she is the only one working in her family. Applicant stated she was "trying to get credit counseling,"⁽³⁾ but had not actually followed through.

On Applicant's Security Questionnaire (SF 86) she answered "No" to Question 38: *In the last 7 years, have you been over 180 days delinquent on any debt(s)?* and Question 39: *Are you currently over 90 days delinquent on any debt(s)?*

⁽⁴⁾ Applicant admitted she knew at the time she filled out the SF 86 that she had delinquent debts over 90 and 180 days. Applicant stated she thought she could get away with it.⁽⁵⁾ She further stated " I was just trying to keep my clearance."

⁽⁶⁾ Applicant stated she knew she was delinquent on her debts, but she was not trying to be dishonest.⁽⁷⁾

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 their 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 determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁸⁾ The government has the burden of proving controverted facts.⁽⁹⁾ The burden of proof is something less than a preponderance of evidence.⁽¹⁰⁾ 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.⁽¹¹⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹²⁾

No one has a right to a security clearance⁽¹³⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁴⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹⁵⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an
⁽¹⁶⁾

applicant. 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 guidelines 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 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.

Guideline E-Personal Conduct-a security concern may exist when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that 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 guideline 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 prima facie case for disqualification under Guideline F and Guideline E.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), FC DC E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*), apply in this case. Applicant accumulated significant delinquent debt from 1997 through 2004. Applicant is making minimum payments on two credit card debts and is not making any payments on the others.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and specifically considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), 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)*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) and 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*).

Applicant's financial problems have existed since 1994 when she had difficulty with her first truck. Since then she has had a history of delinquencies and financial problems. I find FC MC E2.A6.1.3.1 does not apply.

Applicant was unable to work while her truck was being repaired and was confronted with medical bills when her husband became ill. During this time she got behind in her payments. I find FC MC E2.A6.1.3.3 applies because these events were beyond her control.

Applicant paid off her new truck in February 2003, and indicated she would use that extra money to pay her delinquent debts. She did not do that. Applicant makes two payments a month toward credit card debts, but those payments do not even cover the past due or over limit fees. Applicant is not paying anything towards the principal of the debts. Applicant does not pay anything towards her other delinquent debts.

I have not considered the additional debts Applicant presented at the hearing that were not listed in the SOR allegations, except to the extent of how they may impact her ability to pay the overdue debts in the SOR, and whether she has sufficient income to accomplish paying them. Applicant claims she intends to pay her debts, but she is unaware of how much she actually owes on each debt and in some cases what the debts are for. Applicant failed to make an accounting of how she intends to pay the debts. Applicant has had almost three years since she first filled out the SF 86, and two years since she made a statement indicating she had excess money after paying off her truck to pay her debts. She has not followed through in making payments, other than the two noted, and has no defined plan on how she would accomplish it. Applicant intended to get credit counseling, but never followed through. I find FC MC E2.A6.1.4 and FC MC E2.A6.1.6, do not apply. I find Applicant does not have a budget, plan or sufficient means to resolve her past debts.

Based on all the evidence, Personal Conduct Disqualifying Condition (PE DC) E2.A5.1..2.2. (*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. Applicant admitted she intentionally falsified her answers to Questions 38 and 39 on the SF 86 because she thought she could get away with it and was trying to keep her clearance.

I have considered all the mitigating conditions and specifically considered Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.2 (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information*), 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*). Applicant admitted that the reason she did not divulge her outstanding debts on her SF 86 was because she thought she could get away with it. Applicant specifically intended to lie on her SF 86 and did not provide the correct information until she was later confronted with her debts. Therefore, I find PC MC E2.A5.1.3.2 does not apply. I also find PC MC E2.A5.1.3.3 does not apply for the same reason.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered Applicant's appearance and demeanor while testifying. I also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I find Applicant has failed to mitigate the security concerns raised by the financial considerations and personal conduct concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F and Guideline E 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

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. Against the Applicant

Paragraph 2 Personal Conduct (Guideline E) AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. 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.

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. Sworn Statement May 8, 2003.

3. Tr.at 60 and 64.

4. GE 1 signed and dated September 28, 2002.

5. Tr. at 58.

6. *Id.*

7. *Id.*

8. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

9. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.

10. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

11. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, ¶ E3.1.15.

12. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15

13. *Egan*, 484 U.S. at 531.

14. *Id.*

15. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

16. Executive Order 10865 § 7.