

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant's financial problems continue to raise security concerns because of her delay in resolving debts of approximately \$10,000 to fifteen creditors. While Applicant's circumstances have some sympathetic elements as she was unemployed for an 18-month period, in the final analysis, after she regained employment in 2001 she failed to develop a plan to resolve all her debts in a timely manner. Thus, she has not demonstrated sufficiently that she has made a good-faith effort to resolve all her debts and to reform her financial practices. While she filed for bankruptcy protection in March 2005, none of her debts has yet been discharged. Security concerns over her personal conduct are also serious, as she failed to disclose required information on her security form. Clearance is denied.

CASENO: 03-17774.h1

DATE: 10/06/2005

DATE: October 6, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-17774

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial problems continue to raise security concerns because of her delay in resolving debts of approximately \$10,000 to fifteen creditors. While Applicant's circumstances have some sympathetic elements as she was unemployed for an 18-month period, in the final analysis, after she regained employment in 2001 she failed to develop a plan to resolve all her debts in a timely manner. Thus, she has not demonstrated sufficiently that she has made a good-faith effort to resolve all her debts and to reform her financial practices. While she filed for bankruptcy protection in March 2005, none of her debts has yet been discharged. Security concerns over her personal conduct are also serious, as she failed to disclose required information on her security form. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on August 5, 2004. The SOR⁽¹⁾ detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.⁽²⁾ The SOR alleges specific concerns over finances (Guideline F) and personal conduct (Guideline E). Applicant responded to these SOR allegations in a notarized Answer submitted on September 1, 2004; on January 27, 2005, she requested a decision be made with a hearing.

After Department Counsel stated the case was ready to proceed on February 15, 2005, the case was assigned to me on February 17, 2005. On March 7, 2005, DOHA issued a Notice of Hearing and set this case to be heard on March 28, 2005, in a city near where Applicant lives and works.

At the hearing the government offered eleven exhibits (Exhibits 1-11) which were admitted into evidence without objection. Applicant testified and called one witness; she offered 16 exhibits (Exhibits A-P) which were admitted into evidence without objection. Applicant was given an extension until April 4, 2005, to submit additional evidence; and the

Department Counsel was given until April 8, 2005, to review the evidence and submit his comments. (TR 107-108, 123) On April 4, 2005, Applicant timely sent nine additional documents. Department Counsel stipulated on April 26, 2005, that he had no objection so Exhibits Q-Y being admitted into evidence; and the record closed. The transcript (TR) was received on April 7, 2005.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following findings of fact:

Applicant, 49 years old, was employed by Defense Contractor #1 in State #1 as an administrative assistant from October 2001 to March 2005 when she became unemployed. Previously she worked in the same location for Defense Contractor #2 from April to September 2001. Earlier, she had been granted a secret clearance in October 1991. Initially, she did not need a security clearance for her position with Contractor #1; later she did need one and completed a Security Clearance Application (SF 86) on November 24, 2003. She was granted a interim clearance in August 2004. (Exhibit 1; Exhibit B; TR 49-58; 66-67; 81)

Applicant has taken several in house seminars and received commendations. (Exhibit W) If she were granted a clearance, she has the potential to be rehired. (TR 85-86)

Applicant studied at a college in State #1 from 1992 to 1993 but received no degree. She returned to college in June 2002 part-time in the hopes of obtaining a college degree in business management. (Exhibits 1, 2; Exhibit X; TR 94-97)

Personal Conduct

When interviewed by the Defense Security Service (DSS) in June 2003, Applicant denied she intentionally omitted any information from her Security Clearance Application including her financial delinquencies discussed in the statement. (Exhibit 2) She could not explain why she listed only one of her DWI offenses and not two in response to Question 24. She later disclosed the two arrests in response to questions from DOHA. (Exhibit 1; Exhibit N; TR 64-66) While she believed she had disclosed her DWI arrests on her job application, the application form she submitted did not disclose any prior arrests. (TR 67-68; Exhibit S) She completed her required evaluation after her DWIs, but no treatment was recommended. (Exhibit H)

Applicant's claim that she did not list her 2000 judgment in answer to Question 37 as she did not know about it at the time she completed the SF 86 is not credible. Neither is it credible that she did not understand she was to list all of her debts on the security form in response to Question 39. In response to Question 35 Applicant did not list the repossession of her jeep as she did not think of it as a repossession as she voluntarily returned it. (Exhibit 1; Answer; TR 76-77)

Finances

Applicant explained her financial problems began in October 1997 when she worked for a company that did not provide medical insurance; subsequently, she could not pay medical expenses she incurred in October 1997 through October 1998 as she only had enough to pay for "everyday living expenses." Her financial problems escalated in April 1999 when she lost that job due to downsizing and was unable to receive unemployment benefits as she worked as a part-time telephone interviewer. She used credit cards to pay for her living expenses, but then could not cover these expenses from her income. Even though she could not pay for items purchased on credit cards, she continued to make purchases on those cards. She was able to get a part-time job in October 2000, but did not make enough to cover all of her expenses. In April 2001 she found a full-time job, but she did not make enough to pay her delinquent debts and her current living expenses. In June 2003 she considered filing for bankruptcy but did not do so as she did not believe her debt was large enough. (Exhibit 2; TR 58-59)

Applicant in 2003 had a net monthly income of \$2,264, expenses of \$1, 753, and substantial debt payments and delinquent debts. (Exhibit 2) Her income in 2005 was \$1,400 monthly before she was terminated; and her expenses included \$650 for rent, \$34.99 for her cell phone, and \$200 for her cable. She does not own a car. (Exhibit I; TR 82-83) In 2003 and in 2004 she applied for new credit cards and received them, but does not use them. (Exhibit 4; Exhibit V; TR 97-98)

Applicant explained the following concerning her steps to resolve her past debts; she was able to get some of her medical expenses covered by charity care from January 2001 to January 2002 (Exhibit E; TR 73-74); her medical problems include asthma, allergies, acid reflux, and sinus. (TR 89) Also she has started a new business to try to generate additional funds. (Exhibits L, M; TR 80-81) However, she lives pay check to pay check. In March 2005 she did file for Chapter 7 bankruptcy and listed over forty debts of varying amounts. She did not include the complete voluntary petition with the list of creditors, so it is difficult to judge which of the following creditors were included. (Exhibits G, U; TR 68-69; 87-88) There is no evidence that the bankruptcy court has discharged any of these debts.

SOR 1.a.. Applicant owes \$210 to a collection agency for telephone expenses, but has not made any recent payments. (Answer; Exhibit 2; TR 78)

SOR 1.b. Applicant explained her debt to Creditor #2 for \$416 has been paid as her current telephone is "still on" and her bill is current. (Answer; Exhibits P, T; TR 78-79)

SOR 1.c. Applicant admitted her debt to Creditor #3 for \$40 for medical expenses. (Answer; TR 89)

SOR 1.d. Applicant explained her debt to Creditor #4 for \$100 to a collection bureau for a medical debt should have been covered by charity care. (Answer; Exhibits D, O; TR 74-75)

SOR 1.e. Applicant explained she had paid her debt to Creditor #5 for \$37 for medical expenses. (Answer; Exhibit E; TR70-71)

SOR 1.f. Applicant denied a past debt to Creditor #6 for \$167. (Answer; TR 90)

SOR 1.g. Applicant denied a debt to Creditor #7, a bank, for \$177. (Answer; TR 90)

SOR 1.h. Applicant admits her debt to Creditor #8, a bank, for \$965 for credit card debt which will be included in the request for bankruptcy discharge. (Answer; TR 90-91)

SOR 1.i. Applicant admits her debt to Creditor #9, a credit card issued by a bank, for \$778 for credit card debt which will be included in the request for bankruptcy discharge. (Answer; TR 91)

SOR 1.j. Applicant admits her debt to Creditor #10, a bank, for \$1,143 for credit card debt which will be included in the request for bankruptcy discharge. (Answer; TR 92)

SOR 1.k. Applicant admits her debt to Creditor #11, a bank, for \$434 which is a credit card she got after she was employed. (Answer; Exhibit 4)

SOR 1.l. Applicant admits her debt to Creditor #12, a bank, for \$613 for credit card debt which will be included in the request for bankruptcy discharge. (Answer; TR 92)

SOR 1.m Applicant denied her debt to Creditor #13, a bank, for \$335. (Answer; TR 92)

SOR 1.n Applicant made payment arrangements for \$20 per month for the debt of \$4,971 which was the amount remaining following the repossession of her jeep. This debt was included in the bankruptcy petition. (Answer; TR 71-72, 91-92; Exhibit U)

SOR1.o. A judgment was entered against Applicant for \$154 in February 2000. She sent a payment to the courts who returned the payment to her as they could not find the judgment; afterwards the owner of the store died. She does not know how to resolve this debt. (Answer; TR 72, 92)

References

Applicant's daughter testified on her behalf; even though she moved out on her own in 1998 her mother still helps her with expenses. (TR 103-107)

A friend since 1973 noted that Applicant had worked for her as a babysitter and typesetter; she recommended her as a conscientious worker. (Exhibit J)

A co-worker and friend who has known Applicant for thirty-one years assessed her as dedicated and hardworking. Her honesty and work ethics are above reproach. (Exhibit K)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below:

Guideline F - Financial Considerations

The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Guideline E - Personal Conduct

The Concern: 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.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Financial Considerations

The Government established disqualifying conditions that could raise a security concern and may be disqualifying including Applicant's (1) history of financial problems and her (3) inability or unwillingness to satisfy all of her debts. Even after being put on notice in 2003 about the government's concerns over her finances, she waited until March 2005 to file a voluntary petition for bankruptcy under Chapter 7; at the time the record closed the bankruptcy court had not yet discharged her debts, so many of her debts remain unresolved. She admits that she had credit card debt and that she continued to use credit cards even when she did not have the means to pay these debts. In addition, while underemployed, she bought a \$20,000 automobile that she could not afford and ultimately allowed to be voluntarily repossessed and sold at under its value which led to another debt for Applicant. Even after she gained full employment in October 2001, there is no evidence she made a concerned effort to resolve these debts.

While Applicant's circumstances have some sympathetic elements as she was unemployed for an 18-month period, in the final analysis, after she regained employment she failed to develop a plan to resolve all her debts in a timely manner. Thus she has failed to mitigate⁽³⁾ these financial concerns. Even giving her the benefit of the doubt for disputed debts, still she has only resolved a fraction of the remaining debts which can therefore be mitigated under E2.A6.1.3. 6. (The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.)

Thus, for the remaining debts Applicant has yet to demonstrate that she is financially responsible. For example, Applicant did not show that she has received or is receiving counseling for the problem, nor has she developed a budget. While her bankruptcy petition is pending, she did not provide a clear list of which debts detailed in the SOR would be included. In addition, the listing of bankruptcy debts revealed multiple other debts not detailed in the SOR. Consequently, there is not as yet a clear indications that the problem is being resolved or is under control.

Since she is no longer employed at the defense contractor, she has no certain income to resolve these debts in the future. In sum, Applicant failed to initiate a good-faith effort to repay overdue creditors or otherwise resolve debts in a timely manner. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant as she mitigated the allegations in SOR subparagraphs 1.b, 1.d., 1.e., 1.f., 1.g., 1.m. 1.o. but against her under subparagraphs 1.a., 1.c., 1.h through 1.l, and 1.n. under SOR Paragraph 1.

Personal Conduct

The government established its concerns over Guideline E Personal Conduct under Disqualifying Condition 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. On her Security Clearance Application Applicant failed to disclose both DWIs, an unpaid judgment, and eleven financial delinquencies over 90 days. Her defenses for these omissions are not credible as she clearly remembered going to court twice for the alcohol-related offenses, but only disclosed one arrest. She had different

explanations for each of the omissions, saying that she had forgotten the judgment and then only disclosed one delinquent debt as she claimed she did not have an understanding that she needed to disclose her long-standing debts.

On the other hand, the record evidence as a whole must be considered to determine whether Applicant's overall conduct can be mitigated. Thus, I have evaluated her conduct and considered the following factors:

E.2.21.1. The nature, extent, and seriousness of the conduct; E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E2.2.1.3. The frequency and recency of the conduct; E2.2.1.4. The individual's age and maturity at the time of the conduct; E2.2.1.5. The voluntariness of the participation; E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E2.2.1.7. The motivation for the conduct; E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E2.2.1.9. The likelihood of continuation or recurrence. (E.2.2. Adjudication Process)

Even after looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 2.a. through 2.c. under SOR Paragraph 2.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: For Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against 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

Kathryn Moen Braeman

Administrative Judge

1. The SOR does not have all of the allegations in alphabetical order; allegations 1.n. and 1.o. follow 1.i. However, I have addressed them in alphabetical order, not the order they were alleged.

2. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.

3. Conditions that could mitigate security concerns include: 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); E2.A6.1.3. 4. . . . there are clear indications that the problem is being resolved or is under control; and E2.A6.1.3. 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.