

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant's financial irresponsibility renders her an unsuitable candidate for a security clearance. Clearance denied.

CASENO: 03-18254.h1

DATE: 06/27/2005

DATE: June 27, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-18254

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial irresponsibility renders her an unsuitable candidate for a security clearance. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 29 January 2004 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of her clearance because of financial considerations and personal conduct. [\(1\)](#) Applicant answered the SOR on 8 April and 4 June 2004 and requested a hearing. The case was assigned to me 18 August 2004, and I convened a hearing on 12 January 2005. DOHA received the transcript (Tr.) on 19 January 2005.

FINDINGS OF FACT

Applicant admitted all the financial allegations under Guideline F, but denied falsifying her clearance application. Accordingly, I incorporate her admissions as findings of fact.

Applicant--a 32-year-old security guard/receptionist for a defense contractor since June 1999--seeks access to classified information.

Applicant applied for her clearance in August 2001 (GE 1), four months after her divorce from her husband. Although she failed to disclose any of her delinquent accounts, she has consistently and credibly stated that she did not become aware of her delinquent accounts until her June 2003 DSS interview (GE 3), when the agent provided her with a copy of her credit report. Applicant's husband ran the household finances during their July 1996-July 1999 marriage.⁽²⁾ She did disclose a 1997 bad check charge she incurred when she wrote a check on a bank account that her husband had closed without telling her.

Between June 2003, when she first became aware of her delinquent accounts, and January 2004, when DOHA issued the SOR, Applicant did not pay any of the delinquent debts she had acknowledged in her June 2003 sworn statement (GE 3) despite the fact that she claimed to have been in contact with all the creditors and in the process of making payment arrangements with all the creditors. Further, her June 2003 personal financial statement, showed positive monthly cash flow of over \$700.00 without payments to any of her creditors. In her answer, Applicant asserted her belief that she had paid the creditors at 1.b., 1.c., 1.e., 1.g., 1.h., 1.i., 1.j., and 1.m. However, only the creditor at 1.b. had been paid (apparently in January 2001)(AE K, L, M, N).

After the SOR was issued, Applicant paid the creditor at 1.a. sometime during summer 2004. She paid the creditor at 1.f. two days before the hearing, but had not yet received confirmation of the payment. At the hearing, she provided several proofs of pending payments by post-dated checks: January 2005 payments to the creditors at 1.c. and 1.h./1.i.⁽³⁾ (AE G); February 2005 payments to the creditors at 1.e. (AE C) and 1.g. (AE H, J). She claimed to have verbal agreements to pay the creditor at 1.j in March 2005, and the creditor at 1.l. and 1.m. in June 2005, when she would receive a cash disbursement of \$3,300.00 from her employee stock option plan (ESOP)(AE B). She disputed the debt to the creditor at 1.k., because the creditor could not substantiate the debt, and the debt was ultimately removed from her credit report (AE A). She had not made arrangements to pay the creditor at 1.d.--a joint debt for past due rent--because the creditor was currently pursuing her ex-husband for payment. However, she acknowledged that she could ultimately be held responsible for this debt.

Applicant's employment references (AE P, Q) consider her an excellent and trustworthy employee. She is being trained as an assistant facility security officer, should she obtain her clearance.

POLICIES

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. 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 for or against Applicant. However, specific adjudicative 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. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are guidelines F (Financial Considerations) and E (Personal Conduct).

BURDEN OF PROOF

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then 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.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their 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.⁽⁴⁾

CONCLUSIONS

The government established a Guideline F case under disqualifying conditions 1 and 3,⁽⁵⁾ and Applicant did not mitigate the security concerns. At first glance, Applicant's financial difficulties might be viewed as beyond her control⁽⁶⁾ because she was unaware of the debts until June 2003. However, it stretches credibility to believe that none of these debts surfaced during the two years Applicant was separated from her spouse before their divorce was final, or that their divorce decree did not address allocation of marital debt. Nevertheless, accepting that Applicant was unaware of her

financial delinquencies until June 2003, she documents little in the way of good-faith efforts to address her debts before the SOR was issued,⁽⁷⁾ notwithstanding that three of the debts were each less than \$200.00, and all the debts except 1.b., 1.d., and 1.k. were less than \$1,000.00.⁽⁸⁾ Applicant offers no adequate explanation for her failure to address her debts on a more timely basis. As it is, satisfaction of most of the debts relies on successful processing of post-dated checks and a significant pending distribution from Applicant's ESOP. On this record, she has failed to demonstrate that her financial problems are behind her or will be under control anytime soon. I conclude Guideline F against Applicant.

The government did not establish a Guideline E case, as I accept Applicant's explanation that she was unaware of her delinquent accounts when she completed her clearance application. I conclude Guideline E for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: For the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Subparagraph k: For the Applicant

Subparagraph l: Against the Applicant

Subparagraph m: Against the Applicant

Subparagraph n: For the Applicant

Paragraph 2. Guideline E: FOR THE APPLICANT

Subparagraph a: For 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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. Applicant and her husband separated in July 1999 and obtained a final decree of divorce in May 2001. According to Applicant, the final decree made no specific allocation of marital debt.
3. Two accounts with the same creditor.
4. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
5. E2.A6.1.2.1. A history of not meeting financial obligations; E2.A6.1.2.3. Inability or unwillingness to satisfy debts
6. E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment. . .).
7. E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.
8. And record evidence demonstrates that the debt at 1.b. was satisfied three years before the SOR was issued.