

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has six debts totaling approximately \$14,700, which remain unpaid. She failed to list her financial delinquencies on a security clearance questionnaire. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from her debts and falsification. Clearance is denied.

CASENO: 03-18275.h1

DATE: 03/02/2005

DATE: March 2, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No.03-18275

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has six debts totaling approximately \$14,700, which remain unpaid. She failed to list her financial delinquencies on a security clearance questionnaire. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from her debts and falsification. Clearance is denied.

STATEMENT OF THE CASE

On February 4, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On March 26, 2004, Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing.

On August 17, 2004, the Applicant received a complete copy of the file of relevant material (FORM) dated August 11, 2004. September 13, 2004, the Applicant responded to the FORM. I was assigned the case on October 7, 2004.

FINDINGS OF FACT

The SOR alleges Financial Considerations and Personal Conduct. The Applicant admits owing three debts and denies the remaining debts. Those admissions are incorporated herein as findings of fact. After thorough review of the whole record, I make the following additional findings of fact:

The Applicant is 55 years old, has worked for a defense contractor since August 1988, and is seeking to maintain a security clearance. The SOR lists seven debts a summary of those debts follows:

| | Creditor | Amount Owed | Current Status |
|----|--|-------------|--|
| a. | Bank credit card debt | \$1,304 | July 2004 settlement offer accepted for \$569. |
| b. | Bank credit card debt, same creditor as 1.b. | \$3,620 | Unpaid. Admit. |
| c. | Bank debt. | \$2,761 | Unpaid. Applicant alleges this is her mother's account. |
| d. | Credit card. | \$4,195 | Unpaid. Applicant alleges this is her mother's account. January 2004 offer of settlement for \$2,307.48. |
| e. | Department Store debt | \$1,197 | Applicant alleges this is her mother's account. July 2004 offer to settle for \$500. |
| f. | Automobile debt | \$2,891 | Unpaid. Admit. |
| g. | Jewelry store debt | \$49 | Unpaid. Admit. |
| | Amount of debt alleged in SOR | \$16,017 | |

In 1997 or 1998, Applicant's husband stopped working and went on disability. Their financial problems started with the decrease in his income. He is now retired on total disability.

In February 2002, Applicant completed a Security Clearance Application, Standard Form (SF) 86. She answered "no" to question 38, which asked if she had ever been more than 180 days delinquent on any debt during the prior seven years. She also answered "no" to question 39, which asked if she was currently more than 90 days delinquent on any debt. Applicant did not explain why she answered these questions as she did.

In July 2003, Applicant was interviewed by the Defense Security Service (DSS). She stated her mother would accept credit card applications and put Applicant's name on the card as an additional authorized user. This was done without Applicant's knowledge. During the interview, Applicant stated,

I have reviewed my Credit Bureau Report (CBR) and agree with all the debts except I am not aware of the [debtor] debt. I am going to contact them and pay it if I find that I do owe, because I want to pay off all my debts.

Her financial worksheet completed at the time lists the debts referenced in SOR 1.c., 1.e, 1.f., and 1.g. The worksheet also lists four accounts with the creditor listed in SOR 1.a. and 1.b. Two accounts (\$528 and \$2,984) with that creditor are listed as bad debts and two accounts (\$1,031 and \$1,535) are listed as past due.

In her answer to the SOR, Applicant states three of the accounts (SOR 1.c., 1.d., and 1.e.) are not her accounts, but her mother's accounts. Also in her answer, she indicates a settlement offer, in the amount of \$539.71, had been made by a creditor (SOR 1.a.). Payment was required by October 30, 2003. Applicant enclosed a copy of a check (\$401) to the creditor which was dated November 24, 2003. In her response to the FORM, Applicant included a settlement offer for \$569 on the same account (SOR 1.a.). Both offers list the same creditor and account number. Payment of the amount was made on July 30, 2004. Accompanying her answer to the FORM, was a settlement offer on the debt listed in SOR 1.e. However, no documentation was provided showing payment was made.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial 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. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See Executive Orders 10865 § 2 and 12968 § 3.1(b)*. "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 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, (Financial Considerations). A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. Under Guideline F, an Applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive E.2.A.6.1.1. The Applicant owes six debts totaling approximately \$14,700. Disqualifying Conditions (DC) 1 (E2.A6.1.2.1. *A history of not meeting financial obligations*) and 3 (E2.A6.1.2.3. *Inability or unwillingness to satisfy debts*) apply.

Applicant now alleges three of the debts are not her debts but her mother's debts. She has provided no documentation supporting her assertion. In July 2003, she admitted these debts were her debts. Additionally, the debts appear on her credit bureau reports. I find they are her debts.

None of the Mitigating Conditions (MC) apply in the Applicant's favor. MC 1 (E2.A6.1.2.1. *The behavior was not recent.*) does not apply because the conduct is recent since the debts remain unpaid. MC 2 (E2.A6.1.2.2. *It was an isolated incident.*) does not apply because there are six debts. There was no showing the debts were caused by factors beyond Applicant's control. Applicant asserts her husband starting on disability in 1997 or 1998 started their financial

problem. She failed to provide documentation showing the impact on her current financial situation. There has been no showing Applicant has received financial counseling nor is there any indication his financial difficulties are under control.

For MC 6 (E2.A6.1.2.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good faith effort to repay. A systematic, concrete method of handling his debts is needed, which is not present here. Applicant alleges there has been settlement on one debt and supported her assertion with a copy of the check to the creditor. I find for her as to SOR 1.a. She alleges another debt has been settled but provided no documentation showing the offer was accepted or payment made. Applicant has known of the government's concern about her finances since at least July 2003 and she has paid only one debt. Because he has failed to document payment of her debts, I find against Applicant as to SOR 1.b., 1.c., 1.d., 1.e., 1.f, and 1.g. and against her as to financial considerations.

The Government has satisfied its initial burden of proof under guideline E, (Personal Conduct). Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's actions, in providing false information to multiple questions on her February 2002 SF 86 poses a serious potential risk to the nation's security precautions.

She answered "no" when asked if she had been more than 180 days delinquent on any debt during the prior seven years and also answered "no" when asked if she was currently 90 delinquent on any debt. She never explained her false answers. None of the mitigating conditions apply to her false answers. Her financial delinquencies were pertinent to a determination of judgment, trustworthiness, or reliability. The falsifications were not an isolated incident because she gave false answers to two different questions. There is no showing the Applicant make a prompt, good-faith effort to correct the falsification before being confronted with the facts. There is no indication her omissions were caused by improper or inadequate advice from authorized personnel or based on advice from legal counsel. Because of the serious nature of her falsifications, I find against the Applicant as to Personal Conduct, SOR subparagraph 2.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Financial Considerations: AGAINST THE APPLICANT

Subparagraph 1.a.: For 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

Paragraph 2 Personal Conduct: AGAINST THE APPLICANT

Subparagraph 2.a.: 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.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.