

DATE: August 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-05907

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a 57-year-old female providing security for a defense contractor. She admits having approximately \$57,500 in delinquent debts. She denies additional liability for three delinquent accounts amounting to about \$1,148, but did not provide any proof that those debts had been paid or disputed. Applicant has failed to mitigate security concerns arising from financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On November 4, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) concluding it was unable to find that it is clearly consistent with the national interest to grant her a security clearance.⁽¹⁾ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F (Financial Considerations). In a notarized, undated statement, Applicant responded to the SOR allegations. She admitted four of the seven allegations raised under Guideline F. Additionally, she waived her right to an administrative hearing in favor of a decision based on the written record.

Department Counsel prepared a File of Relevant Material (FORM),⁽²⁾ dated May 16, 2006. Applicant received a complete copy of the FORM on June 20, 2006. She was given the opportunity to submit documentary information in rebuttal, or to explain adverse information in the FORM. Any response was due by July 20, 2006, but she declined to submit any additional material. The case was subsequently assigned to me on August 14, 2006.

FINDINGS OF FACT

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

Applicant is a 57-year-old female providing security for a U. S. Department of Defense contractor. In conjunction with that employment, she is seeking to obtain a security clearance. She possesses over 25 years of experience in security. A

single woman, Applicant has a grown daughter.

Inasmuch as Applicant failed to provide any documentary evidence or relevant explanation regarding the allegations contained in the SOR, the record reveals few facts regarding her life or finances. The evidence shows, however, that she resigned from a security job with a state department of corrections around September 2001, after about 22 years of service.⁽³⁾ She was then unable to find a new job until sometime in the summer of 2002. During her interim period of unemployment, she exhausted her cash reserves and her retirement savings. She took a substantial salary reduction when she accepted her current job around August 2002.⁽⁴⁾

At issue in the SOR are seven debts that were delinquent as of October 21, 2005, and are set forth in the SOR's seven allegations. She admits allegations 1.b (\$769 credit card balance charged off since about February 2003), 1.c (\$14,882 credit card balance charged off since about March 2002), 1.e (\$36,397 on two accounts in collection through one collection agency since about July 2002), and 1.g (\$5,460 to a financial entity that has been in collection since about July 2002). Consequently, she admits responsibility for about \$57,500 in unpaid debt. She denies three of the allegations and notes the following regarding the debts noted therein, amounting to about \$1,148:

Allegation 1.a -- [telephone account balance] in the approximate amount of \$233 in collection since about December 2004. Applicant states: "This indebtedness has been paid off as of 6 Feb. 06," but failed to provide any documentation that this account has been satisfied.

Allegation 1.d -- [gas station merchant card balance] in the approximate amount of \$733 in collection since about October 2002. Applicant states: "This indebtedness has been paid off as of 6 Feb. 06," but failed to provide any documentation that this account has been satisfied.

Allegation 1.f -- [an account] in the approximate amount of \$182 in collection since about July 2002. Applicant states: "Denial is based on being unfamiliar with [the alleged account holder]." She failed, however, to provide any other information or explain whether she has contested or formally disputed the account with the business entity, its collection agency, or any of the three major credit reporting bureaus.

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. 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.⁽⁵⁾ The government has the burden of proving controverted facts.⁽⁶⁾ The burden of proof is something less than a preponderance of evidence.⁽⁷⁾ 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 her.⁽⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

No one has a right to a security clearance⁽¹⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹²⁾

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. ⁽¹³⁾ 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 security clearance.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

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. ⁽¹⁴⁾

Conditions pertaining to these adjudicative guidelines that could raise a security concern and may be disqualifying, as well as those which would mitigate the security concerns raised in this matter, are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the applicable legal standards. The government has established a *prima facie* case for disqualification under Guideline F (Financial Considerations). The government demonstrated that Applicant has accrued a number of delinquent debts over the past few years, amounting to at least \$57,500. Consequently, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*a history of not meeting financial obligations*) and FC DC E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*) apply.

With the government's burden met, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her. Applicant, however, has only provided admissions and denials without any corroborative or explanatory evidence. She has failed to raise any facts that might invoke one of the available financial considerations mitigating conditions, ⁽¹⁵⁾ and provided little insight into her finances. Even assuming that she has satisfied the combined \$966 represented by the debts noted in allegations 1.a and 1.d, and formally disputed the \$182 at issue in allegation 1.f, approximately \$57,500 remains outstanding and, apparently, unaddressed. Therefore, after consideration of all the facts and circumstances surrounding this case, including the "whole person" concept, I find that Applicant has failed to carry her burden or otherwise mitigate security concerns based on her finances. Clearance is denied.

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. Guideline F (Financial Considerations) AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is denied.

Arthur E. Marshall, Jr.

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 (Directive).
2. The FORM includes a four-page brief and seven documents.
3. Item 5 (Applicant's Affidavit, signed October 7, 2004), at 1.
4. Applicant states, without corroborative documentation, that when she started her subsequent employment, her salary was "approximately \$30,000 less than [her] salary at the [state department of corrections]." *Id.* at 3.
5. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).
6. ISCR Case No. 97-0016 at 3 (App. Bd. Dec 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
7. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
8. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
9. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
10. *Egan*, 484 U.S. 518, at 531.
11. *Id.*
12. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
13. Executive Order 10865 § 7.
14. Directive, Enclosure 2, ¶ E2.A6.1.1
15. Although Applicant cited to a period of unemployment in Item 5, *supra*, footnote 3, her unemployment was the result of her resignation from her state job, not an uncontrollable event that might trigger application of 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)*).