

KEYWORD: Financial, Personal Conduct

DIGEST: Applicant is a 48-year-old woman who has been employed by a defense contractor since November 2003. Applicant has not mitigated all the financial security concerns because she still has two unpaid judgments. Also, she falsified material facts on her security clearance application when she responded that she did not have any unpaid judgments against her. Clearance is denied.

CASE NO: 05-06602.h1

DATE: 06/23/2006

DATE: June 23, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-06602

**DECISION OF ADMINISTRATIVE JUDGE**

**JACQUELINE T. WILLIAMS**

**APPEARANCES**

**FOR GOVERNMENT**

Ray T. Blank, Jr., Esq., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant is a 48-year-old woman who has been employed by a defense contractor since November 2003. Applicant has not mitigated all the financial security concerns because she still has two unpaid judgments. Also, she falsified material facts on her security clearance application when she responded that she did not have any unpaid judgments against her. Clearance is denied.

### STATEMENT OF THE CASE

On November 17, 2003, Applicant applied for a security clearance and completed a Security Clearance Application (SF 86), which she executed on July 13, 2004.<sup>(1)</sup> On September 30, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended. The SOR detailed reasons under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted or revoked.

In a sworn, written statement, dated October 8, 2005, Applicant responded to the SOR allegations and elected to have her case decided on the written record in lieu of a hearing.<sup>(2)</sup> Department Counsel prepared the government's written case on April 13, 2006. A complete copy of the file of relevant material (FORM)<sup>(3)</sup> was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She had 30 days to respond to the FORM, and any such submissions were due by May 19, 2006. She chose to respond by letter dated April 21, 2006. Department Counsel objected to three documents submitted by Applicant detailing information about one of her creditors. I overrule the objection, and the documents are part of the record. The case was assigned to me on May 17, 2006.

### FINDINGS OF FACT

Applicant admitted some the factual allegations pertaining to financial considerations under Guideline F (subparagraphs 1.a., 1.c., and 1.e.). Those admissions are incorporated herein as findings of fact. She denied the allegations under subparagraphs 1.b., 1.d., and 2.a. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact.

Applicant is a 48-year-old woman who has been employed as a curriculum developer by a defense contractor since November 2003. From December 1983 to November 1984, she was in the U.S. Air Force as an Airman First Class [E-3]. She received a master's of business degree in information systems in May 2004, from a major university. Applicant indicated that the curriculum provided courses in accounting, managerial finance, business ethics, and information systems. She now has a better understanding "of money management and financial planning that [sic] [Applicant] ever did before." (4) She is divorced and has no children.

In December 1994, Applicant filed for Chapter 7 bankruptcy, which was discharged in March 1995. Later, three judgments were entered against her. All judgments were filed in the County District Court, in the state where she lives. The judgments and one debt are as follows:

(1) Judgment for \$15,977. As of September 20, 2005, this debt had not been paid in full. Applicant has a payment plan of \$100 per month with a collection agency for this debt. From November 22, 2004 through September 27, 2005, she routinely made timely payments. (5)

(2) Judgment for \$964. As of September 20, 2005, this debt had not been paid. Applicant stated that it is the apartment complex's practice to file a judgment in court if the residence is one day late in paying rent. Although she paid her rent late one month, she stated that she is current with her rent. (6) The receipt, dated April 24, 2004, submitted from the Maryland Management Co. shows a payment of \$919 for rent. There does not appear to be a correlation between the amount of the judgment and the amount stated in the receipt.

(3) Judgment in the amount of \$4,050. As of September 20, 2005, this debt had not been paid. Applicant admits this debt was for the purchase of a car. She made timely, monthly payments until she began helping a family member with some medical bills. She contacted the company in October 1999 to set up a payment arrangement. Since she never heard from the company, she did not make any more payments on this debt. However, Applicant does not believe that a judgment was ever entered against her because she did not receive notification.

(4) Debt for \$5,193. As of September 20, 2005, this debt has not been paid. Applicant denies the amount of this debt. She claimed that the original purchase of \$200 is now up to more than \$5,000. She has contacted them to settle the

account. She also submitted a couple of articles on this company's alleged unethical practices toward their customers.<sup>(7)</sup>

When Applicant completed a SF 86,<sup>(8)</sup> she answered "no" to Question 37 (*Your Financial Record - Unpaid Judgments In the last 7 years, have you had any judgment against you that have not been paid?*). She did not mention the unpaid judgments against her. Applicant states that when she completed her Electronic Personnel Security Questionnaire, she "had not received any judgment paper of any kind," and that she was paying her bills on time.

## 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.<sup>(9)</sup> The government has the burden of proving controverted facts.<sup>(10)</sup> The burden of proof is something less than a preponderance of evidence.<sup>(11)</sup> 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.<sup>(12)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(13)</sup>

No one has a right to a security clearance<sup>(14)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(15)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(16)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(17)</sup> 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 the evidence, I find the following adjudicative guidelines 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.

**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.

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

## CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of credibility, and after application of all appropriate legal precepts, factors, and conditions including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR.

### **Financial Considerations**

Under Guideline F, a security concern typically exists for two different types of situations: significant unpaid debts and unexplained affluence; this case involves the former. 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, negligent, or careless in properly handling and safeguarding classified information.

In December 1994, Applicant filed for a Chapter 7 bankruptcy. Moreover, she has three unpaid judgments, and another debt outstanding with a creditor for \$5,193. Accordingly, Financial Considerations Disqualifying Conditions (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.

Various conditions can mitigate security concerns arising from financial difficulties. Applicant is a prime example of an individual who could benefit from financial counseling. She indicated that since she received her master's degree, she now has a better understanding of finances generally. The evidence in this record does not reveal that she is financially astute with her personal finances. She needs to fully understand how to properly handle money within the context of the dynamics of earning and spending responsibly. However, she failed to pursue such counseling. Financial Considerations Mitigating Conditions (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*) does not apply.

Applicant filed Chapter 7 bankruptcy. While bankruptcy protection is not the favored method for establishing a clean record, it is a legally available method for satisfying debt. After receiving a fresh start through the bankruptcy, she has incurred additional delinquent debts. However, taken together with Applicant's other irresponsible handling of her finances, FC MC E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditor*) does not apply.

Applicant is in a repayment plan with one of the party's who has a judgment against her. However, two unpaid judgments remain. She believes that she is up-to-date in paying her rent, and that the allegation that there is a judgment outstanding against her by her apartment complex is incorrect but provided no documentation supporting her claim. The judgment by the apartment complex was filed in February 1999. Assuming *arguendo* that she is correct, she had notice about both judgments when she received the SOR, and she has done nothing in the intervening months to pursue the matters. Thus, none of the other Financial Considerations Mitigating Conditions apply. Under the circumstances, Applicant has failed to mitigate or overcome the government's case. The evidence leaves me with doubts as to Applicant's security eligibility and suitability. Accordingly, allegations 1.a. through 1.d. are concluded against Applicant.

## **Personal Conduct**

Personal conduct is always a security concern because it asks the central question whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified information.

Applicant falsified material facts on her SF 86, when she answered "no" to Question 37, which asked if in the last 7 years, she had any unpaid judgments against her. She signed her SF 86 on July 13, 2004. One judgment was filed in

April 2004, and the other in February 1999. There is a presumption that she received her mail at least five days after each judgment was mailed. I conclude that by the time Applicant completed her SF 86 in July 2004, she had notice of both judgments. Personal Conduct Disqualifying Condition E2.A5.1.2 (*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. None of the Personal Conduct itigating Conditions apply. Under the circumstances, Applicant has failed to mitigate or overcome the government's case. The evidence leaves me with doubts as to Applicant's security eligibility and suitability. Accordingly, allegation 2.a. is concluded against Applicant.

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. For the reasons stated, I conclude Applicant is not suitable for access to classified information.

### **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

Paragraph 2. Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

**DECISION**

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

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Jacqueline T. Williams

Administrative Judge

1. Item 4 (Security Clearance Application, dated November 17, 2003, executed on July 13, 2004).
2. Item 2 (Applicant's Answer, dated October 8, 2005).
3. The Government submitted seven items in support of the allegations.
4. Response to FORM, dated April 21, 2006.
5. Ex. A (Letter, dated October 12, 2005) and attachments.
6. Item 2 (Applicant's Response, dated October 8, 2005) and attachments.
7. Ex. A (3 Articles regarding Providian's credit practices).
8. Item 4 (Security Clearance Application, dated July 13, 2004).
9. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
10. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
11. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
12. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.
13. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.
14. *Egan*, 484 U.S. at 531.



15. *Id.*

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

17. Executive Order 10865 § 7.