

KEYWORD: Financial

DIGEST: Applicant is 43 years old and works for a federal contractor. From 1994 until 2003, she accumulated a significant amount of debt as a result of natural disasters, business losses, and family matters. She paid some of her outstanding debts, and initiated a repayment plan to resolve the remaining obligations. She mitigated the security concerns raised by her financial problems. Clearance is granted. CASENO: 05-07177.h1

DATE: 05/31/2006

DATE: May 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-07177

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Debra Ibarra Mayfield, Esq.

SYNOPSIS

Applicant is 43 years old and works for a federal contractor. From 1994 until 2003, she accumulated a significant amount of debt as a result of natural disasters, business losses, and family matters. She paid some of her outstanding debts, and initiated a repayment plan to resolve the remaining obligations. She mitigated the security concerns raised by her financial problems. Clearance is granted.

STATEMENT OF THE CASE

On December 15, 2005, Defense Office of Hearings and Appeals (DOHA) under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guideline F (Financial Considerations) why DOHA could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant a security clearance to Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On January 11, 2006, Applicant filed her Answer, admitting all of the allegations contained in the SOR, and requested a hearing. On February 17, 2006, the case was assigned to me and later transferred to another administrative judge who set the matter for hearing on March 21, 2006. On March 9, 2006, Applicant filed a Motion For Continuance of Hearing Date, which Department Counsel did not oppose. The Motion was granted, and on March 9, 2006, the case was reassigned to me. On April 17, 2006, a Notice of Hearing was mailed, scheduling the hearing on May 4, 2006. At the hearing the Government entered exhibits (GX) 1-6 into evidence. Applicant introduced exhibits (AX) A-M into evidence. She testified in her case-in-chief. DOHA received the hearing transcript (Tr.) on May 12, 2006. The record was left open until May 25, 2006 to give Applicant an opportunity to submit additional documentation related to her financial status. On May 23, 2006, I received those materials and marked them as AX N. Department Counsel did not object to its admission, but did object to the weight to be given to it.

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in her Answer to the SOR and information presented at the hearing, I make the following findings of fact:

Applicant is 43 years old. She and her husband of 18 years, have three children, age 9, 15 and 17. In May 2001, she began a job as a clerk with a federal contractor. In July 2002, she was promoted to the position of records file clerk. While in this position she has received an above average rating from her supervisor, along with a letter of recognition for her work and achievements. (GX K, L & M) She needs a security clearance for her present job, and in order to apply for another promotion. She filed her security clearance application (SCA) in April 2004.

Applicant's house flooded in 1994 and again in 1998. Because of the two floods, she and her family lost their house and possessions, estimated to be worth about \$240,000. (Tr. 40.) After the last flood, she started a business, selling small items at various events. About a year later in 2002, her vending truck and supplies were stolen, which caused her to lose her business. (Tr. 42) In 2000 or 2001, her grandmother and mother-in-law died, and she and her husband incurred various funeral expenses. About the same time her husband lost his job, and remained out of work for a period of time. (Tr. 48)

Paragraph 1 of the SOR alleged that Applicant's delinquent debts total \$16,781, of which the following have been paid: ¶ 1.c for \$1,791; ¶ 1.g for \$22; 1.h for \$82; ¶ 1.i for \$151; and ¶ 1.k for \$113. \$14,724 accrued from approximately 1994 to 2003, and remains delinquent. (GX 4 & 6)

Applicant admitted that she is responsible for all of the debts alleged in the SOR. Five of the debts relate to purchases and expenses for her small business, and are owed to credit card companies: ¶ 1.a for \$4,456; ¶ 1.b for \$1,729; ¶ 1.d for \$631; ¶ 1.e for \$1,141; and ¶ 1.f for \$573. None of these credit cards were used for personal items. (Tr. 47) Some of the other debts accumulated after her husband lost his job and are owed to other credit card companies for household expenses, travel and funeral costs, and reconstruction after the floods. They include: ¶ 1.c. for \$1,791; ¶ 1.l for \$2,131; ¶ 1.m for \$ 2,166; and ¶ 1.n for \$1,595. Two of the debts are her children's medical bills, which she thought were covered by insurance: ¶ 1.j for \$200, and ¶ 1.k for \$113.

Applicant began contacting some of the creditors after the debts became due, and paid some of them in 2005. In May or June of 2005, she contacted a consumer credit counseling agency for assistance in managing her debts. She

subsequently contacted another agency in 2006 to finalize a payment plan. (Tr. 94) On May 18, 2006, she executed a repayment plan, and agreed to repay \$14,960 over the next 32 months by making monthly payments of \$524. She and her husband have a monthly net income of \$3,200 and expenses of \$2,680, leaving her with sufficient funds to make the payments. (AX N) More recently, they have cut their expenses and are in a stable financial condition. (Tr. 88) Applicant feels obligated to pay her bills and appears determined to do so. She was candid during her testimony.

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth criteria which must be evaluated when determining security clearance eligibility. Within those adjudicative guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive, Enclosure 2, ¶ E2.2.2. The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty. Executive Order 10865, § 7. Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988). The Directive presumes a rational connection between past proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability.

ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the government. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive, Enclosure 3, ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his clearance." *Id.*

Based upon the allegations contained in the SOR and a consideration of the evidence as a whole, the following adjudicative guideline is pertinent to an evaluation of the facts of this case:

Guideline F - Financial Considerations: A security concern may exist when 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.

The disqualifying and mitigating conditions, raising either security concerns or mitigating security concerns applicable to this case, are discussed in the Conclusions section below.

CONCLUSIONS

I considered all of the facts in evidence, legal standards, including the "whole person" concept and Applicant's credibility.

The Government established a potential case for disqualification under Guideline F. Based on the evidence, two disqualifying conditions apply: (1) Financial Consideration Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and (2) FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*). From 1994 to about 2003, Applicant accumulated a significant amount of delinquent debt that she was unable to pay, and which remains unpaid as of today, as noted by credit reports and her testimony.

The Government having raised a security concern, the burden shifted to Applicant to mitigate or rebut the allegations. After reviewing all of the mitigating conditions, I conclude Financial Consideration Mitigating Condition (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)) applies. Applicant provided evidence that her delinquent debts accumulated after two floods of her home, a business failure, two deaths, and her husband's unemployment, all of which were factors outside of her control.

As that mitigating condition standing alone is insufficient to overcome the Government's present concern, I also considered 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 under control*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), and conclude both apply. Applicant initially contacted some of her creditors as the bills became due. In 2005, she paid about \$2,200 of the debts. She also contacted two credit counseling companies as a step toward managing her finances. Shortly after the hearing she finalized a repayment plan that will resolve all of the remaining debts. Although that plan may require her to operate on a tight budget, I find her desire and commitment to repay her debts and maintain her employment will be sufficient motivation for her to adhere to the terms of the agreement. As a result of those good faith actions and the reduction of household expenses, her financial problems are under control, and all of her creditors will be paid.

I further considered the totality of the evidence in this case, including Applicant's age, the unfortunate circumstances underlying her financial problems, her present job performance and desire to obtain another promotion, as well as her candid testimony about her finances. Given her expressed commitment and willingness to resolve her financial obligations, coupled with a recently executed repayment plan, I concluded that the security concerns related to her finances are being resolved and are unlikely to recur. Hence, all allegations are concluded for her. Accordingly, Guideline F is decided for Applicant.

For the reasons stated, I conclude Applicant is eligible 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 as follows:

Paragraph 1: Guideline F (Financial Considerations) FOR APPLICANT

Subparagraphs 1.a through 1.n: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

Shari Dam

Administrative Judge