

KEYWORD: Financial; Personal Conduct; Criminal Conduct.

DIGEST: Applicant experienced financial difficulties that began in 1999 which were compounded in 2001 when she was unemployed for about three months. Her current debts consist primarily of consumer credit accounts exceeding \$14,500.00. Applicant has never directly implemented a repayment plan with any of the creditors or through any credit counseling service. She has never applied for bankruptcy relief, and no payments have been made against the accounts for several years. Applicant has failed to successfully mitigate the security concerns raised by her financial problems. Clearance is denied.

CASENO: 03-25661.h1

DATE: 11/30/2005

DATE: November 30, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-25661

DECISION OF ADMINISTRATIVE JUDGE

DAVID S BRUCE

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant experienced financial difficulties that began in 1999 which were compounded in 2001 when she was unemployed for about three months. Her current debts consist primarily of consumer credit accounts exceeding \$14,500.00. Applicant has never directly implemented a repayment plan with any of the creditors or through any credit counseling service. She has never applied for bankruptcy relief, and no payments have been made against the accounts for several years. Applicant has failed to successfully mitigate the security concerns raised by her financial problems. Clearance is denied.

STATEMENT OF THE CASE

On, May 6, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Review Program*, dated January 2, 1992, as amended and modified (Directive), issued a Statement of Reasons (SOR) to Applicant alleging facts that raise security concerns addressed in the Directive under Guideline F - Financial Considerations, Guideline E - Personal Conduct, and Guideline J - Criminal Conduct. The SOR detailed why DOHA could not preliminarily determine under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's request for a security clearance. By her answer dated July 7, 2005, Applicant admitted with explanations the allegations of subparagraphs 1.a., 1.b., 1.d., 1.e., and 1.g - 1.m. of the SOR, and denied the allegations of subparagraphs 1.c., 1.f., 2.a. - 2.c., and 3.a., and requested a hearing before an administrative judge.

The case was assigned to me on August 18, 2005, and I conducted the hearing on September 22, 2005. The government submitted exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified at the hearing and offered no documentary evidence. DOHA received the hearing transcript (Tr.) on October 6, 2005.

FINDINGS OF FACT

Applicant's admissions to the allegations of the SOR as amended are incorporated herein by reference. In addition, after a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact:

Applicant is 35 years old and has never been married. She served honorably in the U.S. Navy from August 13, 1991, until August 12, 1997, ⁽¹⁾ and except for about a 3 month period in late 2001, she has been consistently employed since her discharge from the Navy. ⁽²⁾

Applicant has been working for a defense contractor as an electronics technician since January 2002. ⁽³⁾ She previously held a clearance while employed by a different contractor in 1998. ⁽⁴⁾ She does not use illegal drugs and she has no criminal record. ⁽⁵⁾

After working steadily for over 4 years following her discharge from the Navy, in October 2001, Applicant lost her job when she was laid off due to company restructuring. ⁽⁶⁾ Applicant also worked part-time at a second job with a pet care and boarding facility from May 2001 to October 2001. Applicant's position was terminated primarily because she was unable to work the required hours due to her significant out-of-town traveling requirements related to her full-time job. ⁽⁷⁾ She remained unemployed from October 18, 2001 until January 7, 2002, when she acquired her present position at a salary of about \$20,000.00 less per year. ⁽⁸⁾ She received no unemployment benefits for the period she was unemployed due to her failure to complete the necessary paperwork. ⁽⁹⁾

Applicant owes the following amounts to the creditors referenced in the SOR:

1. Credit card account - \$1,389.00. (Subparagraph 1.a.)
2. Medical services - \$1,315.53. (Subparagraph 1.b.)
3. Credit account - \$534.00. (Subparagraph 1.c.) ⁽¹⁰⁾
4. Fuel oil account - \$475.87. (Subparagraph 1.d.)
5. Personal debt - \$1,035.00. (Subparagraph 1.e.)

6. Credit card account - \$1,713.00. (Subparagraph 1.f.)
7. Cable TV account - \$155.00. (Subparagraph 1.g.)
8. Trash services - \$798.88. (Subparagraph 1.h.)
9. Pet care/lodging services - \$3,535.00. (Subparagraph 1.i.)
10. Phone account - \$221.00. (Subparagraph 1.j.)
11. Credit card account - \$2,897.00. (Subparagraph 1.k.)
12. Credit card account - \$614.00 (Subparagraph 1.l.)

Applicant's total debt set forth above is \$14,683.28.

The debts indicated in numbers 2, 4, 5, 8 and 9 above were reduced to judgments against Applicant from December 2002 to February 2003. The other debts listed were either referred for collection or "charged off" by the respective creditors between August 1999 and January 2004. Applicant made no effort from at least 2001 to the time of the hearing to make any payments against any of the debts. [\(12\)](#)

When Applicant submitted her personal financial statement to the Defense Security Service (DSS) investigator on July 30, 2003, she claimed she owned no material assets. She further indicated she had positive net income of \$944.00 per month. In computing her net income, the financial statement reflected Applicant paying over \$1,100.00 per month against 8 installment credit debts she had at the time, 4 of which (nos. 6, 9, 11 and 12 above) are included in the SOR allegations. [\(13\)](#)

Applicant signed her SF 86 on December 30, 2002. As to Question 6 related to her employment history, Applicant did not disclose she had worked at the pet care and boarding facility for about six months in 2001. As to Question 38 and 39 regarding existing debt delinquencies over 180 and 90 days, Applicant failed to list any unsecured delinquent debts. The only debt Applicant disclosed was a secured mortgage debt against her home in Question 39. The mortgage was foreclosed and the home sold at auction in 2003. [\(14\)](#) The mortgage was not listed among the allegations of the SOR.

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines For Determining Eligibility For Access To Classified Information*, sets forth the criteria which must be evaluated when determining security clearance eligibility. The adjudicative guidelines specifically distinguish between those factors that are considered in denying or revoking an employee's request for access to classified information (Disqualifying Conditions), together with those factors that are considered in granting an employee's request for access to classified information (Mitigating Conditions). By acknowledging that individual circumstances of each case are always different, the guidelines provide substantive standards to assist an administrative judge in reaching fair and impartial common sense decisions.

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 well-informed decisions. 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 conduct of the applicant and the circumstances in any case, the factors an administrative judge should consider pursuant to the concept are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 the participation; (6) the presence or absence of rehabilitation and other pertinent 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.

Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interests of national security. Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information.⁽¹⁵⁾ The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant.⁽¹⁶⁾ It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the burden of proof in the adjudicative process to first establish conditions by substantial evidence which indicate it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information.⁽¹⁷⁾ The legal standard for the burden of proof is something less than a preponderance of the evidence.⁽¹⁸⁾ When the government meets this burden, the corresponding heavy burden of rebuttal then falls on the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the position of the government, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.⁽¹⁹⁾

CONCLUSIONS

Under Guideline F, a security concern exists when a person has significant delinquent debts. 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, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*), apply in this case. I have considered all the Financial Considerations Mitigating Conditions (FC MC), and, especially FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2 (*It was an isolated incident*), 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)*), and FC MC E2.A6.1.3.6 (*The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts*). I conclude none apply to this case.

The total debt raised under the SOR allegations exceeds \$14,500.00. This amount is substantial and took time to accumulate, heightened by the fact that it is ostensibly consumer credit debt which began to materially accrue before Applicant's period of unemployment. The clear inference is that Applicant either lived beyond her means or seriously neglected her credit budget for a lengthy period, and Applicant failed to recognize the magnitude of her escalating debt. Her period of unemployment was relatively short, yet she took no affirmative steps then and after she returned to work to tighten her budget to get her financial affairs in order. The unfortunate loss of her job in October 2001, only compounded her already developing financial difficulties. It is particularly alarming Applicant neglected to complete the simple steps required to collect unemployment benefits. The debts accrued over several years, and because nothing has been paid against them, I consider the debts recent, in the sense that they remain presently overdue. Likewise, I cannot consider accrual of the debts to be an isolated event because the debts were multiple and were progressively incurred over a lengthy period.

Applicant represented to the DSS investigator in July 2003 she would initiate efforts to begin paying the accounts since she had resumed working. At the hearing over two years later, no payments had been made and no repayment plans or schedules had been implemented by Applicant with any of the creditors listed in the SOR. A different conclusion might be appropriate had Applicant adjusted her budget and made good-faith efforts to repay any significant portion of the total debt since she filed her SF 86 nearly three years ago. Applicant never initiated efforts to benefit from meaningful credit counseling, and it is interesting to note she regularly kept her car payments current. It appears she chose to ignore certain debts, and keep others current, in spite of having had at least a modest ability to accomplish some partial repayment. Given the chronology and seriousness of the events, Applicant has failed to show failure to pay her debts was due principally to conditions beyond her control, and she has not made a good-faith effort to repay any of her creditors or otherwise conscientiously resolve her debts. She has made no effort to satisfy even a modest amount of the delinquent debts she acknowledges are her responsibility. Her deliberate and irresponsible inattention to her debts causes great concern, particularly considering she has ignored the debts when she has had a modest ability in recent years to begin making payments on some of them.

Under Guideline E, personal conduct is a security concern because conduct involving questionable judgment,

trustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that a person may not properly safeguard classified information.

Considering all the evidence, Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2. (*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 in this case. Applicant was aware she had a number of overdue accounts and debts when she signed her SF 86 on December 30, 2002. Her financial difficulties began prior to becoming unemployed in October 2001, and by her own admission, her difficulties substantially escalated during the three month period she was without income. No payments were made over the next ten months after she resumed working until she filed the application. Several of the accounts listed on the SOR had been either reduced to judgment or referred for collection when she completed her SF 86. Her omission with regard to her part-time work at the pet care facility is especially troublesome considering she actually left that employment ultimately owing her employer a significant amount of money for the care of her dogs which was not disclosed as well. One objective of the security clearance process is to determine all relevant and material information concerning an applicant. Based upon truth and honesty, the process requires full and open disclosure by the applicant of all requested information. Any intentional misrepresentation or omission by an applicant raises serious concerns about the character and overall integrity of the individual. The evidence presented and Applicant's admissions constitute substantial evidence of PC DC E2.A5.1.2.2. under Guideline E.

I have considered all the Personal Conduct Mitigating Conditions (PC MC), and especially PC MC E2.A5.1.3.3. (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), and conclude it does not apply. Applicant had an affirmative obligation to determine the true status of all information requested in the SF 86, and to fully provide and disclose complete and accurate answers to each item of the questionnaire. The omissions on her SF 86, and particularly under Question 6 regarding her prior employment, were apparent to Applicant when she prepared her answers and were made intentionally. The omissions were a deliberate and self serving attempt by Applicant to mislead and inappropriately influence the outcome of her security clearance application. Applicant met with a Defense Security Service (DSS) investigator on July 30, 2003. Applicant did not openly disclose the facts related to her prior employment and the significant debt associated with it and her other debts until she was confronted with the information during the interview. Applicant had seven months to reconsider her responses on her application and properly disclose the correct information. Considering all the circumstances, Applicant's candor and credibility are questionable given the seriousness and chronology of the events. Accordingly, Applicant has failed to successfully mitigate the personal conduct security concerns raised in this case.

Under Guideline J, criminal conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. Based upon all the evidence, Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1. (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*), applies in this case. Title 18 U.S.C. § 1001, provides that knowingly and willfully submitting materially false, fictitious, or fraudulent information in any matter within the jurisdiction of the U.S. Government is a crime punishable by a fine and up to five years imprisonment. Applicant's conduct in deliberately omitting significant material information about her previous employment and significant debts required to be provided as a part of her SF 86 qualifies as serious uncharged criminal conduct within the meaning of Guideline J. I have further considered all the Criminal Conduct Mitigating Conditions (CC MC) under the Directive and conclude that none apply to Applicant's behavior in violating the requirements of Title 18 as set forth above.

I have further reviewed all the record evidence under the "whole person" concept required by the Directive in evaluating Applicant's vulnerability in protecting our national security. An applicant with a good or even exemplary work history may engage in conduct that has negative security implications. Although Applicant's loyalty to the United States is also not in question, I am persuaded by the totality of the evidence that it is not clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, Applicant has not met the strict guidelines established by the Department of Defense for issuance of a clearance, and she has failed to mitigate the security concerns regarding her financial matters and personal conduct and criminal conduct issues raised in this case. Accordingly, Guidelines F, E and J are decided against Applicant.

FORMAL FINDINGS

In accordance with Section E3.1.25 of Enclosure 3 of the Directive, the following are the formal findings as to each allegation in the SOR:

Paragraph 1. Financial Considerations (Guideline F) AGAINST THE APPLICANT

Subparagraph 1.a. Against 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

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. Against the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. Against the Applicant

Subparagraph 1.k. Against the Applicant

Subparagraph 1.l. Against the Applicant

Subparagraph 1.m. Against the Applicant

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

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Subparagraph 2.c. Against the Applicant

Paragraph 3. Criminal Conduct (Guideline J) AGAINST THE APPLICANT

Subparagraph 3.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 Applicant. Clearance is denied.

David S. Bruce

Administrative Judge

1. GE 1 (Applicant's Security Clearance Application (SF 86) dated December 17, 2002), at 1, 5 and 7.
2. *Id.* at 2-3.
3. *Id.*

4. *Id.* at 9.
5. *Id.* at 7-8.
6. Tr. at 19-21.
7. *Id.* at 39-41.
8. GE 1, *supra* note 1, at 3. See also GE 5 (Applicant's statement to Defense Security Service (DSS) investigator dated July 30, 2003), at 3.
9. Tr. at 22-23.
10. Applicant is not familiar with this account, however, it appears on her latest credit report provided by the government. See GE 6 (Credit report dated March 15, 2005), at 1.
11. Applicant contends she has paid this account in full, but submitted no supporting documentation to verify payment. See Tr. at 32-33. See also GE 6, *supra* note 10, at 2, where the debt still appears past due.
12. Tr. at 30-31.
13. GE 5, *supra* note 8, at 3.
14. *Id.* at 1. See also Tr. at 24.
15. Directive, Enclosure 2, Para. E2.2.2.
16. Executive Order 10865 § 7.
17. ISCR Case No. 96-0277 (July 11, 1007) at p. 2.
18. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
19. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Para. E3.1.15.