

DATE: June 10, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-26015

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has over \$17,000 in debts that are delinquent, charged-off, or in collection status. She failed to contact most of the debtors and has not paid most of them any money. It is not likely that she will be able to resolve these debts in the next year. Applicant deliberately falsified her security clearance application by failing to note her delinquent debts. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 24 January 2005, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. Applicant received the SOR on 4 February 2005, and filed a written Answer on 19 February 2005, in which she elected to have her case decided on the record without a hearing. The case was assigned to me on 24 March 2005. That same day, Applicant sent the Department Counsel originally assigned to the case a facsimile requesting a hearing. The Department Counsel told Applicant she would get a hearing before an administrative judge. On 19 April 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 28 April 2005.

PROCEDURAL ISSUES

"To be entitled to a hearing, the applicant must specifically request a hearing in his or her answer. The answer must be received by the DOHA within 20 days from receipt of the SOR. Requests for an extension of time to file an answer may be submitted to the Director, DOHA, or designee, who in turn may grant the extension only upon a showing of good cause." Directive ¶ E3.1.4. In this case, Applicant answered within 20 days of her receipt of the SOR and did not specifically request a hearing.

The Directive does not provide authority to grant a hearing to an Applicant who has not requested one in her answer.

She may request an extension of time to file the answer, but only the Director, DOHA, or his designee may grant an extension and only upon a showing of good cause. Applicant never requested an extension of time to file her answer-she in fact timely filed her answer-and there has been no showing the Director, DOHA, or his designee found good cause to grant a request for an extension. Applicant was not entitled to a hearing. Nevertheless, as the issue was not brought to my attention until shortly before the hearing and Applicant had relied on the original Department Counsel's representations that she could still have a hearing, I conducted the hearing and have rendered a decision. [\(2\)](#)

FINDINGS OF FACT

Applicant is a 53-year-old packer for a defense contractor. Tr. 17-18. She held a security clearance for two years between 1984 and 1986. She was married to her first husband from 1970-80. She married her second husband in 1994, but separated from him in January 2004. She has since filed for a divorce that should have become final on 19 May 2005. She has three grown children. None of the children live with her, but she still helps her son financially.

In 1986, while she was between marriages, Applicant had debts discharged in a Chapter 7 bankruptcy. Tr. 38-39. Since that discharge, she and her second husband accumulated over \$17,000 in debt. A summary of those debts and their current status is displayed in the chart below:

| ¶ | Debt | Status | Record |
|----------|--|---|---------------|
| 1.a | Delinquent education loan \$2,537 | Garnishment \$140 @ mo.; < \$1,000 remains to be paid | Tr. 21 |
| 1.b | Bank debt \$767 past due | She believes she still owes \$249 | Ex. B at 3 |
| 1.c | Credit card \$1,913 charged off | Not paid or contacted | Tr. 25 |
| 1.d | Repossessed car owes \$3,502 | Claims husband has car. Has not made any payments | Tr. 26 |
| 1.e | Collection acct \$4,399 for credit card debt | Not paid or contacted | Tr. 27-31 |
| 1.f | Collection acct \$3,101 for credit card debt | Not paid or contacted | Tr. 27-31 |
| 1.g | Collection acct \$570 | Now owes \$107 | Ans; Ex C |
| 1.h | Collection acct \$103 | Not paid or contacted | Tr. 34 |
| 1.i | Collection acct \$766--phone she gave to her son | Not paid or contacted | Tr. 34 |
| 1.j | Delinquent acct \$168 | Not paid or contacted | Tr. 35 |

Applicant's take-home pay is approximately \$1,300 a month. She estimates she has \$150 remaining each month after paying her current bills. After she completes paying off the educational loan in 2005 via garnishment of her pay, she will have an additional \$140 each month with which to pay her debts.

On 5 February 2003, Applicant completed her security clearance application (SCA). Question 38 ask if, in the previous seven years, Applicant had been delinquent on any debt more than 180 days. Question 39 asked if Applicant was then delinquent more than 90 days on any debt. Applicant answered no to both questions.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and

mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline F--Financial Considerations

In the SOR, DOHA alleged Applicant has three delinquent debts (¶¶ 1.b, 1.d, 1.j), six accounts that are in collection status (¶¶ 1.a, 1.e, 1.f, 1.g, 1.h, 1.i), and one debt that was charged off (¶ 1.c) totaling more than \$17,000. In her Answer, Applicant basically admitted all of the debts, ⁽³⁾ some with explanation. An individual who is financially overextended is at risk of having to engage in illegal acts to generate fund's. Directive ¶ E2.A6.1.1.

The Government's evidence and Applicant's admissions constitute evidence of potentially disqualifying conditions under Guideline F. Applicant has a history of not meeting her financial obligations (DC E2.A6.1.2.1) and is unable or unwilling to satisfy those debts (DC E2.A6.1.2.3). Although she made some progress in paying off her educational loan via a voluntary allotment, it is now being satisfied through court ordered garnishment. Applicant does not know what one of her debts is for and believes it may be for medical care she thought was being covered by her medical insurance. But she did not contact the creditor to find out if that was the case. She also failed to contact most the creditors to try to establish payment plans. Applicant insists that some of her financial problems are the result of her husband who is a drug addict and has not worked in a year. She left her husband in January 2004 and initiated divorce proceedings that should be finalized in May 2005. While this may limit her future debt, it does not resolve the many debts she has that are delinquent. Applicant failed to mitigate the financial security concerns raised in the SOR. She has not shown that she is in control of her financial situation. Even after she completes payments on her educational loan, the additional \$140 in her account will do little to resolve her debts in the next year or two.

Guideline E--Personal Conduct

In the SOR, DOHA alleged Applicant falsified material facts on her SCA by failing to disclose that, in the previous seven years, she had debts that were over 180 days delinquent (¶ 2.a) and debts that were then currently delinquent (¶ 2.b). Applicant denied the allegations. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government's evidence established Applicant failed to accurately answer question 38 and 39 on her SCA. She claims she was unaware of the extent of her debts because she turned over her bills to a credit counseling service that failed to help her, and she thought her debts had been charged off, so she was not required to report them. After listening to her testimony and observing her demeanor, I am convinced she deliberately answered questions 38 and 39 incorrectly. The evidence established potentially disqualifying conditions under Guideline E. An applicant who deliberately falsifies material information from an SCA raises a security concern. An applicant's financial situation is relevant and material to her security worthiness. None of the listed mitigating conditions apply. Applicant failed to mitigate security concerns raised by her misrepresentations on her SCA.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: 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.f: Against Applicant

Subparagraph 1.h Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: 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.

James A. Young

Administrative Judge

1. As required by Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

2. I may not do so in the future.

3. In her Answer, Applicant both agreed and disagreed with the allegations in SOR ¶¶ 1.a, 1.d, and 1.g. It appears the disagreement was not over whether the debts ever existed, but whether they have been paid or what amount she owes.