

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant began to experience financial difficulties because her husband was laid off from his job and she was unable to control her credit card spending. Although she has made some progress, over \$38,000 in delinquent debts remain outstanding that she has made no arrangements to resolve. Applicant deliberately omitted relevant and material information about her financial condition from her security clearance application. Clearance is denied.

CASENO: 04-05153.h1

DATE: 01/17/2006

DATE: January 17, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05153

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant began to experience financial difficulties because her husband was laid off from his job and she was unable to control her credit card spending. Although she has made some progress, over \$38,000 in delinquent debts remain outstanding that she has made no arrangements to resolve. Applicant deliberately omitted relevant and material information about her financial condition from her security clearance application. 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 31 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 answered the SOR in writing on 21 March 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on 21 July 2005. I scheduled a hearing for 27 September 2005, but had to postpone it due to Hurricane Rita. On 1 November 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 16 November 2005.

FINDINGS OF FACT

Applicant is a 41-year-old lead position supply chain associate for a defense contractor. She had two children with her first husband, whom she divorced in 1993. One child lives with her. She married again in 1997 and her husband's son resides with them. Applicant's supervisor raves about her work performance, reliability, and high ethical values. He noted her recent promotion because of her outstanding job performance.

After her divorce, Applicant struggled financially. Applicant's current husband was an aircraft mechanic who worked on a contract basis. In September 2001, he was laid off. He received unemployment compensation and attended a technical school. He received \$300 a week in unemployment compensation as compared to the \$1,300-\$1500 he formerly brought home each week. Tr. 14. He started work again in September 2003. A month later, he fractured some bones in his hand and injured his wrist. He received unemployment compensation of more than \$2,148 a month from November 2003 until March 2005, when he returned to work. When her husband was injured, Applicant was working at a convenience store and attending school in physical therapy. Since she started with her present employer, she has progressed from making \$8.50 an hour to \$13 an hour.

In September 2005, six months after returning to work, Applicant's husband injured his back. He started work again the last week in October, but had back spasms and had to leave. He expects to resume work in less than two weeks.

Applicant admits she was seduced by the lure of credit cards and let her use of them get out of hand. She and her husband bought what they wanted instead of just what they needed or could afford. With her husband out of work, she made a conscious decision to focus on the needs of the family-paying the mortgage and putting food on the table-and did not make payments on many of the other debts she had accumulated. Although Applicant's husband's health problems have restricted the couple's income, when he works, the couple earns at a rate of over \$100,000 a year. Exs. C, E.

The following chart summarizes the current status of Applicant's delinquent debts:

Debt	Status	Record
1.a--\$212	Unpaid.	Tr. 26
1.b-\$259	Unpaid.	Tr. 26
1.c-\$733	Agreed to pay \$20 @ month for 2 yrs. Has made 3 payments.	Tr. 26; Ex. J
1.d-\$1,433	Unpaid, but has until 10 Nov 2005 to decide whether to accept a settlement offer.	Tr. 28
1.e-\$7,578	Makes payments of \$25 @ month. Has made 4 payments.	Tr. 30; Ex. K
1.f-\$8,820	From voluntary car repossession and sale of auto-unpaid and no arrangements to pay.	Tr. 30-31
1.g-\$1,012	Unsure if it is her debt, but hasn't contested it.	Tr. 31-32
1.h-\$67	Unpaid. Claims company won't send her an invoice to pay it.	Tr. 32-33
1.i-\$195	Paid.	Ex. M
1.j-\$1,045	Unsure if it is her debt, but hasn't contested it.	Tr. 33-34
1.k-\$3,768	Unpaid-no arrangements to pay.	Tr. 34
1.l-\$4,277	Unpaid-no arrangements to pay.	Tr. 34-35
1.m-\$1,222	Unpaid-no arrangements to pay.	Tr. 35
1.n-\$1,040	She thinks it is paid.	Ex. O
1.o-\$385	Settled for \$156 and paid.	Tr. 36; Ex. N
1.p-\$10,238	Unpaid-no arrangements to pay.	Tr. 37-38

1.q-\$239	Unsure if it her debt, but hasn't contested or paid it.	Tr. 38
1.r-\$3,845	Student loan-deferred until December 2005.	Tr. 38-39
1.s-1,030	Student loan-deferred until December 2005.	Tr. 39
1.t-\$1,144	Creditor offered to settle. She will pay \$597 by end of Nov 2005.	Tr. 40
1.u-\$210	Makes monthly payments (3 so far) of \$35.	Tr. 40
1.v-\$4,051	Unpaid-no arrangements to pay.	Tr. 41
1.w-\$3,507	Unpaid-no arrangements to pay.	Tr. 41-42
1.x-\$821	Paid, but no proof.	Tr. 42
1.y-\$344	Paid.	Ex. N

On 9 January 2003, Applicant completed a security clearance application (SCA) that was submitted electronically on 29 January 2003. Applicant certified her answers were "true, complete, and correct" to the best of her knowledge and belief and acknowledged that "a knowing and willful false statement" could be punished by fine and/or imprisonment. Question 38 asked if, in the previous seven years, Applicant had been delinquent more than 180 days on any debt. Applicant answered "yes," and listed one \$150 debt to a department store. Question 39 asked if she was currently delinquent more than 90 days on any debts. Applicant answered "no."

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 had 25 debts totaling more than \$54,000 that had not been paid (¶¶ 1.a-1.y).⁽²⁾ Applicant admitted each of these debts.⁽³⁾ An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government's evidence established potentially disqualifying conditions under Guideline F. Applicant has a history of not meeting financial obligations (DC E2.A6.1.2.1) and is unable or unwilling to satisfy her debts (DC E2.A6.1.2.3). Applicant made a good-faith effort to pay some of these delinquent debts (MC E2.A6.1.3.6), but only the smaller ones. She still has delinquent debts totaling more than \$38,000 for which she has made no plans to pay. Some of her financial problems are no doubt due to conditions beyond her control (MC E2.A6.1.3.3)-her husband was laid off, was unable to find employment for two years and received only unemployment insurance, and was injured shortly after starting a job in 2003, putting him on workmen's compensation for two years. But during the time he was out of work due to injuries, he received 80 percent of his monthly wages. It is clear that, although these factors contributed, Applicant's financial problems are in large measure due to the couple misusing their credit cards. Under all the circumstances, Applicant's financial condition leaves her at risk. I find against Applicant on the allegations in ¶¶ 1.a, 1.b, 1.f-1.h, 1.j-1.m, 1.p, 1.q, 1.v, and 1.w. I found for her on the debts she paid or is paying under a payment plan.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant deliberately omitted some of the debts from the answers she gave to question 38 (¶ 2.a) and 39 (¶ 2.b) of the SCA. Applicant denied both 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.

Applicant asserts she only listed one debt in answer to question 38 because it was the only debt for which she had all of the information required (such as the credit account number), and her security officer told her that it would be sufficient if she listed only that debt. But she suggests otherwise in the statement she gave to a Defense Security Service agent on 18 February 2004. Ex. 3. In it, she claims she did not list all of her debts because "they were old debts and either charged off and or sent to collection. I guess I misunderstood the question about finances on my security." Under all the circumstances, I conclude Applicant deliberately omitted the information requested in questions 38 and 39 of her SCA.

The Government's evidence established potentially disqualifying conditions under Guideline E. Applicant deliberately omitted relevant and material facts from her SCA. DC E2.A5.1.2.2. An applicant's financial situation is relevant and material to a determination of her security worthiness. None of the mitigating condition listed under Guideline F apply. After considering all of the evidence as well as the adjudicative process factors (Directive ¶ 6.3), I find against Applicant on ¶ 2.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a-1.b: Against Applicant

Subparagraph 1.c-1.e: For Applicant

Subparagraph 1.f-1.h: Against Applicant

Subparagraph 1. i: For Applicant

Subparagraph 1.j-1.m: Against Applicant

Subparagraph 1.n-1.o: For Applicant

Subparagraph 1.p-1.q: Against Applicant

Subparagraph 1.r-1.u: For Applicant

Subparagraph 1.v-1w: Against Applicant

Subparagraph 1.x-1.y: For 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 (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended and modified (Directive).
2. The allegations contained in the SOR do not allege a disqualifying condition. They merely allege Applicant has debts that have not as yet been paid, which is not a disqualifying condition. Nevertheless, the evidence introduced at the hearing established the debts were delinquent which is disqualifying under DC E2.A6.1.2.1.
3. At the hearing, Applicant explained that she could not identify some of the debts listed in the SOR, but she believed they were probably hers because they were listed on her credit report.