

KEYWORD: Financial; Personal Conduct

DIGEST: By deliberately under reporting her delinquent debt on her security form, Applicant exercised poor judgment. By stating she would only try to pay those debts if she was contacted by the specific creditor, rather than initiating action to pay the creditor, Applicant demonstrated more poor judgment. While the unforeseen medical and employment problems provide some extenuation and mitigation for Applicant's financial troubles, these unanticipated events do not overcome Applicant's financial problems. Clearance is denied.

CASENO: 04-09461.h1

DATE: 02/28/2006

DATE: February 28, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09461

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

By deliberately under reporting her delinquent debt on her security form, Applicant exercised poor judgment. By stating she would only try to pay those debts if she was contacted by the specific creditor, rather than initiating action to pay the creditor, Applicant demonstrated more poor judgment. While the unforeseen medical and employment problems provide some extenuation and mitigation for Applicant's financial troubles, these unanticipated events do not overcome Applicant's financial problems. Clearance is denied.

STATEMENT OF CASE

On July 21, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, amended April 4, 1999, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons 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 clearance should be denied or revoked.

Applicant furnished her answer to the SOR on August 11, 2005. Applicant elected to have her case decided on a written record. The Government provided Applicant a copy of the File of Relevant Material (FORM) on September 23, 2005. Applicant received the FORM on October 11, 2005. Her response to the FORM was due by November 10, 2005. No response was received. The case was assigned to me on November 28, 2005.

FINDINGS OF FACT

The SOR alleges financial considerations (FC) and personal conduct (PC). Twenty-nine debts totaling approximately \$42,000.00 (19 creditors or collection agencies) are listed under the FC guideline. Of the total amount, Appellant owes \$24,275.00 in medical bills to seven collection agencies. Applicant admitted all delinquent debts but denied the two personal conduct (PC) allegations.

Applicant is 53 years old and employed in the technical support department of a defense contractor. She seeks a secret clearance.

Financial considerations. In June 2004, Applicant was questioned about the past due debts identified in the SOR and explained:

My extensive financial delinquencies were primarily due to unstable employment on my part and my husband's part. We both were employed off-and-on and laid off several times. Additionally, my son and I ran into a period of bad luck between 1999 and 2000 when we had numerous medical problems and emergencies, resulting in very high medical bills and we had no insurance at the time. For example, my son was hospitalized and operated on in the late 90's for about two weeks due to having his spleen ruptured during a football game. I was hospitalized for at least four days for a spider bite on my leg. These medical collection [debts] accounts for most of my bad debt. (Item 5, June 10, 2004)

Applicant also indicated in her June 2004 sworn statement she intended to repay all the creditors under some kind of payment plan, if the creditors that contact her were willing to stylize a plan that considered her limited income. Her two, unemployed, adult sons that were living with her also represented an additional financial burden. She noted she was receiving an advance of \$500.00 every two weeks to ensure her bills stay in a current status. Applicant mentioned she was living from paycheck to paycheck. Finally, Applicant promised to take action in July 2004 on the unpaid debts if contacted. The credit bureau report (CBR) dated March 22, 2005, reflected the SOR debts became delinquent between April 2001 and March 2005.

In September 2004, Applicant was asked to answer questions (interrogatories) and explain actions taken in repaying some of the debts listed in the SOR. In response to the 1.r. debt, Applicant indicated she would pay if contacted by the creditor. Similarly, she did not take any action on the 1.f. debt because the creditor had not contacted her. She had not taken action on the debts identified in 1.a., 1.c., 1.d., 1.h., 1.m., 1.o., 1.s., and 1.w., for the same reason.

Personal conduct. On February 6, 2003, Applicant submitted a security clearance application (SCA) during the security clearance investigation. She answered "yes" to question 38 asking whether, in the last seven years, she had been more than 180 days delinquent on any debt. She answered "yes" to question 39 requesting whether she was more than 90 days delinquent on any debts. Then, she listed one debt in each module. Contrasting this module with the employment activity module of her SCA, Applicant accounted for every job, the period of time she worked at the job, the job location, the job telephone number, the job supervisor, and periods of unemployment since 1998.

POLICIES

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

Burden of Proof

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

Financial Considerations (FC)

Financial problems can result from irresponsible financial habits or unanticipated events that prevent or hinder the payment of debts. An individual who faces debt problems also faces the temptation of having to engage in criminal acts to generate funds.

Personal Conduct (PC)

Deliberately omitting or falsifying information during the security investigation demonstrates poor judgment.

CONCLUSIONS

Financial considerations (FC). There are five disqualifying conditions (DC) under the financial considerations (FC) guideline that may disqualify an individual from holding a security clearance. Owing approximately \$42,000.00 in overdue debt to 19 creditors represents a serious problem under FC DC E2.A6.1.2.1. (*a history of not meeting financial obligations*). Because the record shows no action taken to resolve any of the debts, FC DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*) also applies.

Given Applicant's history of not meeting her financial obligations, there are five mitigating conditions (MC) that may apply to remove the security concerns of Applicant's debt problems. FC MC E2.A6.1.3.1. (*the behavior was not recent*) and FC MC E2.A6.1.3.2. (*it was an isolated incident*) do not apply to Applicant's debts as some of her debts became delinquent less than two years ago. Moreover, there are 29 overdue debts owed to 19 creditors or collection agencies.

Applicant mentioned several matters that trigger the invocation of FC MC E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the person's control*) to the circumstances of her case. First, having no insurance to pay for her son's serious surgeries and her hospitalization in 1999 and 2000 was a condition beyond her control, and probably a result of being under employed at a job with no health benefits. Third, having to continue to provide food and shelter for two adult children has been a strain on Applicant's finances. The three above matters supply extenuation.

The considerable weight that is given Applicant under FC MC E2.A6.1.3.3 is reduced dramatically by the absence of any effort to repay her overdue creditors. See, FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) An applicant's obligation to pay her bills does not change when the bill becomes delinquent or has been charged off or transferred to a collection agency. The applicant still has the responsibility to seek out the creditor and pay the debt, regardless of the type of debt, and even if she has to contact the

credit agency to find out the location of the debt.

In view of the absence of evidence under 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*) and FC MC E2.A6.1.3.6., Applicant has not overcome the adverse financial problems, notwithstanding the unforeseen medical and employment problems in 1999 and 2000.

Personal conduct (PC). The applicant has an obligation to furnish honest and forthright information during all phases of the security investigation. Applicant's omissions of financial information from her SCA on February 6, 2003 prompts the activation of PC DC E2.A5.1.2.2. (*the deliberate omission of relevant and material facts from any personnel security questionnaire used to determine security clearance eligibility or trustworthiness*). Applicant under reported the delinquent debt information. Having weighed the scant financial information she provided against the significant detail she provided in the job history module of her SCA, and her sworn statement of June 2004 describing the serious and costly operations of her son in 1999 and 2000, I believe she was deliberately trying to misrepresent the seriousness of her financial problems.

There are three mitigating conditions under the PC guideline that are potentially applicable to Applicant's deliberate dishonesty. PC MC E2.A5.1.3.1. (*the information was unsubstantiated or not pertinent to a determination of judgment, reliability and trustworthiness*) will not assist Applicant's case in mitigation as the missing financial information was verified through a CBR. In addition, financial problems are always pertinent to judgment and reliability. Failure to pay debts can adversely affect a person's judgment by pressuring him to entertain illicit activities to obtain funds. PC MC E2.A5.1.3.1. does not apply.

PC MC E2.A5.1.3.2. (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*) and PC MC E2.A5.1.3.3. (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*) focus on an applicant's conduct once she has deliberately omitted information. On these facts, neither MC applies as Applicant continues to deny she deliberately concealed any information from February 2003 SCA.

Applicant has not established her case in mitigation. Though there have been unanticipated occurrences that have exacerbated her financial problems, she has taken no good-faith steps to resolve her indebtedness. Based on her inaction, a finding against Applicant under the specific guidelines and the general factors of the whole person concept is warranted.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 are:

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.

Subparagraph 1.n. Against the Applicant.

Subparagraph 1.o. Against the Applicant.

Subparagraph 1.p. Against the Applicant.

Subparagraph 1.q. Against the Applicant.

Subparagraph 1.r. Against the Applicant.

Subparagraph 1.s. Against the Applicant.

Subparagraph 1.t. Against the Applicant.

Subparagraph 1.u. Against the Applicant.

Subparagraph 1.v. Against the Applicant.

Subparagraph 1.w. Against the Applicant.

Subparagraph 1.x. Against the Applicant.

Subparagraph 1.y. Against the Applicant.

Subparagraph 1.z. Against the Applicant.

Subparagraph 1.aa. Against the Applicant.

Subparagraph 1.bb. Against the Applicant.

Subparagraph 1.cc. Against the Applicant.

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

Subparagraph 2.a. Against the Applicant.

Subparagraph 2.b. 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.

Paul J. Mason

Administrative Judge