

KEYWORD: Financial

DIGEST: Applicant is a defense contractor's employee. She has delinquent debts that she has made no effort to repay. Some debts were incurred ten years ago. Applicant did not mitigate the financial considerations security concern. Clearance is denied.

CASENO: 04-09570.h1

DATE: 02/08/2006

DATE: February 8, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09570

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a defense contractor's employee. She has delinquent debts that she has made no effort to repay. Some debts were incurred ten years ago. Applicant did not mitigate the financial considerations security concern. 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 June 14, 2005, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on July 19, 2005. Applicant requested her case be decided on the written record in lieu of a hearing.

On September 2, 2005, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. She was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file a response to the FORM within the 30-day time period allowed that expired on October 13, 2005. The case was assigned to me on October 28, 2005.

FINDINGS OF FACT

Applicant's admissions to all the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 33 years old, divorced with two children, and works for a defense contractor. She was divorced in 1999. She served in the U.S. Navy on active duty from 1990 to 1996. She experienced three periods of unemployment after leaving the Navy, from September 1996 to April 1997, from October 1997 to February 1998, and August 2003 to September 2003. She does not pay any of the delinquent debts listed in her SOR because her income does not allow her to pay them. She has \$10 remaining monthly after she pays her current monthly expenses. (Items 4 and 5)

Applicant has the following delinquent debts alleged in her SOR, none of which she has paid or resolved in any manner:

SOR /Creditor	Amount and Date	Current Status	Record Evidence
1.a. Gas credit card	\$286; 1996	Unpaid	Items 3, 5 and 6
1.b. Financing Co.	\$600; 1997	Unpaid	Items 3, 5-7
1.c. Phone company	\$285; 1997	Unpaid	Items 3, 5, 7
1.d. Credit card	\$3,445; 1997	Unpaid	Items 3, 5-7
1.e. Service Company	\$347; 1998	Unpaid	Item 3, 8
1.f. Telephone	\$2,054	Unpaid	Item 3, 5
1.g. Bank credit card	\$921; 2001	Unpaid	Items 3, 5-8
1.h. Bank credit card	\$842; 2002	Unpaid	Items 3, 5-7
1.i. Bank loan	\$6,023.84; 2003	Unpaid	Item 3
1.j. Credit union loan	\$6,036.92; 2004	Unpaid	Items 3, 5, 6, 8

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 has 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 the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with 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.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and

mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

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. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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 that the applicant has not met the strict guidelines the President and the Secretary of Defense have established 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. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. ay 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline F: Financial Considerations: *The Concern*: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. E2.A6.1.1

CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Disqualifying Conditions (DC) 1 (A history of not meeting financial obligations E2.A6.1.2.1) and DC 3 (Inability or unwillingness to satisfy debts E2.A6.1.2.3) apply. Applicant has had delinquent debts and produced no evidence that she has made any attempt to compromise, settle, pay totally, or pay on an installment basis even one debt. She incurred some of the delinquent debts in the 1990s. She has had ample time to make some resolution of them, but has done nothing.

Applicant's statement attempts to attribute her penurious situation to her divorce in 1999, low paying jobs since she left active Navy duty, or unemployment. Yet she provides no substantive evidence that any of these factors caused her present situation. No Mitigating Conditions (MC) apply in this case. Therefore, I conclude this guideline against Applicant.

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.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

DECISION

In light of all of 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.

Philip S. Howe

Administrative Judge

1. Pursuant to 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).