

KEYWORD: Financial

DIGEST: Applicant has a history of unresolved financial problems dating back several years. She admitted owing approximately \$24,313 in delinquent debts. In 2004 and 2005, Applicant made repeated promises to timely resolve her debts. At her hearing and in post-hearing submissions, she presented credible evidence to show she had satisfied four of the twelve debts alleged in the Statement of Reasons. Applicant failed to show her current and long-standing financial delinquencies are not a security concern. Clearance is denied.

CASENO: 04-09651.h1

DATE: 05/23/2006

DATE: May 23, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09651

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of unresolved financial problems dating back several years. She admitted owing approximately \$24,313 in delinquent debts. In 2004 and 2005, Applicant made repeated promises to timely resolve her debts. At her hearing and in post-hearing submissions, she presented credible evidence to show she had satisfied four of the twelve debts alleged in the Statement of Reasons. Applicant failed to show her current and long-standing financial delinquencies are not a 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 20, 2005, under the applicable Executive Order ⁽¹⁾ and Department of Defense Directive, ⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations). Applicant answered the SOR in writing on August 26, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me December 12, 2005. On January 30, 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and submitted five exhibits (Ex.) for admission to the record (Ex. 1 through 5). The Government's exhibits were admitted to the record without objection. Applicant called no witnesses and submitted thirteen exhibits. At the conclusion of the hearing, I left the record open until February 13, 2006, so Applicant could, if she wished, submit additional information for the record. On February 10, 2006, Applicant requested an enlargement of time to supply additional materials for the record. Department Counsel did not object to Applicant's request; accordingly, I granted Applicant an extension until February 21, 2006. On February 21, 2006, Applicant filed ten additional exhibits. Department Counsel did not object to the proposed exhibits, which were marked as Applicant's Ex. N through W and entered in the record of this proceeding. On February 8, 2006, DOHA received the transcript (Tr.) of the hearing.

FINDINGS OF FACT

The SOR contains twelve allegations of disqualifying conduct under Guideline F, Financial Considerations. In her answer to the SOR, Applicant admitted all twelve allegations. Applicant's admissions are incorporated as findings of fact.

Applicant is 46 years old and employed as a waiver assistant by a government contractor. (Ex. 1.) Applicant has been married twice. She was married for the first time in 1978. The marriage ended in divorce in 1989. In 2000, Applicant married her present husband. Applicant is the mother of a son, born in 1985 during her first marriage. (Ex. 1.)

Applicant has been steadily employed since 1994. She has worked for her present employer since December 2002. (Ex. 1.)

Applicant has a history of financial delinquencies. The SOR alleges, and Applicant admits, four past due debts, three bad debts, four accounts in collection status, and an unpaid judgment. These debts total approximately \$24,313. Five of Applicant's delinquencies occurred in 1997, 1998, and 1999. One account, in the amount of approximately \$7,654, was placed for collection in November 2000. Another account, in the amount of approximately \$4,819, was placed for collection in November 2002. In April 2003, a judgment was entered against Applicant for \$709. (SOR.)

After her divorce from her first husband in 1989, Applicant moved from the family home and purchased a condominium. (Tr. 81-82.) Her former husband was responsible for child support. She intended to live in the condominium with her son. When the son was 12 years old, the former husband took the son to live outside the U.S. Applicant's former husband then sued her for child support. Applicant did not earn enough money to pay child support and to meet her obligations to pay for an automobile and the condominium. She began to fall behind in her financial obligations. Her automobile was repossessed and she lost the condominium. (Tr. 55; 81-83.) Applicant's salary was garnished to pay child support. (Ex. E, F, V.) Two of the debts alleged in the SOR are for personal loans Applicant acquired to help pay her debts. (*See* SOR 1. b. and 1.g.)

When Applicant married her second husband, she was hopeful that she would be able to overcome her financial problems. However, the husband's mother became ill and the husband lost his job because he was caring for his mother. (Tr. 83-84.) Applicant's husband is now gainfully employed. He pays the mortgage on the marital home. (Tr. 78.)

In November 2004, Applicant signed an agreement authorizing a credit counseling company to negotiate settlement

agreements with her creditors. (Ex. 3.) Applicant stated: "I know I'm on the right track now to pay off all my debts and sought financial counseling. I'm taking full charge and responsibility to pay my debts to stay debt free. I need this clearance to stay employed." (Ex. 3 at 6.) She further stated that the debts alleged at subparagraphs 1.e., 1.i., 1.j., 1.k., and 1.l. of the SOR would be paid off in November and December 2004. (Ex. 3 at 5.)

In January 2006, on the weekend before her hearing, Applicant contacted an on-line credit counseling company to arrange a consolidation loan to pay some of her creditors. The plan provided for the first consolidated payment to be made in February 2006. Applicant offered this unsigned agreement as evidence of her plan to systematically pay her financial delinquencies. (Ex. A; Tr. 44; 70-72.)

In her response to the SOR, Applicant stated the debt alleged at subparagraph 1.e. had been paid in full. At her hearing she submitted a document indicating the debt had been paid March 10, 2005. (Ex. H.) Also in her response to the SOR, Applicant stated the debt alleged at subparagraph 1.k. was paid in full in August 2005. She failed to provide credible evidence that the debt had been paid. (Ex. I; Ex. N; Ex. Q; Ex. R.) Applicant also stated debts alleged at subparagraphs 1.i., 1.j. and 1.l. of the SOR would be paid in full in September 2005. Applicant's post-hearing submissions indicated that the debt alleged at subparagraph 1.i. was paid February 2, 2006 (Ex. O); the debt alleged at subparagraph 1.j. was paid February 21, 2006 (Ex. S); and the debt alleged at subparagraph 1.l. was paid in full February 17, 2006, by Applicant's husband. (Ex. U.)

Applicant failed to provide credible evidence to demonstrate the debts alleged at subparagraphs 1.c. and 1.f. of the SOR were one and the same debt. (Ex. A; Ex. W.)

Applicant submitted letters from her supervisor and program manager attesting to her conscientiousness and dependability. (Ex. B and Ex. C.)

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 restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal 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 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. *See Egan*, 484 U.S. at 531. 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. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. 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.

CONCLUSIONS

Guideline F-Financial Considerations

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Applicant has a history of not meeting her financial obligations, and she has not demonstrated a willingness to satisfy her debts. These conditions raise security concerns under subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

In the SOR, DOHA alleged that Applicant was indebted to a creditor for approximately \$1,178 for an account charged off as a bad debt in about September 1997, and, as of November 9, 2004, the debt had not been satisfied (¶ 1.a.); that she

was indebted to a creditor in the approximate amount of \$3,128 for an account placed for collection in about December 1997, and, as of November 9, 2004, the debt had not been satisfied (§ 1.b.); that she was indebted to a creditor in the approximate amount of \$5,660 for an account charged off as a bad debt in about April 1998, and, as of November 9, 2004, the debt had not been satisfied (§ 1.c.); that she was indebted to a creditor in the approximate amount of \$733 for an account charged off as a bad debt in about May 1999, and, as of March 30, 2005, the debt had not been satisfied (§ 1.d.); that she was indebted to a creditor in the amount of \$113 on an account placed for collection in about November 1999, and, as of March 30, 2005, the debt had not been satisfied. (§ 1.e.).

DOHA also alleged that Applicant was indebted to a creditor for approximately \$7,654 on an account placed for collection in about November 2000, and, as of March 30, 2005, the account had not been satisfied (§ 1.f.); that she was indebted to a creditor for approximately \$4,819 on an account placed for collection in November 2002, and, as of March 30, 2005, the account had not been satisfied (§ 1.g.); that she was indebted to a creditor for approximately \$709 for a judgment entered against her in about April 2003, and, as of March 30, 2005, the judgment had not been satisfied (§ 1.h.); that she owed a creditor approximately \$114.63 on a past due debt, and, as of November 9, 2004, the debt had not been satisfied (§ 1.i.); that she owed approximately \$25 on a past due medical account, and as of November 9, 2004, the debt had not been satisfied (§ 1.j.); that she owed a creditor approximately \$22.55 on a past due account, and, as of November 9, 2004, the debt had not been satisfied (§ 1.k.); and that she owed a dentist approximately \$157 on a past due account, and, as of November 9, 2004, the debt had not been satisfied (§ 1.l.).

The Government has established, through Applicant's admissions and the record evidence, a *prima facie* case that Applicant is financially overextended. Applicant provided no persuasive evidence to rebut eleven of the twelve the financial concerns specified in the SOR and identified as disqualifying conditions under §§ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. ⁽³⁾ However, Applicant provided persuasive evidence that she had paid the debt alleged at subparagraph 1.e. before the March 30, 2005, date cited in the SOR.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's delinquencies date to at least 1997. Applicant's financial delinquencies involve long-standing debts, some of which continue to be unsatisfied to this day. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies. ⁽⁴⁾

If a person's financial delinquencies were largely caused by conditions beyond his or her control, mitigating condition E2.A6.1.3.3. might apply. ⁽⁵⁾ At her hearing, Applicant repeatedly attributed her financial delinquencies to conditions beyond her control. Applicant cited her 1989 divorce, her subsequent obligation for child support, her mother-in-law's illness, and her second husband's loss of employment as conditions beyond her control which impacted her ability to pay her debts. The record shows that Applicant has held steady employment since 1994. The life circumstances cited by Applicant, while unfortunate, do not fully explain or mitigate her long-standing financial difficulties or her refusal to pay her debts. Accordingly, I find that mitigating condition E2.A6.1.3.3. applies only in part to Applicant's case.

Applicant has sought counseling for her financial problems. However, there is no indication in the evidentiary record

that she has developed and implemented a practical plan for resolving her debts and avoiding further indebtedness. She failed to pay debts after repeatedly asserting she would do so. After her hearing, Applicant paid three debts alleged in the SOR and submitted evidence of payment on February 21, 2006. While Applicant deserves some credit for paying her long over-due debts, I do not find her actions credible evidence of a good faith effort to honor her financial obligations or predictive of her ability to be financially responsible in the future. Thus, mitigating conditions E2.A6.1.3.4. and E2.A6.1.3.6. do not apply. [\(6\)](#)

In making a determination of an applicant's security worthiness, a DOHA administrative judge must consider all the record evidence. The presence of some favorable evidence about an applicant's financial conduct is not dispositive. Rather, the judge must consider whether the favorable evidence outweighs the unfavorable evidence or *vice versa*. (ISCR Case No. 97-0783 at 5 (Aug. 7, 1998).

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6., as amended.

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.: For 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

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: 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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Disqualifying Condition E2.A6.1.2.1 reads: " A history of not meeting financial obligations." Disqualifying Condition E2.A6.1.2.3 reads:"Inability or unwillingness to satisfy debts."
4. Mitigating Condition E2.A6.1.3.1 reads: "The behavior was not recent." Mitigating Condition E2.A6.1.3.2 reads: "It was an isolated incident."
5. Mitigating Condition E2.A6.1.3.3. reads: "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)."
6. Mitigating Condition E2.A6.1.3.4. reads: "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." Mitigating Condition E2.A6.1.3.6 reads: "The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."