

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant incurred over \$11,000 in delinquent debt between 1998 and 2002. The debts do not appear to be a priority in her life. She also deliberately falsified her security clearance application by denying she had used marijuana in the previous seven years. Clearance is denied.

CASENO: 04-10104.h1

DATE: 01/30/2006

DATE: January 30, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-10104

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Robert E. Coacher, Esq., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant incurred over \$11,000 in delinquent debt between 1998 and 2002. The debts do not appear to be a priority in her life. She also deliberately falsified her security clearance application by denying she had used marijuana in the previous seven years. 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. In accordance with Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on 14 July 2005 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 3 August 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on 27 October 2005. On 6 December 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 December 2005.

Department Counsel moved to amend the allegation in ¶ 2.a by changing "Question 29" to "Question 27." Applicant had no objection, so I granted the motion.

At Applicant's request I kept the record open so she could submit additional evidence. On 20 December 2005, I admitted, without objection, her additional evidence as Ex. B.

## FINDINGS OF FACT

Applicant is a 40-year-old employee of a defense contractor. She was originally hired in November 2002 to work in the Facility Security Office performing administrative work. She now works at a project level security office. Tr. 24. She has one child, by her second husband, who lives with her and her third husband. Her third husband's daughter, who was born deaf, also lives with them.

Applicant experimented with marijuana when she was 16 or 17 years old. After she married her second husband in 1990, they moved to a town near where he grew up. She started smoking marijuana with her husband and his friends on a daily basis. Applicant stopped smoking marijuana after her daughter was born in 1994. But between then and 1999, she smoked marijuana on two or three occasions. In October 1999, Applicant's employer selected her for random drug testing. The specimen tested positive for the metabolites of marijuana. Ex. 2; Ex. 5.

On 19 February 2003, Applicant completed a security clearance application (SCA) by certifying that the information she provided was "true, complete, and correct" to the best of her knowledge and belief and acknowledging that a knowing and willful false statement could be punished by a fine and/or imprisonment. Ex. 1 at 20. Question 27 asked if, in the previous seven years, Applicant had illegally used any controlled substance, such as marijuana. Applicant answered "no." Ex. 1 at 12. In a signed, sworn statement made on 20 May 2003 to an investigator for the Defense Security Service, Applicant asserted she "forgot about the test in 99." Ex. 2 at 2. In her Answer and at the hearing, Applicant claimed she falsified her SCA because the facility security officer "insisted on full disclosure and a personal review of my application." Answer at 6. She asserts she was in fear of losing her job and, had she complete privacy, she would have been truthful. *Id.*; Tr. 41-43.

The following chart summarizes the allegations in ¶ 1 of the SOR and the status of the debts:

<b>Debt</b>	<b>Status</b>	<b>Record</b>
1.a-judgment-\$2,837	Unpaid, but no longer on credit report.	Tr. 29
1.b-collection acct-\$434	Unpaid-utility bill was in her name. She gave her ex-husband a few months to change acct. He didn't.	Tr. 30-31
1.c-collection acct-\$180	Pediatric bill-she denies debt-claims her daughter was not in state on date of debt.	Tr. 32-33
1.d-collection acct-\$281	Creditor offered to settle for \$210 if paid by 30 Dec 2005. No proof of payment.	Ex. B at 6-7
1.e-collection acct-\$129	Paid \$30. Creditor offered to settle for \$97 if paid by 30 Dec 2005. No proof of payment.	Ex. B at 4-5

1.f-collection acct-\$41	Unpaid.	Tr. 35; Ans.
1.g-collection acct-\$142	Unpaid.	Tr. 35; Ans.
1.h-charged off acct-\$8,101	Turned vehicle back to dealer. Debt is balance after resale. Unpaid.	Tr. 35-36

Applicant and her husband recently closed on the purchase of a home. The mortgage payments are \$1,200 per month. She withdrew money from her 401(k) plan. Some of the money-\$15,000-was used for the down payment and the rest was used to pay off two credit card debts incurred by the husband. They pay \$365 a month to a credit service to resolve debts the husband incurred with his now deceased first wife. That plan requires them to continue making payments for 18-24 more months.

Applicant is paid about \$3,200 a month. Her husband is a licensed electrician and his pay matches hers. The couple own a 2005 truck on which they pay \$609 a month. Applicant's stepdaughter was born deaf and requires expensive hearing aids. A court has ordered Applicant's ex-husband to pay child support. He was paying through the court. Applicant permitted him to pay her directly and he promptly stopped making timely payments.

### 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 is indebted to a creditor for more than \$2,800 as a result of a judgment (¶ 1.a); six debts totaling more than \$ 1,200 that are in collection status (¶¶ 1.b-1.g); and one debt for more than \$8,100 that had been charged off (¶ 1.h). In her answer, Applicant admitted each of the allegations, except those in ¶¶ 1.b and 1.c. An applicant 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 her financial obligations (DC E2.A6.1.2.1.) and is unable or unwilling to satisfy her debts (DC E2.A6.1.2.3.). An applicant may mitigate such security concerns by establishing that the delinquent debts resulted from conditions that were largely beyond the applicant's control. MC E2.A6.1.3.3. Applicant established that her divorce caused some financial problems. But the issue in Applicant's case is a matter of priorities. She has purchased a home, bought a truck requiring substantial monthly payments, and helped pay off her husband's debts. She has not made the payment of her own debts a priority. She failed to pay even debts as small as \$42 (¶ 1.f) and \$129 (¶ 1.e). Applicant presented evidence that the creditor offered to settle the debts alleged in ¶¶ 1.d and 1.e for less than the full amount. But she presented no evidence she accepted the offer and paid them off. I accepted her testimony that the pediatric debt (¶ 1.c) could not be accurate because her daughter was not in the state at the time of the billing. I find against Applicant on ¶ 1.

### **Guideline E--Personal Conduct**

In the SOR, DOHA alleged Applicant falsified her SCA by deliberately omitting information in question 27 about her use of illegal drugs within the previous seven years. ¶ 2.a. Applicant denied the allegation, but admitted she had falsified her answer to question 27 about her drug use. 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 evidence established Applicant deliberately falsified her SCA by denying she had used marijuana in the previous seven years. An applicant may be disqualified from obtaining a security clearance if she deliberately falsifies relevant and material information on her SCA. DC E2.A5.1.2.2. An applicant's illegal use of drugs is relevant and material to a

determination of an the applicant's security worthiness. I considered the fact that Applicant should have been permitted to protect the privacy of her answer to this question. Nevertheless, she signed the SCA after certifying she was telling the truth. Under the circumstances, I find none of the mitigating conditions listed under the guideline apply. 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: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: For 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

Paragraph 2. Guideline : AGAINST APPLICANT

Subparagraph 2.a: 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