

KEYWORD: Financial

DIGEST: Applicant is 50 years old and has worked as a custodian for a defense contractor since 2002. She and her husband had substantial credit card debt. They divorced and she became responsible for a portion of it, but could not pay it. She filed bankruptcy and the debts were discharged. However, Applicant continues to be unable to pay her debts in a timely manner and without a sustained period of solvency, it is too early to conclude she is past her financial problems. Applicant failed to mitigate the security concerns regarding Guideline F, financial considerations. Clearance is denied.

CASENO: 04-10188.h1

DATE: 02/21/2006

DATE: February 21, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10188

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is 50 years old and has worked as a custodian for a defense contractor since 2002. She and her husband had substantial credit card debt. They divorced and she became responsible for a portion of it, but could not pay it. She filed bankruptcy and the debts were discharged. However, Applicant continues to be unable to pay her debts in a timely manner and without a sustained period of solvency, it is too early to conclude she is past her financial problems. Applicant failed to mitigate the security concerns regarding Guideline F, financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On July 29, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.⁽¹⁾ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F (financial considerations).

In a sworn statement, dated October 7, 2005, Applicant responded to the SOR allegations and requested a hearing. In her SOR response, Applicant denied all of the allegations under Guidelines F. The case was assigned to me on November 22, 2005. A notice of hearing was issued on December 21, 2005, scheduling the hearing for January 10, 2006. The hearing was conducted as scheduled. The government submitted seven exhibits that were marked as Government Exhibits (GE) 1-7. The exhibits were admitted into the record without objection. Applicant testified on her own behalf, and submitted three exhibits that were marked as Applicant's Exhibits A-C. The exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on January 18, 2006.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 50 years old, divorced from her second husband, and has one grown son. She has worked as a custodian for a defense contractor since 2002. She currently holds an interim secret security clearance. In August 2001, she and her husband separated and split their debts, each responsible for paying the ones agreed upon. During the time of her separation and subsequent divorce in August 2003, the debts they each individually were responsible for became delinquent. Her husband stopped paying on all but one debt and she did not have sufficient means to pay on her debts.

(2) Applicant's husband earned twice as much money as she did. When they separated, it became impossible for her to pay the debts she had agreed to pay.

Applicant filed for bankruptcy and her debts, totaling over \$47,800, were discharged in August 2005. It is unclear because Applicant could not explain if these were only the debts she agreed to pay or if these were also joint debts. Applicant's debts consisted over approximately \$36,000 in credit card debt, an \$11,000 repossession; and other debts of approximately \$700.00. Applicant believed when she filed that all of her debts were listed in the bankruptcy because she had submitted a credit report to her attorney and he had checked to ensure the order was inclusive. Unfortunately the debts in SOR ¶¶ 1.b., 1.c., and 1.k. totaling more than \$11, 000, were not included and remain unpaid. She has two secured debts for her car and a bed valued at approximately \$15,000.

Applicant returned her vehicle to the creditor and had it "voluntarily repossessed" because it was having mechanical problems and she believed it was unsafe. She then purchased a used 2004 car from the only dealer that would offer her credit. The car cost \$21,000. She reduced her living expenses by moving in with her sister and does not pay rent or utilities, but does contribute funds for groceries.

In November 2003, Applicant and her siblings had to accommodate their mother in a nursing home. Applicant contributed \$200 a month to her care until February 2004.

Applicant co-signed a contract for cable services for her son, who defaulted on the contract and left her owing \$409.00.

(3) He promises to pay the bill, but it has been over a year and he has not done so to date. She owes \$600.00 on a utility bill that is delinquent, and she is attempting to make partial payments, but has not completed paying it. (4) She also is paying back taxes on a debt to the IRS that occurred because she miscalculated her 2004 taxes. (5) That debt has not been totally satisfied. Currently, she does not have taxes deducted from her part-time job paycheck and anticipates she will owe additional taxes for her income in 2005. She does not believe she will be able to pay her taxes on time.

Applicant has approximately \$150.00 left each month after she has satisfied her bills. She is trying to save money so she can eventually buy a house. She attends school that is paid for by her employer, with hopes of increased compensation. She is considered by her coworkers to be an honest hard worker who is committed and dedicated to her job. ⁽⁶⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline F, pertaining to financial considerations, with its respective DC and MC, applies in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. ⁽⁷⁾ The government has the burden of proving controverted facts. ⁽⁸⁾ The burden of proof is something less than a preponderance of evidence. ⁽⁹⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him. ⁽¹⁰⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. ⁽¹¹⁾

No one has a right to a security clearance ⁽¹²⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ⁽¹³⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. ⁽¹⁴⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. ⁽¹⁵⁾ 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.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F- Financial Considerations-a security concern exists when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*), apply in this case. Applicant and her now ex-husband accumulated significant credit card debts. She had them discharged in bankruptcy.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2 (*It was an isolated incident*), FC MC E2.A6.1.3.3 (*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)*), 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 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant found herself in financial ruin after she and her husband divorced and she could not satisfy her portion of the debts. She did not make enough money to pay back the debts she was responsible for. I have considered the fact that her income dropped when she divorced and she had a short period of time when she had to provide support for her mother. Bankruptcy is a legitimate and legal means to discharge ones debts and it is intended to provide a person with a fresh start financially. ⁽¹⁶⁾ However, it is not carte blanche protection from reviewing an applicant's financial history and issues considered for security concerns. ⁽¹⁷⁾ Applicant had an extraordinary amount of credit card debt that was the bulk of her debts discharged in bankruptcy. This is an indication that she (and perhaps at the time her husband) were living beyond their means and as long as there were no intervening events they were capable of keeping their debts current.

However, when they divorced payment of their debts rose to crisis level. Even if Applicant was only to be responsible for half or one-third of the joint debts, based on her finances, she would not have been able to pay them. Although the divorce was a event beyond her control, the amount of the debts and their spending history was not. Therefore, I can not apply I FC MC E2.A6.1.3.3.

I have also considered that three debts that Applicant believed should have been discharged were not listed in her bankruptcy discharge.⁽¹⁸⁾ For purposes of this determination, I conclude in accordance with 11 U.S.C. 727 (b) that these debts, even if not named in the bankruptcy order, should have been discharged.

Although Applicant had her debts discharged in bankruptcy, she continues to have financial difficulties, which is the basis of concern in considering her financial history. She has taken some steps to save money, but her actions in buying a \$21,000 car, cosigning on a contract that is now defaulted, owing back taxes, and admitting she will not be able to pay her current taxes on time because she will not have the money, prove to me she is unable to pay her debts. I find it is very likely her financial difficulties will continue. Applicant did not offer any evidence that she is receiving financial counseling or shown there is a clear indication that her finances are not a recurring problem. FC MC E2.A6.1.3.4 does not apply. She is making an attempt to get control of her finances, but without a period of sustained solvency, it is too early to conclude that she will not continue to have financial problems. I find FC MC E2.A6.1.3.5 does not apply. I have looked at all of the evidence and considered the whole person and find Applicant failed to mitigate the financial considerations with regard to her security clearance.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered the whole person and I find Applicant failed to mitigate the security concerns regarding Guideline F, financial considerations. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F is decided against Applicant.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. 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

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.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Tr. 19-20.
3. The debt is not alleged in the SOR and is not considered for disqualifying purposes, but is relevant when considering the "whole person" and Applicant's ability to repay her debts.
4. This debt is not alleged in the SOR and is not considered for disqualifying purposes, but is relevant when considering the "whole person" and Applicant's ability to repay her debts..
5. This debt is not alleged in the SOR and is not considered for disqualifying purposes, but is relevant when considering the "whole person" and Applicant's ability to repay her debts.
6. AE A.
7. ISCR Case No. 96-0277 at p. 2 (App. Bd. Jul 11, 1997).
8. ISCR Case No. 97-0016 at p. 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
9. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
10. ISCR Case No. 94-1075 at pp. 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
11. ISCR Case No. 93-1390 at pp. 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
12. *Egan*, 484 U.S. at 531.
13. *Id.*
14. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
15. Executive Order 10865 § 7.
16. ISCR Case No. 97-0016 at 4 (App. Bd. Dec. 31, 1997).
17. *Id.*
18. SOR ¶¶ 1.b., 1.c., and 1.k.