

KEYWORD: Financial

DIGEST: Applicant experienced severe financial difficulties caused by the dissolution of a long-term relationship and the need to care for her children. She accumulated delinquent debt totaling more than \$28,000.00. Since then, she has been unable to pay or resolve these debts, and has no plan to do so in the future. Applicant failed to mitigate the security concerns arising from her financial difficulties. Clearance is denied.

CASENO: 04-11769.h1

DATE: 03/27/2006

DATE: March 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-11769

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant experienced severe financial difficulties caused by the dissolution of a long-term relationship and the need to care for her children. She accumulated delinquent debt totaling more than \$28,000.00. Since then, she has been unable to pay or resolve these debts, and has no plan to do so in the future. Applicant failed to mitigate the security concerns arising from her financial difficulties. Clearance is denied.

STATEMENT OF THE CASE

On March 17, 2003, Applicant submitted a security clearance application. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). On August 11, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline F, Financial Considerations, of the Directive.

Applicant answered the SOR in writing by letter dated August 24, 2005, with attachments. She elected to have a hearing before an administrative judge.

I received the case assignment on October 28, 2005. With the concurrence of Applicant and Department Counsel, I convened the hearing on December 14, 2005. The government introduced Exhibits 1 through 9. Applicant provided Exhibits A and B, and testified on her own behalf. DOHA received the final transcript of the hearing (Tr.) on December

28, 2005.

FINDINGS OF FACT

Applicant admitted the factual allegations in the SOR, except ¶¶ 1.g and 1.m. (Applicant's Answer to SOR, August 24, 2005.) Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant was born in June 1960. (Ex. 1 at 1.) She was married in March 1977. (*Id.* at 4.) She had three children of the marriage, born in 1978, 1982, and 1983. (*Id.* at 5.) The marriage ended in divorce in 1990.

Applicant remarried in 1991. (*Id.* at 4.) She divorced her second husband in January 1994. The divorce caused substantial financial difficulties. (Tr. at 17.) Applicant fell behind on the department store credit account listed in ¶ 1.b of the SOR. (Tr. at 19.) She conveyed her interest in their home to her former husband as part of the marital settlement. (*Id.*) According to Applicant, several parties assumed the loan thereafter. (Answer to SOR, *supra*, at 1.) In 1999, she learned the lenders foreclosed on the house. (*Id.*)

In January 1992, Applicant began another serious relationship. (Answer to SOR, *supra*, at 1.) She began living with her fiancée. She worked in a variety of positions, including as a bartender, a fiberglass repairer, a delivery driver, and an emergency telecommunicator for a city government. (Ex. 1 at 2-3.)

The relationship ended in about 2001. (Tr. at 17.) Applicant had to find a new place to live and assume all the expenses herself. (Answer to SOR, *supra*, at 1; Tr. at 23-24.) Her son came to live with her between about 2000 to 2005 while finishing his education. (Answer to SOR, *supra*, at 1.) Her eldest daughter and her son also lived with Applicant between about 2002 and 2003, adding to her expenses. (*Id.*; Tr. at 26.) Applicant used her credit card accounts to pay for essentials, such as utilities, and soon fell behind on her payments. (Ex. 5 at 1-2.) She also experienced mechanical problems with her motor vehicle and had difficulty making the payments. In about June 2002, she returned the vehicle to the financing company, and purchased a more reliable vehicle. The \$8,000.00 debt for the unpaid obligation for the vehicle is ¶ 1.h of the SOR.

In July 2001, the assignee of a credit card company sued Applicant in the county court for a delinquent account in the amount of \$432.29, plus interest. (Ex. 6.) The parties settled the lawsuit by entering into a payment plan requiring Applicant to pay \$50.00 a month. (Ex. 7.) Applicant made two payments, but was unable to continue. (Ex. 5 at 2; Tr. at 39.) The court entered a judgment against Applicant in the amount of \$772.93, plus interest, in June 2002, which is ¶ 1.k of the SOR. (Ex. 8.)

In early 2002, she consulted an attorney about the possibility of filing for personal bankruptcy. (Ex. 5 at 2.) However, she was unable to afford the \$600.00 to \$1,000.00 fee to file the action. (*Id.*) She called two credit counseling companies, but believed they could not help her because her debts were delinquent and the accounts were no longer active. (Tr. at 46.) Over the years Applicant contacted some of her creditors, but was unable to resolve the debts. (Tr. at 33-38.)

In December 2002, Applicant accepted her present position as an emergency telecommunicator for a defense contractor. (Ex. 1 at 2.) In March 2003, she completed an SF 86, Security Clearance Application. (*Id.* at 1.) A credit report for Applicant obtained on March 21, 2003, revealed numerous delinquent debts. (Ex. 4.)

Applicant stopped making payments on her credit cards in about April 2003, although she continued to make payments on her car. She also paid for her daughter's car and automobile insurance. (Ex. 5 at 2.)

In December 2003, a security investigator interviewed Applicant about her security clearance application, including her delinquent debts. (Ex. 5.) Applicant indicated she intended to file for personal bankruptcy at the beginning of the new year, and that her new job gave her the funds to afford the attorney's fees. (Ex. 5 at 2.)

In January 2005, DOHA sent Applicant written interrogatories, inquiring about the status of her delinquent debts. (Ex. 3.) On January 26, 2005, Applicant acknowledged her debts, and indicated her intention to contact an attorney to file for personal bankruptcy. (*Id.*)

The SOR lists 13 delinquent debts in the total amount of more than \$28,000.00. Applicant avers she would like to pay these debts, but has no idea how to do so. (Tr. at 43.) She has not initiated bankruptcy proceedings or taken any other action to resolve these debts.

POLICIES

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." (*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline F, Financial Considerations: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (Directive ¶ E2.A6.1.1.)

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

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." (Directive, ¶ E2.2.1.) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (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. (*Id.*)

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, ¶ E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (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 (App. Bd. Dec. 19, 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.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Paragraph E2.A6.1.2.1 of the Directive provides that it may be a disqualifying condition if the evidence reveals "[a] history of not meeting financial obligations." Similarly, ¶ E2.A6.1.2.3 indicates that an "[i]nability or unwillingness to satisfy debts" may be disqualifying. Applicant has a history of not meeting her financial obligations. She still has unpaid debts totaling over \$28,000.00 that have remained unpaid for many years. I find Applicant has shown both a history of failing to meet her financial obligations and an inability to satisfy her debts. I conclude the available evidence raises both these potentially disqualifying conditions.

The Directive provides that security concerns arising from financial difficulties can be mitigated. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." Although Applicant's delinquent debts arose between about 1999 and 2003, they remain unresolved; therefore, I find the unpaid obligations are recent. This potentially mitigating condition does not apply.

Paragraph E2.A6.1.3.2 of the Directive provides that it may be mitigating where the financial difficulty "was an isolated incident." Applicant's numerous delinquent debts arose over many years because of a variety of reasons. I conclude this mitigating condition does not apply.

Under ¶ E2.A6.1.3.3, it may be mitigating where, "[t]he 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)." Several conditions beyond Applicant's control contributed to his financial problems, including the dissolution of her spouse-like relationship in about 2000, and her obligation to provide support for her children. I conclude this potentially mitigating condition applies.

Proof that "[t]he 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," may be mitigating, under ¶ E2.A6.1.3.4 of the Directive. Applicant sought out financial counseling but never went through any counseling sessions. She has not paid, settled, or brought current her delinquent debts. I conclude this mitigating condition does not apply.

Finally, it may be mitigating where "[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." (Directive, ¶ E2.A6.1.3.6.) As noted above, Applicant has not paid or begun to repay the delinquent debts listed in the SOR. She has not taken action to seek bankruptcy protection, even though she claimed an intent to do so on several occasions. I conclude this mitigating condition does not apply.

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. Applicant is a mature individual. Her financial difficulties arose from circumstances largely beyond her control, especially the break-up of her relationship. Initially, she was financially unable to take any action to resolve her debts through repayment or bankruptcy. However, when her financial circumstances improved she still did little or nothing to resolve her many delinquent debts. I conclude Applicant's financial circumstances create a security risk.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

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

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: 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.

Michael J. Breslin

Administrative Judge