

DATE: September 12, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12398

DECISION OF ADMINISTRATIVE JUDGE

NOREEN A. LYNCH

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 46-year-old employee of a defense contractor, has a history of financial problems. Specifically, she has a history of being unable or unwilling to pay her debts and thereafter failing to take reasonable steps to satisfy her creditors. Applicant has not set up any plans to resolve her delinquencies, nor did she seek financial counseling. Applicant has not mitigated the security concerns arising from her financial difficulties. Clearance is denied.

STATEMENT OF THE CASE

On February 14, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program (Directive)*, dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant because of security concerns arising under Guideline F (Financial Considerations).

In a sworn written statement, dated April 29, 2005, Applicant responded to the allegations in the SOR. She elected to have her case decided on the written record in lieu of a hearing.

Department Counsel submitted the government's case on June 14, 2005. Department Counsel provided a complete copy of the file of relevant material (FORM) [\(1\)](#) to Applicant, along with her notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on July 1, 2005. Applicant did not submit additional materials in response to the SOR. The case was assigned to me on August 29, 2005.

FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to financial matters under Guideline F (subparagraphs 1.a. through 1.h).⁽²⁾ The admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact.

Applicant, a 46-year-old employee of a defense contractor, seeks to obtain a security clearance.⁽³⁾ Applicant worked in various positions since 1992 with several months of unemployment, including a one-month period in 2002.⁽⁴⁾

Applicant has an approximate total delinquent debt of \$30,000.00.⁽⁵⁾ A review of her credit history, as set forth in a September 25, 2004, credit report, reveals financial difficulties as early as 1998.⁽⁶⁾ Applicant never sought, nor received credit counseling.⁽⁷⁾ Applicant considered bankruptcy but decided against it.⁽⁸⁾ Applicant did not indicate an intent to pay any of the delinquent debts.⁽⁹⁾

Applicant's current employment rate is \$21.00 an hour for a 40-hour workweek with an opportunity for overtime.⁽¹⁰⁾ This hourly rate is lower than her former rate of \$30.00 per hour.⁽¹¹⁾ Applicant moved to a smaller apartment and bought a smaller car to reduce expenses. She did not pay any delinquent bills because she believed she would never catch up.⁽¹²⁾

The Personal Financial Statement prepared by Applicant on November 8, 2004, shows a net remainder after monthly expenses of a negative \$170.00. Applicant sends a charitable donation each month in the amount of \$400.00.⁽¹³⁾ Applicant has not consolidated debts with a repayment program.⁽¹⁴⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E.2.2, Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision.

The Adjudicative Process factors to consider are: (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. Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interest of national security.

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

Guideline F - Financial Consideration: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The Guideline F disqualifying and mitigating conditions, either raising security concerns or mitigating security concerns, applicable to this case are set forth and discussed in the Conclusion section below.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information.⁽¹⁵⁾ If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation, or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate that it is clearly consistent with the national interest to grant or continue the applicant's clearance.⁽¹⁶⁾

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that 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. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of national security.⁽¹⁷⁾

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of the Executive Order 10865 specifically provides that industrial security clearance decisions shall be, "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the following with respect to each allegation set forth in the SOR:

The government has established its case under Guideline F. Applicant does not deny her long history of debts and inability to pay. As indicated above, Applicant has a history of financial difficulty. Specifically, her answers to the SOR provide information on all the debts consistent with the SOR. As of September 25, 2004, Applicant had seven accounts reported as bad debt totaling almost \$30,000.00.⁽¹⁸⁾

Her overall financial activity and subsequent inactivity gave rise to Financial Considerations Disqualifying Conditions (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*). Applicant stopped paying these accounts after becoming unemployed in 2002, and her inaction eventually resulted in a number of her accounts being closed by the creditor, charged off, or reduced to repossession. Applicant claims this was an isolated period of time resulting in a history of bad credit. She stated that she now has good credit, and is working for a contracting company and is paying all her bills. Applicant explained that after sudden unemployment for one month she called her creditors to work out a payment plan. Not only does the Applicant not provide any documentation for this assertion, but she repeatedly states in her sworn submission that she will not pay or do anything about the financial situation.

Applicant failed to take any substantial steps toward paying these debts. Applicant asserts that she is a casualty of the changing economy.⁽¹⁹⁾ Applicant's generous charitable donation each month in the amount of \$400.00 is laudable, but that money could be applied to the delinquent debts. Applicant did not establish any repayment program, nor does she intend to do so. Accordingly, Mitigating Condition (MC) E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply.

Applicant submits that her unemployment in 2002 caused the financial difficulty. In addition, Applicant's hourly rate was reduced from \$30.00 to \$21.00. Thus, Applicant provides mitigation under 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)*).

Applicant maintains that she can never catch up with the debt, so there is no point in making any payments. Thus, a significant amount of outstanding delinquent debt remains, with no repayment plan, and this has been so for several years. She did not seek any financial counseling. 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*) does not apply.

Applicant's bad debts arose at various times over many years. Thus, FC MC E2.A6.1.3.2 (*It was an isolated event*) does not apply.

Applicant has not provided documentation to support her contention that she has good credit. Thus, Applicant has failed to provide any mitigation in this case.

Under these circumstances, I find no evidence of timely or positive action on Applicant's part to pay off her outstanding debts. Instead, I find an unwillingness that prevents Applicant from paying anything on the delinquent accounts. Applicant is not addressing her outstanding financial obligations and has no clear plan to avoid future financial problems. I find Applicant has failed to mitigate or overcome the government's case. Accordingly, allegations 1.a. through 1.h of the SOR are concluded against Applicant.

To conclude, Applicant has failed to meet her ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have considered the record evidence as a whole, the whole person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

Formal Findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.125 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: [\(20\)](#)

Subparagraph 1.e: Against the Applicant

Subparagraph 1. f: Against the Applicant

Subparagraph 1.g: Against the Applicant

Subparagraph 1.h: Against the Applicant

DECISION

In light of all 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.

Noreen A. Lynch

Administrative Judge

1. The government submitted six items in support of its contentions.

2. Item 3 (Applicant's Answer to SOR dated April 29, 2005) at 1 and 2.
3. Item 4 (Security Clearance Application (SF 86) dated November 22, 2002), at 1.
4. *Id.* at 3 and 4.
5. Item 6 (Credit Report, dated September 25, 2004) at 1-5.
6. *Id.* at 4.
7. Item 3, *supra* note 2, at 1.
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. Item 5 (Applicant's Statement, dated November 8, 2004) at 6.
14. *Id.*
15. ISCR Case No. 96-0277 (July 11, 1997) at 2.
16. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, Para E3.1.15.
17. Directive, Enclosure 2, Para. E2.2.2
18. Item 5, *supra* note 13, at 6.
19. Item 3, *supra* note 2, at 1.
20. There is no allegation 1.d. in the SOR.