

KEYWORD: Financial: Criminal Conduct

DIGEST: Applicant is 28 years old and works for a federal contractor. Since 1999, she has accumulated a significant amount of debt, some of which she has paid and other that remains unresolved. In addition, she has not filed her 2001 and 2002 state and federal income tax returns, despite assurances that she would. She failed to mitigate the security concerns raised by financial considerations and criminal conduct. Clearance is denied.

CASE NO: 04-12624.h1

DATE:06/27/2006

DATE: June 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12624

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 28 years old and works for a federal contractor. Since 1999, she has accumulated a significant amount of debt, some of which she has paid and other that remains unresolved. In addition, she has not filed her 2001 and 2002 state and federal income tax returns, despite assurances that she would. She failed to mitigate the security concerns raised by financial considerations and criminal conduct. Clearance is denied.

STATEMENT OF THE CASE

On January 20, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended. The SOR detailed reasons under Guidelines F (Financial Considerations) and J (Criminal Conduct) why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

In a sworn statement dated February 28, 2006, Applicant responded to the SOR, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the government's file of relevant material (FORM), containing nine Items, on April 20, 2006. The FORM was mailed to Applicant on April 25, 2006, and received on May 9, 2006. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation, but did not respond. The case was assigned to me on June 14, 2006.

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in her response to the SOR, I make the following findings of fact:

Applicant is 28 years old and has worked as a systems engineer for a federal contractor since 1999. In August 2003, she completed a security clearance application (SCA). In it, she acknowledged that she owed money on past due accounts, and had not filed income tax returns for 2001 and 2002. (Item 4 at 8) In August 2004, she met with a government investigator and reviewed her credit report in conjunction with her SCA. She admitted that she owed monies on her student loans, a credit card debt, and a medical bill. She indicated that she would resolve the debts within the next few months and claimed she was financially stable. She had not filed her income tax returns although she anticipated a refund. She stated she had been "too lazy to complete them." (Item 5 at 2) She knew that "it was a stupid thing to do and [would] file those taxes within the next couple months." (*Id.*)

During that interview, Applicant explained that her financial problems occurred as the result of a bad relationship, in which she assumed too many financial obligations. According to an April 2004 Credit Report, her debts began accruing in 1999. (Item 6)

In January 2006, the Government issued an SOR alleging that Applicant had delinquent debts totaling \$22,083, and that she had not filed her state and federal income tax returns for 2001 and 2002. Subsequent to the SOR, she paid the three student loans, alleged in SOR ¶¶ 1.d, 1.f and 1.h, and which totaled \$4,703. She also paid a \$50 medical bill, alleged in SOR ¶ 1.a, and a credit card bill listed in SOR ¶ 1.g for \$5,711. She is current on her car payments that were noted as \$596 delinquent in SOR ¶ 1.c. Although she asserted that her mortgage account is current, a March 2006 Credit Report reflected a delinquent balance of \$1,253, and not \$6,669, as alleged in SOR ¶ 1.e. According that report, she has not resolved a delinquent credit card debt of \$3,285, which is listed as SOR ¶ 1.b, and was previously discussed with her in the August 2004 interview, although it was subsequently sold to another company for collection. She did not present any evidence to prove that she filed her income tax returns that are allegations contained in SOR ¶¶ 1.i, 1.j, 1.k, and 1.l. She admitted in her response that she wilfully failed to file the returns as alleged in SOR ¶¶ 2.a and 2.b.

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth criteria, which must be evaluated when determining security clearance eligibility. Within those adjudicative guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified

information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must

include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive ¶ E2.2.2. The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty. Exec. Or. 10865, § 7. Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense 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. *Departments of the Navy v. Egan*, 484 U.S. 518, 531 (1988). The Directive presumes a rational connection between past proven conduct under any disqualifying conditions and an applicant's present security suitability. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the government. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); 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 clearance." *Id.*

Based upon the allegations contained in the SOR and a consideration of the evidence as a whole, the following adjudicative guidelines are pertinent to an evaluation of the facts of this case:

Guideline F - Financial Considerations: A security concern may exist when an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to

proceeds from financially profitable criminal acts.

Guideline J - Criminal Conduct: A security concern may exist when a history or pattern of criminal activity creates doubt a person's judgment, reliability and trustworthiness.

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

CONCLUSIONS

I considered all of the facts in evidence and legal standards, including the "whole person" concept. The Government established a potential case for disqualification under Guideline F and Guideline E.

Guideline F: Financial Considerations

Based on 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 to this case. Since 1999, Applicant has a history of failing to meet her financial obligations, including the filing of income tax returns, as evidenced by her admissions and credit reports. Despite her statement in 2004 that she was financially able to pay her debts, she has not provided proof that she has done so, indicating her unwillingness or inability to satisfy all of them.

I also considered all of the Financial Considerations Mitigating Conditions (FC MC), particularly, FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), and conclude it applies to SOR ¶¶ 1.a, 1.c, 1.d, 1.f, 1.g, and 1.h. Since August 2004, Applicant has taken steps and made a good faith effort to resolve some of her debts, and those allegations are decided in her favor. However, she did not provide any evidence to support her contention that her mortgage is current and not delinquent as alleged in SOR ¶ 1.e, or to document her efforts to resolve the old debt listed in SOR ¶ 1.b. She apparently has available funds to resolve those debts, as noted in SOR ¶ 1.m. She admitted that her 2001 and 2002 state and federal income tax returns remain unfiled as alleged in SOR ¶¶ 1.i, 1.j, 1.k, and 1.l. Hence, those allegations are decided against her.

Guideline J: Criminal Conduct

Based on the evidence, Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*) applies. Applicant admitted in August 2003, August 2004, and again in her February 2005 response that she wilfully failed to file her 2001 and 2002 federal tax returns, which constitutes a criminal offense under federal law. (Item 9)

I considered all of the mitigating conditions under Guideline J, in particular, Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.6 (*There is clear evidence of successful rehabilitation*), and concluded it does not apply. The only relevant evidence of rehabilitation in this instance would be documentation that Applicant filed the outstanding income tax returns for 2001 and 2002, irrespective of whether she is entitled to a refund. To-date, she has not provided that proof, despite having notice of the problem since completing her SCA in August 2003. The allegations contained in SOR ¶¶ 2.a and 2.b are decided against her.

I further considered the totality of the evidence in this case, including Applicant's age, present employment, and the resolution of many of her financial obligations since 2004. However, I am perplexed that she has not filed her outstanding income tax returns, in view of assurances throughout the security clearance process that she intended to do so. That neglect raised a concern about her reliability, a critical characteristic of one authorized to handle classified information. Accordingly, she did not sufficiently mitigate the security concerns raised based on financial considerations and criminal conduct, and Guideline F and Guideline J are decided against her.

For the reasons stated, I concluded Applicant is not eligible for access to classified information.

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 as follows:

Paragraph 1: Guideline F (Financial Considerations) AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For 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

Paragraph 2: Guideline J (Criminal Conduct) AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

DECISION

In light of all the circumstances and evidence presented in this case, it is not clearly consistent with the national interest to grant a security clearance to Applicant. Clearance is denied.

Shari Dam

Administrative Judge