

KEYWORD: Financial

DIGEST: Applicant has held a security clearance since 1979. In 2000 and 2001, she suffered personal losses which caused her to avoid her financial responsibilities for several years. Applicant claimed personal assets worth over \$800,000. At the time of her hearing, she owed approximately \$21,000 to four creditors. While she provided evidence showing she had paid or settled several additional delinquencies and participated in consumer credit counseling after her hearing, Applicant's promises to pay her remaining debts were not a substitute for a consistent record of timely remedial action. Clearance is denied.

CASE NO: 04-12673.h1

DATE: 06/27/2006

DATE: June 27, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12673

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has held a security clearance since 1979. In 2000 and 2001, she suffered personal losses which caused her to avoid her financial responsibilities for several years. Applicant claimed personal assets worth over \$800,000. At the time of her hearing, she owed approximately \$21,000 to four creditors. While she provided evidence showing she had paid or settled several additional delinquencies and participated in consumer credit counseling after her hearing, Applicant's promises to pay her remaining debts were not a substitute for a consistent record of timely remedial action. 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. On October 27, 2005, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on November 23, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me February 14, 2006. On April 7, 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government offered ten exhibits for admission to the record. The Government's exhibits were identified as Exhibits (Ex.) 1 through 10 and were admitted into evidence without objection. Applicant testified on her own behalf and called no other witnesses. She offered nineteen exhibits for admission to the record. Applicant's exhibits were identified as Ex. A through S and were admitted into evidence without objection. At the conclusion of the hearing, I left the record open until April 21, 2006 so that Applicant could, if she wished, submit additional information for the record. Applicant timely submitted eight additional documents, which were identified as Ex. T through Z and A-1. On April 21, 2006, DOHA received the transcript (Tr.) of the proceeding.

FINDINGS OF FACT

The SOR contains eleven allegations of disqualifying conduct under Guideline F, Financial Considerations. In her answer to the SOR, Applicant denied all eleven allegations. With the exception of the debt alleged at 1.j. of the SOR, Applicant did not deny the debts alleged in the SOR were hers and had been delinquent over a significant period of time. She disputed the amounts owed on some of the debts, since she began to pay some of them in 2005 and the balances alleged in the SOR did not reflect her more recent payments. (Ex. L; Tr. 84.)

Applicant, who is 53 years old, has been employed as a marketing manager by a federal contractor since 1999. From 1992 to 1999, she was employed by a federal contractor as a vice-president for business development. She is the oldest of seven children and has never married. Her current annual salary is approximately \$120,000. She lists financial assets of \$817,500, including real estate of approximately \$750,000, stocks and bonds of approximately \$10,000, and retirement savings of approximately \$50,000. (Ex. 1; Ex. M.) She has held a security clearance for approximately 25 years. (Tr. 125-126; Ex. 5 at 3.)

In 1977, Applicant purchased a home with a man with whom she had a love relationship. They held ownership in trust with the agreement that if either of them died, the property would be sold. The couple shared responsibility for paying the mortgage on the house. In 1994, the relationship ended, the partner moved away, and he married another woman. Although the partner retained his ownership in the house, he no longer paid the mortgage. Applicant continued to pay the mortgage herself. The ex-partner died in 2001, and his estate demanded the property be sold and the proceeds divided. After 2000, Applicant no longer lived in the house, but, for reasons of sentiment, she did not want to sell the property, and she contested the sale. Applicant initiated litigation to retain the house. She liquidated assets to acquire approximately \$55,000 to purchase the ex-partner's share of the house. The attorney who represented Applicant acquired a judgment against her in August 2002 for payment of the legal fees in the matter, which totaled approximately \$13,000. The judgment and subsequent debt is alleged at subparagraph 1.f. of the SOR. In the past year, Applicant has paid \$8,000 on the debt and has an agreement with the attorney to pay him \$500 a month until the debt of \$5,000 is satisfied. (Ex. F; Ex. L; Tr. 78-80; 99-102.) Applicant has retained ownership in the house. She no longer resides in the house and does not rent it. (Tr. 117-118.)

Applicant was close to her parents. In 1987 she purchased a home which they lived in. She still owns the home, and her widowed mother lives there. Applicant's liability in the property is a mortgage of \$43,000; her monthly payments on the mortgage are approximately \$900. Additionally, she provides her mother with monthly support of approximately \$250. (Tr. 96; Ex. A-1.)

Applicant's father opened a credit card account in her name and without her knowledge. In 1999, the account was charged off as a bad debt. When Applicant's father died in 2000, she learned the debt was in her name. The debt, in the amount of \$9,447, is alleged at subparagraph 1.a. of the SOR. Applicant did not dispute responsibility for the debt and began making payments in December 2005. At the time of her hearing, she owed approximately \$6,345 on the debt. (Ex. A; Tr 71-76; 96.)

The SOR alleged at subparagraph 1.b. that Applicant owed a debt of \$1,740 to a creditor on an account placed for collection in about April 2000, and that as of April 8, 2005, the account had not been paid. At her hearing, Applicant submitted evidence showing the creditor offered to settle the debt for \$300 in August 2003, but Applicant did not respond. She satisfied the debt by settlement in the amount of \$870 on April 11, 2005. (Ex. B; Tr.76-77.)

The SOR alleged at subparagraph 1.c. that Applicant owed a debt to a creditor of \$1,486 on an account placed for collection in about April 2000. At her hearing, Applicant provided evidence showing that she had settled the account for \$2,053.10 in April 2005. (Ex. C; Tr. 77.)

The SOR alleged at subparagraph 1.d. that Applicant owed a creditor approximately \$ 376.79 on a judgment entered against her on September 11, 2000, and, as of April 8, 2005, the debt had not been satisfied. At her hearing, Applicant submitted evidence establishing that the debt was paid in April 2001. (Ex. D; Tr. 77-78.)

The SOR alleged at subparagraph 1.e. that Applicant owed a creditor a debt of \$8,674.15 for an account placed for collection in about June 2001 and the account had not been paid as of April 8, 2004. At her hearing, Applicant provided evidence showing she made one payment on the account in January 2003, two payments in 2005, and three payments in 2006. Her records showed she owed approximately \$6,000 on the account at the end of March 2006. (Ex. E.; Tr. 78.)

The SOR alleged at subparagraph 1.f. the Applicant's debt to an attorney for legal services, discussed *supra*, connected with her struggle to keep the house she owned with her ex-partner.

The SOR alleged at 1.g. that Applicant owed a creditor \$191 for an account placed for collection in about May 2003, and the account had not been paid as of September 27, 2005. Applicant asserted she had paid the debt in April 2006 before her hearing and would provide evidence of payment after her hearing, which she did. (Tr. 80-81; Ex. G; Ex.U.)

The SOR alleged at 1.h. that Applicant owed a debt to a creditor for \$6,511.40 for a judgment entered against her in April 2004 and, as of September 25, 2005, the debt had not been satisfied. At her hearing, Applicant provided receipts and records to show she paid made payments on the debt of \$500 in April 2005; \$760 in November 2005; \$500 in January 2006; \$1,000 in February 2006; and \$1,000 in March 2006. She also negotiated a payment agreement with the creditor that she would make regular payments on the account until the balance due was paid in full. (Ex. H; Tr. 81.)

The SOR alleged at 1.i. that Applicant owed a medical creditor approximately \$418.20 for medical services rendered in approximately 2002, resulting in a debt placed for collection in about April 2004, which had not been paid as of April 8, 2005. At her hearing Applicant provided evidence that she had paid the debt in full on April 11, 2005. (Ex. I; Tr.81-82.)

The SOR alleged at subparagraph 1.j. that Applicant owed a credit card company approximately \$12,970 for an account placed for collection in about August 2005, and, as of September 2005, the account had not been paid. At her hearing, Applicant presented evidence showing she possessed both corporate and private accounts with the credit card company. She shared the private account with one of her brothers, who was the principal cardholder. When she traveled on business, which she did frequently, she charged her expenses to the personal account. When she returned from her business trips, she sent personal checks to her brother to pay for charges to the account. E-mails in the record from the brother and his wife suggest a concern that Applicant provide them timely with her payments. Applicant's records showed she sent checks to her brother who paid the bills. It is not clear whether penalties were imposed for late payment. (Ex. J; Tr. 82-84;103-109.)

The SOR alleged at subparagraph 1.k. that Applicant owed a communications company \$141 for an account placed for collection in about September 2005 and the account had not been paid as of September 27, 2005. At her hearing, Applicant presented documentation showing her account was past due on September 12, 2005, and that she paid the past due charges on October 18, 2005. (Ex. K; Tr. 84.)

Applicant admitted on-going delinquencies in four accounts of approximately \$21,000 and asserted she had plans in place to pay the accounts. Before her hearing, Applicant had not participated in consumer financial credit counseling. (Ex. A-1; Tr. 64-65.)

Applicant received a leadership award and a bonus award from her employer in February 2006. (Ex. N.) She submitted several signed letters from current and former co-workers and managers in her company attesting to her professionalism and trustworthiness. (Ex. W, X, Y, Z.) Applicant did not tell those she asked to serve as references of her financial vulnerability and its potential to affect her eligibility for a security clearance. (Tr. 90.)

POLICIES

"[No 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 has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal 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 that the applicant has not met the strict guidelines the President and the Secretary of Defense have established 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. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ICR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ICR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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." ICR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline F-Financial Considerations

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Applicant has a history of not meeting her financial obligations, and she has not demonstrated a willingness to satisfy her debts. These conditions raise security concerns under subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F.

DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ICR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

For several years, from approximately 2000 to 2005, Applicant was unwilling or unable to fulfill her legal obligations to creditors. She suggests her inability was the result of emotional turmoil at the death of her father, the termination of a love relationship, and the death of a former partner. Throughout this period, however, Applicant held a responsible job with a federal contractor and apparently carried out her duties competently. She initiated legal action to retain ownership and possession of the house she owned with her former partner, and she liquidated \$55,000 in assets to buy out the partner's widow. She successfully retained ownership of the house and neither lives there nor rents the property.

Applicant's unwillingness or inability to satisfy her creditors did not occur because she lacked sufficient resources to satisfy her debts. She claimed assets of over \$800,000, and while most of her wealth is in real estate, she elected not to liquidate securities or other savings in order to make her creditors whole.

The Government has established, through Applicant's admissions and the record evidence, a *prima facie* case that Applicant has a history of not meeting her financial obligations and was unable or unwilling to satisfy her debts, conditions that are identified as disqualifying under ¶¶ E2.A6.1.2.1. and E2.A6.1.2.3. ⁽³⁾ of Guideline F.

While Applicant, to her credit, paid or settled some of the debts alleged in the SOR prior to her hearing, she owed her creditors approximately \$21,000 in delinquent debts at the time of her hearing. Most of Applicant's actions to pay or settle her delinquencies occurred recently, in 2005. She also rebutted the allegation that the credit card account she shared with one of her brothers was in collection status in about August 2005. (*See* SOR allegation 1.j.)

Applicant asserted she would pay off her debts completely, and she provided evidence that in the short term she had taken action to address them. DOHA's Appeal Board has stated that promises to pay one's debts in the future are not a substitute for a clear record of debts actually paid. ICR Case No. 98-0188 at 3 (App. Bd. Apr. 29, 1999) In determining an individual's security worthiness, the Government cannot rely on an Applicant's promises that substantial debts will be resolved at a future date.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's acknowledged delinquencies date to at least 2000. Her financial delinquencies involve long-standing debts, and her inability or unwillingness to pay them is recent. Thus, neither mitigating condition E2.A6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies. ⁽⁴⁾

The record shows Applicant's relationship with her partner ended in 1994. Her father died in 2000, and her ex-partner died in 2001. She attributed her financial problems to the emotional turmoil she felt when experiencing these life events. However, Applicant has been steadily employed with her present employer since 1999, and she presented no evidence that she was unable to meet her workplace obligations or perform her day-to-day duties. Her argument that her emotional turmoil only impacted her ability to pay her debts lacks credibility.

If a person's financial delinquencies were largely caused by conditions beyond his or her control, then mitigating condition E2.A6.1.3.3 might apply. Assessing the applicability of this mitigating condition often requires a two-part analysis. First, an administrative judge must review and weigh the existing evidence to determine if the applicant's financial difficulties initially arose from circumstances outside of his or her control. Second, assuming that some or all of the circumstances were beyond the individual's control, the judge may consider whether the applicant acted in a reasonable manner when dealing with those financial difficulties. *See e.g.*, ICR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ICR Case No. 99-0012 at 4 (App. Bd. Dec. 1., 1999).

In assessing the applicability of mitigating condition E2.A6.1.3.3. in Applicant's case, I conclude the losses Applicant experienced in 2000 and 2001, while unfortunate, do not explain or mitigate her long-standing financial difficulties and her unwillingness to approach her creditors and arrange payment or settlement. Her present financial problems do not appear to be primarily the result of conditions beyond her control. Thus, mitigating condition E2.A6.1.3.3. does not apply.

Applicant did not present evidence that she had received consumer financial credit counseling to help her manage her financial problems. While she submitted evidence that she had contacted her creditors, arranged payment plans, and made some recent payments, she failed to show a consistent record of timely remedial action or that her financial situation is finally under control. Therefore, mitigating condition E2.A6.1.3.4. is inapplicable.

Applicant presented evidence she had recently paid some of her overdue creditors or otherwise resolved her debts. Her assertions she would pay four of her larger obligations in the future were not entirely persuasive in light of her earlier protracted unwillingness to pay her creditors. It appears Applicant has had sufficient resources to satisfy all of her creditors but has been unwilling to do so. However, Applicant does deserve credit for initiating, albeit belatedly, efforts to pay her debts. Accordingly, I conclude mitigating condition E2.A6.1.3.6. applies in part.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude the Guideline F allegations in the SOR against the Applicant, and I also conclude she should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6., as amended.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SO:

Paragraph 1.: Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: For 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.

Joan Caton Anthony
Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Disqualifying Condition E2.A6.1.2.1. reads: "A history of not meeting financial obligations." Disqualifying Condition E2.A6.1.2.3. reads: "Inability or unwillingness to satisfy debts."
4. Mitigating Condition E2.A6.1.3.1. reads: "The behavior was not recent." Mitigating Condition E2.A6.1.3.2. reads: "It was an isolated incident."