

KEYWORD: Financial: Personal Conduct

DIGEST: Applicant is 46 years old and works for a federal contractor. Since 1988, she accumulated a significant amount of delinquent debt, as a result of marital problems, medical issues, and the loss of income. Although she recently discharged all of her debts through bankruptcy, she failed to mitigate the security concerns raised by financial considerations, as she remains unable to meet her current obligations and has not established a plan to reach financial stability. She did mitigate those security concerns raised by her personal conduct. Clearance is denied.

CASE NO: 04-12913.h1

DATE: 04/21/2006

DATE: April 21, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12913

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 46 years old and works for a federal contractor. Since 1988, she accumulated a significant amount of delinquent debt, as a result of marital problems, medical issues, and the loss of income. Although she recently discharged all of her debts through bankruptcy, she failed to mitigate the security concerns raised by financial considerations, as she remains unable to meet her current obligations and has not established a plan to reach financial stability. She did mitigate those security concerns raised by her personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On August 18, 2005, the Defense Office of Hearings and Appeals (DOHA) 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, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guidelines F (Financial Considerations) and E (Personal 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.

On October 6, 2005, Applicant filed her Answer to the SOR, admitting some of the allegations and denying others, and requested a hearing. On January 12, 2006, the case was assigned to me. A Notice of Hearing was issued on January 31, 2006, setting the case for hearing on March 3, 2006. At the hearing the Government introduced exhibits (GX) 1-8 into evidence. Applicant testified in her case-in-chief. DOHA received the Transcript (Tr.) on March 10, 2006. I kept the record open until March 24, 2006, so Applicant could submit copies of documents related to her bankruptcy that I subsequently received and marked as exhibits (AX) A and B.

PROCEDURAL MATTERS

At the commencement of the hearing, Department Counsel moved to amend the SOR to add ¶ 1.y that states: "You filed a Chapter 7 bankruptcy petition on or about October 12, 2005." Applicant received notice of that amendment on or about January 9, 2006, and had no objection to the amendment. The motion was granted.

FINDINGS OF FACT

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

Applicant is 46 years old and has worked as a management operations specialist for a federal contractor for the last 17 years.⁽¹⁾ She is married and has three children, one of whom she still supports. She recently separated from her husband of 15 years, and is in the process of obtaining a divorce.⁽²⁾ She has held a secret security clearance since 1989. In July 2002, she filed a security clearance application (SCA) to update her clearance.⁽³⁾

Some of Applicant's financial problems began in 1988 and have continued to the present, as documented by credit reports from the years 2002 through 2006.⁽⁴⁾ Those problems were exacerbated after her employer relocated in 1999, causing her monthly travel costs to increase. Later, she and her husband experienced marital problems and medical issues that affected their finances. In 2002, her husband lost his part-time-job as a pastor and a \$1,600 monthly stipend. In 2003, the family budget was further reduced by \$700 a month when Applicant's daughter turned 18 and her monthly disability checks were terminated.⁽⁵⁾ She and her husband spoke to a credit counselor one time about their financial problems.⁽⁶⁾

Since January 2006, Applicant has been on medical leave, receiving approximately \$571 a week or about \$2,200 per month.⁽⁷⁾ She was scheduled to return to work in middle March 2006. Although she presently lives with her cousin, she has very little money left at the end of the month after she pays her expenses.⁽⁸⁾ She admitted that she is presently overextended financially and her monthly expenses exceed her monthly income, as alleged in SOR ¶ 1.x.⁽⁹⁾ She realizes that many of her previous financial difficulties are attributable to credit card mismanagement and does not intend to have more than one credit card in the future.⁽¹⁰⁾

Paragraph 1 of the SOR alleged that Applicant's delinquent debts total \$27,290. Although she disputed some of the amounts contained in ¶¶ 1.a through 1.w, she did not deny the debts, which consisted of unpaid credit card companies, department stores, medical bills, utilities, cell phone companies, and a car loan.⁽¹¹⁾ In October 12, 2005, she filed a Chapter 7 bankruptcy petition in order to resolve those debts (SOR ¶ 1.y).⁽¹²⁾ On February 13, 2006, all of the debts listed in the SOR were discharged.⁽¹³⁾

When Applicant signed her SCA in July 2002, she certified her answers were "true, complete, and correct" to the best of her knowledge and belief. In response to Question 38. Your Financial Delinquencies - 180 Days (*In the last 7 years, have you been over 180 days delinquent on any debt(s)?*) she answered "Yes", and listed a debt related to a car purchase. She did not disclose the debts listed in SOR ¶¶ 1.a, 1.b, 1.c, and 1.d. In response to Question 39. Your Financial Delinquencies - 90 Days (*Are you currently over 90 days delinquent on any debt(s)?*), she answered "No", and failed to list the debts alleged in SOR ¶¶ 1.a through 1.g.

At the time Applicant completed her SCA, she did not have a copy of her credit report to review, and believed that many of her debts were not delinquent because she had stopped paying them and they were considered bad debts. She was confused by the questions and her understanding of the term "delinquent."⁽¹⁴⁾ She subsequently met with a government investigator about her application and reviewed her credit report. She acknowledged all of the debts.⁽¹⁵⁾ She denied that she intentionally or deliberately attempted to falsify the information on the application.⁽¹⁶⁾ I find her testimony credible.

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, Enclosure 2, ¶ E2.2.2. The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty. Executive Order 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. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988). The Directive presumes a rational connection between past proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's 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, Enclosure 3, ¶ 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 E - Personal Conduct: A security concern may exist when conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

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

CONCLUSIONS

I considered all of the facts in evidence, legal standards, including the "whole person" concept, and Applicant's credibility, and conclude as follows:

Guideline F: Financial Considerations

The Government established a *prima facie* case for disqualification under Guideline F. Based on the evidence, two disqualifying conditions under this guideline apply: (1) Financial Consideration Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and (2) FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*). Applicant has a long history of not meeting her financial obligations that span from 1988 to the present. Although her delinquent debts were recently discharged in bankruptcy, she remains unable to meet her expenses, as indicated by her testimony and Answer.

The Government having established its case, the burden shifted to Applicant to mitigate or rebut the allegations. After reviewing all of the mitigating conditions, I conclude Financial Consideration Mitigating Condition (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)*) applies in this case. Applicant's financial difficulties are the result of unexpected marital and medical problems, additional travel expenses related to her employment, and a decrease in her monthly income, all of which were factors beyond her control.

As that mitigating condition standing alone is insufficient to overcome the Government's present concern, I also considered 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 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*), and conclude neither applies. Applicant stated that she and her husband spoke to a credit counselor one time, but she did not present any evidence that they subsequently established a plan to handle their problems. Nor, is there any evidence indicating that she recently sought credit counseling to assist her in managing her current situation in order to demonstrate that her finances are under control, as required under FC MC E2.A6.1.3.4. Applicant did not present any evidence that prior to filing bankruptcy she attempted to contact her creditors and work out a resolution for the unpaid debts, which would have exhibited a

"good-faith effort," as required by mitigating condition FC C E2.A6.1.3.6.

Hence, the allegations contained in SOR ¶¶ 1a through 1.y are concluded against Applicant, despite the discharge of those debts through bankruptcy. The Appeal Board in ISCR Case No. 97-0016 (December 31, 1997) at 4 noted, "While a discharge in bankruptcy is intended to provide a person with a fresh start financially, it does not immunize an applicant's history of financial problems from being considered for its security significance." In this instance, her credit problems are long-standing and the discharge order is too recent (February 2006) to sufficiently mitigate the security concerns raised by her financial problems. The allegations contained in SOR ¶ 1.x are decided against her, as she remains unable to meet her expenses at this time. Accordingly, Guideline F is decided against Applicant.

Guideline E - Personal Conduct

Based on the evidence, the Government did not establish a *prima facie* case under this Guideline. I find that none of the disqualifying conditions apply. Although Applicant failed to list all of her delinquent debts, these omissions were not deliberate, but were based on her belief that after she had stopped paying her debts for a period of time they were no longer considered delinquent but rather bad debts. Despite this illogical conclusion, it was obvious from her testimony and demeanor that she is confused about finances and financial terms in general. She did disclose her delinquent car loan, which showed an intention to honestly answer the questions, such that her misinterpretation of the requested information is credible. Accordingly, SOR ¶¶ 2.a and 2.b are concluded for Applicant.

I further considered the totality of the evidence in this case, including Applicant's seventeen year work history, years of holding a clearance without incident, her current resolution to manage her finances, a series of life's misfortunes, and her candid testimony about her finances. While Applicant expressed a sincere willingness to achieve financial responsibility, she only recently began resolving her difficulties and has not yet had an opportunity to establish a track record of financial management sufficient to mitigate the security concerns raised by a history of unresolved debts.

For the reasons stated, I conclude 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

Subparagraphs 1.a through 1.y: Against Applicant

Paragraph 2: Guideline E (Personal Considerations) FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: 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 Applicant a security clearance. Clearance is denied.

Shari Dam

Administrative Judge

1. Tr. 19.

2. Tr. 24.

3. Tr. 20.

4. Tr. 31; GX 2-7.

5. Tr. 16-23.

6. Tr. 55.

7. Tr. 27.

8. Tr. 28-31.

9. Answer at 5.

10. Tr. 58.

11. Tr. 55.

12. GX 8.

13. AX B. (The bankruptcy pleadings indicate that \$34,442 of unsecured creditor debt was discharged.)

14. Tr. 49.

15. Tr. 51.

16. Answer at 4.