

KEYWORD: Financial

DIGEST: Applicant had delinquent debts totaling more \$30,000. All but her \$3,000 debt to the IRS was discharged in bankruptcy in March 2006. Applicant owes an additional \$2,250 to the IRS for taxes due after the SOR was issued. She has no plans in place to resolve her \$5,250 debt to the IRS. Applicant failed to mitigate financial considerations security concerns. Clearance is denied.

CASENO: 05-00845.h1

DATE: 05/17/2006

DATE: May 17, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-00845

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant had delinquent debts totaling more \$30,000. All but her \$3,000 debt to the IRS was discharged in bankruptcy in March 2006. Applicant owes an additional \$2,250 to the IRS for taxes due after the SOR was issued. She has no plans in place to resolve her \$5,250 debt to the IRS. Applicant failed to mitigate financial considerations security concerns. 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. In accordance with Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan 2. 1992), as amended, DOHA issued a Statement of Reasons (SOR) on 25 August 2005 detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 10 October 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on 17 February 2006. On 5 April 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. DOHA received the hearing transcript (Tr.) on 19 April 2006.

I kept the record open so Applicant could submit proof she had filed her income tax returns. Applicant's submission was unopposed by the Government and was admitted as Ex. D.

FINDINGS OF FACT

Applicant is a 44-year-old senior administrative associate for a defense contractor. She was married for a second time in

1999. She separated from her husband in July 2004 and filed for divorce in August 2005. The final divorce decree was issued in October 2005, and Applicant resumed using her maiden name. She currently holds a secret security clearance that she has held since 1992. She reports she has been an excellent employee and needs her clearance for her job.

Applicant began to experience financial difficulties when her third husband lost his job in 2001. Although he received unemployment compensation, it was significantly less than he had been making. He later found employment, but his pay was still not adequate to stay solvent. In 2002, Applicant sought counseling from a credit counseling service (CCS). From her deposits, the CCS made payments on some but not all of her debts. She cancelled her account with them in September or October 2005. At that time, in an effort to retain her clearance, she filed for bankruptcy on all of the alleged debts except the \$3,000 in taxes she owes the IRS from her 2003 federal income tax return. With the exception of the IRS debt, all of her debts were discharged on 23 March 2006. Applicant failed to file her 2004 federal income tax return until 17 April 2006. She claims she did not file because of her bankruptcy, the divorce, and her security clearance. She filed her 2005 federal income tax return at the same time. She owes the IRA a total of more than \$2,250 for the 2004 and 2005 tax years.

In July 2003, Applicant was diagnosed with Optic neuritis. Her eyesight in her right eye had deteriorated to 20/200. Nevertheless, she was able to maintain her job. With treatment, by July 2004, her eyesight had improved to 20/25+.

POLICIES

"[N]o 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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

In the SOR, DOHA alleged Applicant had nine debts totaling more than \$14,250 that had been charged off (¶¶ 1.a, 1.c, 1.d, 1.h, 1.i, 1.k, 1.n, 1.o, 1.r); 10 debts totaling more than \$8,240 that were in collection status (¶¶ 1.b, 1.e, 1.f, 1.l, 1.m, 1.p, 1.q-1.t); one debt for \$1,315 that was delinquent more than 120 days as of December 2002 (¶ 1.j); one debt of over \$13,600 for the balance owed since August 2002 on the resale of her repossessed auto (¶ 1.g), and a delinquent debt to IRS for \$3,000 in back taxes, penalties, and interest (¶ 1.u). In her answer, Applicant admitted each of the allegations except those in ¶¶ 1.f, 1.l, 1.m, and 1.n. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The evidence and Applicant's admissions established she has a history of not meeting her financial obligations (DC E2.A6.1.2.1) and has been unable or unwilling to satisfy her debts (DC E2.A6.1.2.3). An applicant may mitigate such potentially disqualifying conditions by showing the conditions that resulted in her financial deficiencies were largely beyond her control (MC E2.A6.1.3.3), that she received counseling and there are clear indications the problem is being resolved or is under control (MC E2.A6.1.3.4), or that she initiated a good-faith effort to repay overdue creditors or otherwise resolve her debts (MC E2.A6.1.3.6).

Applicant's eye problems, her husband's layoff, and their divorce were certainly beyond her control and caused her some stress. But she provided no evidence that either of these conditions caused her financial problems or inhibited her ability to pay off her debts in a timely manner. Bankruptcy is a legal means of resolving her debts and all of the debts listed in the SOR, with the exception of her IRS debt have been resolved. That still leaves her with a debt to the IRS totaling more than \$5,250. She has not established a plan to resolve her IRS debt. Nor does she have a sufficient track record to show she can become and will remain solvent. Applicant did not have a firm grasp of her financial situation, including her income or her savings. Under the circumstances, Applicant failed to persuade me she has her financial house in order. After considering the evidence, the disqualifying and mitigation conditions, and the adjudicative process factors, I find against Applicant on ¶ 1.u. I find for Applicant on the debts she resolved in bankruptcy.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a-1.t: For Applicant

Subparagraph 1.u: Against Applicant

DECISION

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

James A. Young

Administrative Judge