

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant, who is an attorney, has a history of financial delinquencies dating back several years. She deliberately failed to report her financial delinquencies on a security clearance application she certified and signed in April 2003, and she offered no credible explanation for her failure to do so. Clearance is denied.

CASE NO: 05-00952.h1

DATE: 06/08/2006

DATE: June 8, 2006

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 05-00952

**DECISION OF ADMINISTRATIVE JUDGE**

**JOAN CATON ANTHONY**

**APPEARANCES**

**FOR GOVERNMENT**

Daniel F. Crowley, Esq., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant, who is an attorney, has a history of financial delinquencies dating back several years. She deliberately failed to report her financial delinquencies on a security clearance application she certified and signed in April 2003, and she offered no credible explanation for her failure to do so. 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 August 26, 2005, under the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive,<sup>(2)</sup> DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on September 30, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me January 23, 2006. On March 15, 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 called no witnesses and submitted nine exhibits for identification and admission to the record. The Government's documents were identified as Exhibits (Ex.) 1 through 9 and were admitted into evidence without objection. Applicant called no witnesses and submitted 24 exhibits for identification and admission to the record. Her documents were identified as Exhibits (Ex.) A through X and were admitted into evidence without objection. At the conclusion of the hearing, I left the administrative record open until close of business, March 22, 2006, so that Applicant could, if she wished, submit additional documents. On March 21, 2006, Applicant submitted a cover letter and five additional documents. I identified her cover letter as Applicant's Ex. Y, and I identified her remaining exhibits as Applicant's Ex. Z, AA, AB, AC, and AD. Department Counsel did not object to Applicant's post-hearing submissions, and, accordingly, all six exhibits were admitted to the record. On March 23, 2006, DOHA received the transcript (Tr.) of the proceeding.

## FINDINGS OF FACT

The SOR contains six allegations of disqualifying conduct under Guideline F, Financial Considerations, two allegations of disqualifying conduct under Guideline E, Personal Conduct, and one allegation of disqualifying conduct under Guideline J, Criminal Conduct. In her answer to the SOR, Applicant admitted in part and denied in part four of the Guideline F allegations. She denied two Guideline F allegations, the two allegations under Guideline E, and the Guideline J allegation. Applicant's admissions are incorporated as findings of fact.

Applicant is 43 years old. In 1998, she graduated from law school. She is a member of a State bar. Applicant has pursued advanced studies at universities abroad. She has worked as a staff member for a U.S. Congressman and as a government relations manager for a federal contractor. (Ex. 1; Ex. A.) In December 2004, Applicant was hired as a senior legal and policy advisor by a government contractor. Her annual salary was approximately \$113,000. (Tr. 70.) In January 2006, the employer, a federal contractor, dismissed her when her interim security clearance was withdrawn, and the work for which she had been hired required a security clearance. At the time of her hearing, Applicant was receiving \$395 per week in unemployment compensation. (Ex. Y; Tr. 70; 94-96 .)

In 1992, Applicant married a foreign national. Applicant and her husband purchased several houses, which the husband renovated. In 1999, the couple was divorced. The husband returned to his home county, and Applicant was left with debts incurred during the marriage. Applicant believes, but cannot prove, that her former husband used her social security number to apply for and acquire credit cards. (Tr. 56-60.) In March and April 1999, Applicant and a friend took a trip to the Far East. Applicant sold off savings bonds to pay for her travel. She took the trip because she "just needed to leave" and she "didn't want to be present for the finalization of the divorce." (Tr. 106.)

Applicant was unemployed from December 1998 to July 1999; from November 2002 through March 2003, and from December 2003 until December 2004. From September 1999 until May 2002, she worked part-time as a legal editor. In 2004, she worked part-time as an EEO counselor; however, her major income came from personal loans acquired from family members and friends. (Tr. 66-67.) In 2005, she married her second husband, who is also an attorney. (Tr. 69; 95-96.)

Applicant reported that her apartment flooded in 2001, resulting in a property loss of \$1,000. (Ex. G; Tr. 61.) She also reported veterinary expenses. (Tr. 61-62.)

Applicant has a history of financial delinquencies, some of which date to 1998 or 1999. She acknowledged responsibility for two collection accounts, three bad debts, and a judgment. She disputed the amounts of the five delinquencies, which DOHA alleged totaled approximately \$47,269. Applicant suggested the amounts owed were lower. The judgment entered against Applicant in September 2004 totaled approximately \$8,356. In responses to

interrogatories from DOHA in March, 2005, Applicant stated she was negotiating settlement terms with a debtor on a \$7,098 debt that had been charged off. At her hearing, Applicant attributed the debt to her first husband and acknowledged her responsibility to pay it. (Ex. 7; Tr. 83.)

Applicant acknowledged a credit card debt placed in collection in 2001 and a debt to a bank for \$1,450. The credit card debt was identified as \$9,538 on Applicant's December 2004 credit report. (Ex. 6.) Applicant said she had not contacted the creditor about repayment of the account since her security interview in April 2004. (Tr. 85.) Applicant speculated that a \$11,077 debt in collection status might have been related to another credit card she used to charge expenses when she moved in 1999 and 2000. She also speculated the debt might be the same as the judgment entered against her for \$8,356. In a post-hearing submission she presented documents showing the debt identified at ¶1.c. of the SOR was for the credit card she used when she moved in 1999 and 2000. (Ex. AC; Tr. 87;101.) She failed to produce credible evidence that the debt alleged at SOR 1.c. was the same debt as the judgment alleged at SOR 1.f. Applicant stated she had disputed the judgment because she had not been served with notice. (Tr. 91.)

Applicant also acknowledged responsibility for a debt of approximately \$18,105 for a consolidation loan she took out to pay some of the credit card debt incurred during her first marriage. She disputed the amount of interest charged on the loan and acknowledged she had stopped making payments on the debt in 2004 when she was unemployed. She stated she had no recent contact with the creditor. (Tr. 89-90.)

Applicant stated she and her husband had sufficient income to pay their current living expenses, but she was unable to make payments toward reducing her accumulated debts. (Tr. 96-97.) The record did not indicate that Applicant sought financial counseling for her financial difficulties.

Applicant submitted letters of reference attesting to her good character. (Ex. R, S, T, U.)

Applicant completed and signed a security clearance application (SF-86) on April 23, 2003. Question 38 on the SF-86 asks, in pertinent part: "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Applicant answered "no" to Question 38. Question 39 on the SF-86 asks, in pertinent part: "Are you currently over 90 days delinquent on any debt(s)?" Applicant answered "no" to Question 39.

Applicant signed and dated the following certification after she completed her SF-86:

My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both (See section 1001 of title 18, United States Code.)

## 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* ISCR 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. ISCR 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." ISCR 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 her financial history suggests an inability or unwillingness to satisfy her debts, conditions which 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." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

In the SOR, DOHA alleged that Applicant was indebted to a credit card company on a bad debt charged off in about November 2000, and the debt had not been satisfied as of May 5, 2005 (¶1.a.); that she owed approximately \$9,539 on an account placed for collection in about September 2001, and the debt had not been satisfied as of May 5, 2005 (¶1.b.); that she owed a creditor approximately \$11,077 on an account placed for collection in about November 2001, and the debt had not been satisfied as of May 5, 2005 (¶1.c.); that she owed a bank \$1,450 on a bad debt charged off in about April 2004, and, as of December 10, 2004, the debt had not been satisfied (¶1.d.); that she owed a creditor approximately \$18,105 on an account charged off as a bad debt in June 2004, and the debt had not been satisfied as of May 5, 2005 (¶1.e); and that Applicant had a judgment entered against her by a creditor in about September 2004 on an account totaling approximately \$8,356 and the judgment had not been satisfied as of May 5, 2005 (¶1.f.). 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 Government has established, through Applicant's admissions and the record evidence, a *prima facie* case that Applicant is financially overextended. Applicant provided no persuasive evidence to rebut the financial concerns specified in the SOR and identified as disqualifying conditions under ¶¶ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F.

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 1998 or 1999. Her financial delinquencies involve long-standing debts, and her inability or unwillingness to pay them is recent. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies.

The record shows Applicant was divorced in 1999 and had periods of unemployment between December 1998 and July 1999, November 2002 and March 2003, and December 2003 and December 2004. She is currently unemployed. She attributed her financial problems to her divorce, which occurred in 1999, almost seven years ago.

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. Applicant's 1999 divorce, while unfortunate, does not explain or mitigate her long-

standing financial difficulties and her unwillingness to approach her creditors and arrange payment or settlement. Applicant has a law degree and experience gained from responsible jobs, higher education, and travel. She has family and friends who support her. She appears to be in good health. Her financial problems do not appear to be the result of conditions beyond her control. Thus, I conclude that mitigating condition E2.A6.1.3.3. does not apply.

Applicant has not sought financial counseling and has not presented clear indications that her financial problems are being resolved or are under control. Therefore, mitigating condition E2.A6.1.3.4. is inapplicable, and the Guideline F allegations in the SOR are concluded against Applicant.

### **Guideline E - Personal Conduct**

In the SOR, DOHA alleged Applicant deliberately falsified her answers on her SF-86 to Questions 38 and 39 (¶¶ 2.a. and 2.b.). In her answer to the SOR, Applicant denied the falsifications. However, at her hearing, she acknowledged her awareness of at least three of the debts alleged on the SOR before she completed and signed the SF-86 in April 2003. Her deliberate misrepresentations cause serious security concerns. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

An applicant's responsibility to provide truthful and complete responses to questions on her SF-86 cannot be set aside or ignored. An applicant's financial history is material to a determination of her security worthiness. With respect to the Guideline E conduct alleged in SOR subparagraphs 2.a. and 2.b, Applicant falsified her SF-86 by omitting and concealing relevant and material information about her financial delinquencies in response to questions 38 and 39, bringing her conduct under disqualifying condition E2.A5.1.2.2. She did not make a prompt, good-faith effort to correct the falsification before being confronted with the facts, and thus Mitigating Condition (MC) E2.A5.1.3.3. does not apply. Applicant's falsifications were recent and not isolated incidents, and she did not supply the correct information voluntarily. Thus MC E2.A5.1.3.2. does not apply.

Applicant's deliberate concealment of her financial delinquencies increased her vulnerability to coercion, exploitation, or duress, and thus disqualifying condition E2.A5.1.2.4. applies. She has not taken positive steps to reduce or eliminate her vulnerability to coercion, exploitation, or duress, and thus MC E2.A5.1.3.5. does not apply. With respect to the Guideline E conduct alleged in the SOR, the Government has established its case. Accordingly, the allegations in subparagraphs 2.a. and 2.b. of the SOR are concluded against Applicant.

### **Guideline J - Criminal Conduct**

In the SOR, DOHA alleged Applicant knowingly and willfully falsified her answer to Questions 38 and 39 on her security clearance application in violation of 18 U.S.C. § 1001 and that this act constituted felonious criminal conduct. (¶¶ 3.a. and 3.b.) It is a criminal offense to knowingly and willfully make any materially false, fictitious or fraudulent statement or representation in any matter within the jurisdiction of the executive branch of the Government of the United States. 18 U.S.C. § 1001. Security clearances are within the jurisdiction of the executive branch. *See Egan*, 484 U.S. at 527.

Applicant seeks the privilege of a security clearance and the opportunity to safeguard classified information. A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. Where the facts proven by the Government or admitted by the applicant raise doubts about the applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nevertheless security worthy.

A history or pattern of criminal activity raises doubts about a person's judgment, reliability, and trustworthiness. (¶ E2.A10.1.1.) Disqualifying conditions include allegations or admissions of criminal conduct, regardless of whether the person was formally charged (¶ E2.A10.1.2.1.), and a single serious crime or multiple lesser offenses (¶ E2.A10.1.2.2.). Applicant's conduct raises security concerns under ¶ E2.A10.1.2.1. and ¶ E2.A10.1.2.2. of Guideline J.

Applicant denied the criminal conduct alleged by the Government in ¶ 3.a. of the SOR, but offered no credible explanations in support of her denials. Applicant failed to acknowledge and report her financial delinquencies of over 180 days in the seven years before she completed her SF-86, and she also failed to acknowledge and report on her SF-86 any financial delinquencies over 90 days. This was information specifically requested by the government on the SF-86. Applicant has the benefit of an education, responsible employment, and a law degree. She signed the certification attesting she was telling the truth and was cognizant of the consequences for not telling the truth. Applicant's two falsifications were recent and took place in 2003. Together, the two acts are not isolated and demonstrate a pattern of criminal conduct. Thus, mitigating conditions ¶¶ E2.A10.1.3.1. and E2.A10.1.3.2 of Guideline J do not apply in this case.

I conclude Applicant deliberately falsified her security clearance application by omitting relevant and material information and then certifying her statements on her SF-86 as true, complete, and correct to the best of her knowledge and belief and made in good faith. After weighing the disqualifying and mitigating conditions of Guideline J and after evaluating Applicant's conduct in light of the whole person concept identified at ¶ E2.2 of Enclosure 2 of the Directive, I conclude the Guideline J allegations of the SOR against the Applicant.



## **FORMAL FINDINGS**

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

Paragraph 1.: Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Paragraph 2.: Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Paragraph 3.: Guideline J: AGAINST APPLICANT

Subparagraph 3.a.: Against 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.