

DATE: November 30, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-02147

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Fahryn E. Hoffman, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred 15 debts of \$27,000.00 that had become delinquent, and failed to report them at Question 38 of her SF 86. She had one judgment against her and that was not reported at Question 37. She failed to mitigate the security concerns, showing only that three of the debts had been paid with no credible evidence of payment of the others. Clearance is denied.

STATEMENT OF CASE

On November 4, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement dated December 5, 2005, Applicant responded to the allegations set forth in the SOR, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on June 23, 2006. A complete copy of the file of relevant material (FORM) was provided to the Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.

In the FORM the government moved to amend the SOR to substitute another debt for the one alleged in SOR 1. i. and add additional allegations of three additional delinquent debts in three new paragraphs added to SOR 1. The motion also seeks to modify SOR 2.b. relating to personal conduct to add the three additional debts to those originally alleged concerning failure to report debts delinquent more than 180 days in response to Question 38 on her application for a

security clearance (SF 86) filed August 12, 2003. Applicant submitted no additional information in response to the FORM and raised no objection to the motion to amend the SOR, although invited to do so. The case was assigned to me on August 29, 2006. The motion to amend the SOR is granted.

FINDINGS OF FACT

Applicant is a 30-year-old employee of a defense contractor. She denied all of the allegations in the SOR concerning security concerns relating to financial considerations and personal conduct. She offered explanatory information about several of the debts. After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant owes approximately \$27,000.00 in delinquent debts to a variety of creditors as alleged in the SOR. Over \$17,000.00 of the debts are for student loans for which she became delinquent in 2003. The balance consists of various debts to different creditors and two tax liens filed against her in August 2003 and February 2004 for \$134.00 and \$143.00 respectively (SOR 1.j. and k.). One judgment was filed against her in March 2002 for \$374.00 (SOR 1.l.).

Applicant submitted information appended to her answer to show that each of these three debts had been resolved as follows (SOR 1.j. on April, 27, 2004); (SOR 1.k. on May 23, 2005) and (SOR 1.l. on October 28, 2002). From the correspondence, the first two (tax liens) were filed in error and resolved, and the judgment was resolved through payment before the SOR was issued.

Although Applicant denied the other debts and attempted to explain the circumstances surrounding them including her own under-employment, family problems, possible identity theft, and existence of payment plans, no credible evidence was submitted to establish those facts or to show that any of the debts had been paid in full or in part.

Applicant failed to report the one judgment against her and the delinquent debts of 180 days on her SF 86 filed August 12, 2003 at Questions 37 and 38 calling for such information if extant during the seven years preceding the filing of the SF 86. .

Applicant has been employed by her present employer since 2001 and in her present position since 2003 at the time of the filing of her SF 86. Her salary is approximately \$24,000.00 per annum. She is single with one child.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor

of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

Applicant's delinquent debts prompted the allegation in the SOR of violation of Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts

to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of

inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

Mitigating conditions might include the fact that the person has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (E2.A6.1.3.6.), and that the conditions resulting in the problems were largely beyond the person's control. (E2.A6.1.3.3.) Since there was no hearing and opportunity to question Applicant and no credible information was submitted on the record, I cannot conclude that either mitigating condition is applicable.

Also alleged under Guideline E is Applicant's failure to acknowledge the judgment and delinquent debts in response to questions 37 and 38 on her SF 86. This indicates questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information (E2.A5.1.1.). Her conduct falls under E2.A5.1.2.2 regarding the deliberate omission of relevant and material facts from any personnel security questionnaire.

While Applicant might not have known of some of the delinquent debts, she must have known of some or most of them since she acknowledged many of them in her statement to a security investigator in January 2004 indicating that she expected to resolve them six months to one year after her statement. Since the one judgment was entered in March 2002 it is difficult to believe she was unaware of it in August 2003 when she completed her SF 86. Although it was resolved before the SOR was issued, that did not relieve her from reporting it on the SF 86. The two tax liens were not alleged on the SOR since one was filed after the SF 86 was filed and the second one in the same month as the filing.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant elected not to have a hearing where such evidence might have been submitted. As such it is impossible for me to make an adequate whole person analysis. While some of her arguments and statements are facially plausible, there is insufficient evidence to provide a valid analysis.

After considering all the evidence submitted in its totality, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

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

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: For Applicant

Subparagraph 1.l.: For Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge