

KEYWORD: Criminal Conduct; Personal Conduct; Financial

DIGEST: Applicant is 28-years-old and has worked as a billing analyst for a federal contractor since 2003. She has three criminal issues from her past. She has not been in any trouble since 2000. For a period of time she was underemployed, had no health insurance and needed surgery, and her father, unbeknownst to her, was using her credit cards without her authorization. Although she still has delinquent debts, she has cut her expenses, paid some bills, and set up a budget to resolve her debts. When she filled out her security clearance application she failed to list her delinquent debts because they had not yet become delinquent or she did not know about them. She also failed to remember certain criminal offenses from her past and did not list them. Applicant successfully mitigated the security concerns under Guidelines J, E, and F. Clearance is granted.

CASENO: 05-03719.h1

DATE: 04/10/2006

DATE: April 10, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-03719

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Melvin Howry, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is 28-years-old and has worked as a billing analyst for a federal contractor since 2003. She has three criminal issues from her past. She has not been in any trouble since 2000. For a period of time she was underemployed, had no health insurance and needed surgery, and her father, unbeknownst to her, was using her credit cards without her authorization. Although she still has delinquent debts, she has cut her expenses, paid some bills, and set up a budget to resolve her debts. When she filled out her security clearance application she failed to list her delinquent debts because they had not yet become delinquent or she did not know about them. She also failed to remember certain criminal offenses from her past and did not list them. Applicant successfully mitigated the security concerns under Guidelines J, E, and F. Clearance is granted.

STATEMENT OF THE CASE

On October 12, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant Statement of Reasons (SOR) stating it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(U\)](#) The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline J (criminal conduct), Guideline E (personal conduct), and Guideline F (financial considerations).

In a sworn statement, dated December 2, 2005, Applicant responded to the SOR allegations and requested a hearing. In her SOR response, Applicant admitted some of the allegations and denied others with explanations. The case was assigned to me on January 6, 2006. A notice of hearing was issued on January 24, 2006, scheduling the hearing for February 9, 2006. The hearing was conducted as scheduled. The government submitted eight exhibits that were marked as Government Exhibits (GE) 1-8. The exhibits were admitted into the record without objection. Applicant testified on her own behalf, and did not submit any exhibits at the time of her hearing. However, the record was left open until February 21, 2006, to allow Applicant an opportunity to submit documents. She did so in a timely manner and submitted 15 exhibits that were marked as Applicant Exhibit (AE) A-O. The exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on February 27, 2006

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 28 years old, single and has worked as a billing analyst for a federal contractor since 2003. Applicant has attended college and needs approximately a years worth of credits to complete her bachelors degree.

Applicant was arrested on about November 14, 1995, and charged with (1) Unlawful Use/Possession of Drug Paraphernalia, (2) Intent to Sell Drugs, and (3) Interstate Commerce. She pled nolo contendere and was fined approximately \$500 for Count (2). Count (1) was dismissed and she forfeited bail for Count (3).⁽²⁾ Applicant was riding in a car with others when they were stopped by the police and drugs were found. She complied with the terms of her plea agreement and was advised her record would be expunged. It was not. She moved out of the state to get away from the negative influences, but fell into the same situation and was arrested again on about July 21, 1997, for possession of cannabis. Applicant does not dispute that she was arrested, but believes the charge was for possession of drug paraphernalia. No documentation was provided to verify her assertions.

She pled no contest to the charge, but no information was provided as to what sentence she received.⁽³⁾ Applicant was arrested on May 5, 2000 for lewd conduct. The charge was dismissed.

Applicant no longer uses drugs and has been "sober" for eight years. Although she drinks alcohol she does so responsibly and it is not an issue in her life.⁽⁴⁾ After resolving her drug issues she started to put her life back in order and moved to State A. She got a good job with her current employer, but at the time it was only part-time and she did not receive any benefits. She worked a second job as a waitress to pay her bills. While supporting herself her father was living with her. Unbeknownst to her, and without her permission, he took her credit cards from her wallet and made unauthorized purchases. She estimates he made approximately \$1,600 in unauthorized purchases and did not reimburse her. She does not think he knew how little money she made and that she was not going to be able to pay them or possibly that she would not notice the additional purchases.⁽⁵⁾ She did not notice the discrepancies until months later when her credit limits had been maximized. She did not confront her father, nor did she report him to law enforcement. She decided she would just pay the bills, however they put a serious strain on her financial situation. The accounts were closed and she has been working towards paying off the credit card debts in SOR ¶¶ 3.d, 3.e, and 3.f. Applicant contacted all three creditors and has negotiated settlements. She has satisfied SOR ¶ 3.d.⁽⁶⁾ She anticipates satisfying the debt in SOR ¶ 3.e by June 2006.⁽⁷⁾ Although she has a settlement offer for her debt in SOR ¶ 3.f, she is presently unable to pay the debt, but plans on doing so.

Applicant incurred medical debts in July/August 2003 when she required surgery and did not have health insurance because of her part-time work status. She paid many of the medical bills and contacted the creditors she was unable to pay. She advised them she would pay the bills when she was able.⁽⁸⁾ Her medical bills are listed in SOR ¶¶ 3.g, 3.h and 3.k, and remain unpaid. She began full time employment in September 2003 and now has benefits.⁽⁹⁾

Applicant disputes SOR ¶ 3.a. She had been living in an apartment and returned one day to find her roommate had moved out and left without paying his share of the rent. She could not pay

the rent by herself, so she moved.⁽¹⁰⁾ She has contacted the apartment complex to resolve the debt, but had been advised that they did not have a record of her debt and they would check their records in storage. They did and still could not find anything in storage that corresponded to the debt. She believes she probably owes the apartment complex some money, but until they can find the records and determine the amount she is reluctant to pay. She believes some of the charges are probably for breaking the lease and she will pay the debt to have it removed from her credit report, but disputes the total amount.⁽¹¹⁾

The debt in SOR ¶ 3.b is for expenditures for telephone services she incurred on a business credit card she believed was covered by the company. It was not and she is responsible for the charges. Applicant has paid \$450 towards the original \$1,170 she owes. The credit card company offered to settle for two lump sum payments in two months. Applicant could not afford to make the two payments. The remainder of the debt is still owed.⁽¹²⁾

The utility bill listed in SOR ¶ 3.c was not paid when Applicant moved from one state to another. She has not paid it, but intends to do so.⁽¹³⁾

The debt listed in SOR ¶ 3.i is for carpet cleaning when Applicant moved from an apartment. She believed because her security deposit was returned in full she did not owe anything to the apartment complex. She disputed the charge directly with the apartment complex, but understands she is liable for the debt and intends to pay it.⁽¹⁴⁾

Applicant disputes the debt listed in SOR ¶ 3.j. This account was placed for collection by the university she attended. She is insistent that the amount claimed was included as part of her student loan debt and she does not owe the university directly. She had been in contact with the university in an attempt to resolve the discrepancy. However before it was resolved, they sent it to a collection agency.⁽¹⁵⁾ Applicant continues to dispute she owes any debt to the university, but she does have student loans that are not yet due.

Applicant currently owes approximately \$1,823 in medical expenses.⁽¹⁶⁾ These medical expenses were incurred when she was uninsured. She still owes approximately \$2,687 on credit cards (\$1,600 is attributed to her father's unauthorized

purchases), although she has negotiated a lesser amount to settle, and the debt remains unpaid.⁽¹⁷⁾ She owes approximately \$912 for a business credit card and other undisputed debts.⁽¹⁸⁾ In total she owes \$5,422. The remaining debts totaling approximately \$5,283 are in dispute.⁽¹⁹⁾ She has taken a loan against her 401k to pay some of the bills. Applicant sought out credit counseling and they helped her negotiate settlement agreements. However, she realized she could negotiate better agreements without their assistance so she stopped working through them.⁽²⁰⁾

Applicant is working full time and has full benefits. She makes more money than in the past, and is anticipating a raise and a bonus by the end of March 2006, that she will use towards paying down her debts. She has a budget and is currently meeting her monthly expenses.⁽²¹⁾ Applicant intends to pay off all of her debts by December 2006. She is cutting costs by changing apartments and adding a roommate who will share the rent and utilities. This saving will reap approximately \$325 to help pay off her debts.⁽²²⁾ When her car lease expires in the summer of 2006, she plans on buying a cheaper used car, thereby saving more money.⁽²³⁾

Applicant submitted her security clearance application on December 3, 2003, and answered "no" to Question 24,⁽²⁴⁾ Question 26,⁽²⁵⁾ Question 38,⁽²⁶⁾ and Question 39.⁽²⁷⁾ She had asked her security officer if she had to report a charge that had been expunged and was advised she did not have to report it, so she did not report the charge in SOR ¶ 1.a.⁽²⁸⁾ She credibly testified that she failed to list the offenses in SOR ¶¶ 1.b and 1.c, because she forgot about them and was not trying to hide the offenses.⁽²⁹⁾ She credibly testified she did not leave them off because she was embarrassed and did not want anyone to find out. She believed when she filled out the SCA that it included everything required and she was surprised when it was later brought to her attention that certain things had been left off.⁽³⁰⁾

Applicant credibly testified with regard to why she did not list her delinquent debts. At the at the time she filled out her SCA, she did not believe she had any debts that were overdue by 90 or 180 days. She was unaware of the expenditures her father had been making causing her financial difficulties.⁽³¹⁾ Her medical expenses were not yet overdue.

Applicant is considered by her supervisors and peers to be hard-working and a highly committed employee who does her job very well. She excels in her work assignments and is always professional and is viewed as responsible and ethical. Applicant provided many character letters from people who attest to her honesty and loyalty and recommend that she be granted a clearance.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽³²⁾ The government has the burden of proving controverted facts.⁽³³⁾ The burden of proof is something less than a preponderance of evidence.⁽³⁴⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.⁽³⁵⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽³⁶⁾

No one has a right to a security clearance⁽³⁷⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽³⁸⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽³⁹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽⁴⁰⁾ 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.

Based upon consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline F- Financial Considerations-a security concern exists when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Guideline E-Personal Conduct is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that

could indicate that the person may not properly safeguard classified information.

Guideline J-Criminal Conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Willingness to abide by rules is an essential qualification for eligibility for access to the nation's secrets. A history of illegal behavior indicates an individual may be inclined to break, disregard, or fail to comply with regulations, practices, or procedures concerning safeguarding and handling classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guidelines J, E and F.

Based on all the evidence I have considered Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*The deliberate omission, concealment or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*). I observed Applicant during her testimony and accessed her demeanor and credibility and find that although she did not accurately answer certain questions on her SCA, that she did not intentionally or deliberately attempt to conceal information. With regards to her finances, her debts had not yet become delinquent in many instances, and others she was unaware of their delinquency status at the time of filling out the SCA. She also credibly testified that she did not deliberately fail to divulge two criminal incidents from 1997 and 2000, but rather had forgotten about them. With regard to her criminal conviction in 1995, she believed it had been expunged from her record, and specifically asked guidance from her security manager with regard to listing the offense. She was advised not to include it. Personal Conduct Mitigating Condition (PC MC) E2.A5.1.2.4 (*Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided.*) applies in that instances. With regard to the other omissions, I find her actions were not deliberate. I also conclude with regard to her divulging her financial delinquencies, many were not yet overdue at the time she filled out the SCA, and others she was unaware of due to her father's actions. Applicant has mitigated the security concerns regarding her personal conduct.

Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*Allegations or admissions of criminal conduct,*

regardless of whether the person was formally charged), and CC DC E2.A10.1.2.2 (*A single serious crime or multiple lesser offenses*) both apply. Applicant has a drug conviction in 1995 and 1997, and an arrest in 2000.

I have considered all the mitigating conditions and especially considered Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.1 (*The criminal behavior was not recent*), CC MC E2.A10.1.3.2 (*The crime was an isolated incident*), and CC MC E2.A10.1.3.6 (*There is clear evidence of successful rehabilitation*). Applicant was last arrested in 2000, and has had no problems since that time. I find her criminal behavior is not recent and CC MC E2.A10.1.3.1 applies. Applicant had two convictions and one arrest, so her criminal behavior was not isolated. CC MC E2.A10.1.3.2 does not apply. Applicant went through a difficult period of time in her younger years, but now has her life on track and she is a productive and responsible person. She received accolades from those she works with who attest to her excellent work record and trustworthiness. There is clear evidence that Applicant has turned her life around, and has matured into a responsible adult. CC MC E2.A10.1.3.6 applies. Because I previously discussed and found that Applicant did not deliberately falsify her SCA, I find that she did not violate 18 U.S.C. § 1001, and I have not considered it in making my conclusions regarding her criminal conduct. I find Applicant has successfully mitigate the security concerns under Guideline J.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*), apply in this case. Applicant has accumulated delinquent debts that are unpaid.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2 (*It was an isolated incident*), 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)*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant still owes approximately \$5,000 in undisputed debts so her debts are recent and FC MC E2.A6.1.3.1 and FC MC E2.A6.1.3.2 do not apply. Applicant debts became delinquent when, without her authorization, her father misused her credit cards and left her with unexpected debts. Around the same time she needed surgery and was working in a part-time status for her current employer and not entitled to medical benefits. She had a roommate who moved out without telling her and she was left with paying a debt she had not anticipated. All of these factors were beyond her control and caused her financial difficulties. Applicant is committed to paying off her undisputed debt and resolving the disputed debts. She has a budget that reflects a reasonable cost-cutting approach to pay off her debts within a reasonable time. An applicant is not required to be debt-free, but is required to manage her finances in such a way to meet her financial obligations. Applicant would likely not be in financial trouble if it were not for the intervening events that were beyond her control. She has taken positive steps to pay off her bills, but needs more time to complete the entire process. I find she is making a good-faith effort to repay her overdue creditors and resolve her disputed debts. She credibly testified that she was committed to resolving all of her debts by December 2006 and with her cost-cutting measures, pay increase and bonus, she is on her way to financial health. I find Applicant has mitigated the security concern regarding Guideline F, financial considerations.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of

variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered the whole person and I find Applicant has successfully mitigated the security concerns under Guideline J, criminal conduct, Guideline E, personal conduct, and Guideline F, financial considerations. Therefore, I am persuaded by the totality of the evidence in this case, that it is clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guidelines J, E and F are decided for Applicant.

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:

Paragraph 1. Guideline J: FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For the Applicant

Paragraph 2. Guideline E: FOR THE APPLICANT

Subparagraph 2.a: For the Applicant

Subparagraph 2.b: For the Applicant

Subparagraph 2.c: For the Applicant

Subparagraph 2.d: For the Applicant

Paragraph 3. Guideline F: FOR THE APPLICANT

Subparagraph 3.a: For the Applicant

Subparagraph 3.b: For the Applicant

Subparagraph 3.c: For the Applicant

Subparagraph 3.d: For the Applicant

Subparagraph 3.e: For the Applicant

Subparagraph 3.f: For the Applicant

Subparagraph 3.g: For the Applicant

Subparagraph 3.h: For the Applicant

Subparagraph 3.i: For the Applicant

Subparagraph 3.j: For the Applicant

Subparagraph 3.k: For the Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive

5220.6, dated January 2, 1992, as amended and modified (Directive).

2. SOR ¶ 1.b correctly alleges the facts that occurred on November 14, 1995 and not July 21, 1997. Applicant disputes the offense alleged on July 21, 1997. She states she was arrested for possession of drug paraphernalia and not drug possession. AE P verifies the charges on November 14, 1995 are those listed in SOR ¶1.b.

3. Tr. 20.

4. Tr. 22.

5. *Id.*

6. AE B.

7. AE C.

8. Tr. 29-30

9. Tr. 39.

10. Tr. 47.

11. Tr. 47-48.

12. Tr. 25.

13. Tr. 27.

14. Tr. 31.

15. Tr. 32-33.

16. SOR ¶¶ 3.g, 3.h and 3.k.

17. SOR ¶¶ 3.e. and 3.f.

18. SOR ¶ 3.b.

19. SOR ¶¶ 3.a and 3.j.

20. Tr. 36.

21. AE N.

22. Tr. 63.

23. AE M.

24. Question 24 asks: *Your Police Record-Alcohol/Drug Offense- Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs? For this item, report information regardless of whether the record in your case has been 'sealed' or otherwise stricken from the court record. Te single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S. C. 844 or 18 U.S. C. 3607.*

25. Question 26 asks: *Your Police Record-Other Offenses In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in modules 21, 22, 23, 24, or 25? (Leave out traffic fines of less than \$150*

unless the violation was alcohol or drug related.) For this item, report information regardless of whether the record in your case has been 'sealed or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S. C. 844 or 18 U.S.C. 3607.

26. Question 38 asks: *Your Financial Delinquencies-180 Days In the last 7 years, have you been over 180 days delinquent on any debt(s)?*

27. Question 39 asks: *Your Financial Delinquencies-90 Days Are you currently over 90 days delinquent on any debt(s)?*

28. Tr. 44-45.

29. *Id.*

30. *Id.*

31. Tr. 23.

32. ISCR Case No. 96-0277 at p. 2 (App. Bd. Jul 11, 1997).

33. ISCR Case No. 97-0016 at p. 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

34. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

35. ISCR Case No. 94-1075 at pp. 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

36. ISCR Case No. 93-1390 at pp. 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

37. *Egan*, 484 U.S. at 531.

38. *Id.*

39. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

40. Executive Order 10865 § 7.