

KEYWORD: Financial

DIGEST: Applicant contends her financial difficulties arose after she was fired as a security officer in January 2003 for not qualifying her weapon. The job termination provides only limited extenuation for her overdue debts, because she knew that in order to keep her job, she would be tested periodically to ensure she was qualified to handle her gun properly. Although Applicant promised the government in September 2004 she would contact all creditors and set up payment plans with some and completely pay off others, she only produced evidence of settlement with one of 14 creditors. Applicant did not document her claims of contacting the other creditors or present a plan to address the remaining accounts. She has not met her burden of persuasion under the financial considerations guideline. Clearance is denied.

CASENO: 05-03864.h1

DATE: 03/31/2006

DATE: March 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-03864

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Robert E. Coucher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant contends her financial difficulties arose after she was fired as a security officer in January 2003 for not qualifying her weapon. The job termination provides only limited extenuation for her overdue debts, because she knew that in order to keep her job, she would be tested periodically to ensure she was qualified to handle her gun properly. Although Applicant promised the government in September 2004 she would contact all creditors and set up payment plans with some and completely pay off others, she only produced evidence of settlement with one of 14 creditors. Applicant did not document her claims of contacting the other creditors or present a plan to address the remaining accounts. She has not met her burden of persuasion under the financial considerations guideline. Clearance is denied.

STATEMENT OF CASE

On November 23, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, amended April 4, 1999, issued a Statement of Reasons (SOR) to Applicant. The SOR 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant furnished her answer to the SOR on September 1, 2005. Applicant elected to have her case decided on a written record. The government provided Applicant a copy of the File of Relevant Material (FORM) on November 23, 2005. Applicant received the FORM on December 2, 2005. She responded to the FORM on December 7, 2005 and February 7, 2006. The case was assigned to me on January 23, 2006.

FINDINGS OF FACT

The SOR alleges Applicant owes 14 delinquent debts. The credit card debt appearing in subparagraphs 1.f., 1.g., and 1.h. (1) refers to the same account because the account numbers are the same. The three SOR entries for the same account resulted from the account-payment-terms being renegotiated on three occasions. Applicant denied owing the debts described in subparagraphs 1.a., 1.c., 1.e., 1.l., and 1.m. She admitted the debts in subparagraphs 1.b., 1.d., 1.h., 1.i., 1.j., 1.k., 1.n., 1.o., and 1.p. Her admissions are incorporated in the Findings of Fact.

Applicant is 29 years old and has been a security officer with her current employer since February 2004. She has worked as a security officer since 1997 with three companies.

On September 8, 2004, Applicant provided an affidavit to an investigator from the Office of Personnel Management (OPM). She explained she was keeping abreast of her bills until she was fired for failing to qualify a new weapon. (She did not reveal when she was fired, but her security clearance application (SCA, Item 4) reflects she was unemployed from January 2003 until February 2004, when she began working for her current employer.) In the September 2004 affidavit, she acknowledged most of the delinquent debts that are listed in the SOR. She indicated she would contact all the creditors to work out a payment plan or simply pay the debts outright. She claimed she was paying the creditor in subparagraph 1.b. \$50.00 a month. She predicted she could pay some creditors in October 2004. Her personal financial statement indicates she had \$480.00 monthly remainder after payment of all bills. Applicant provided no receipts, bank account statements, or any other documentation indicating she had paid or established a payment plan with any of the creditors.

The 14 debts in the SOR total \$11,907.00. Twelve of the 14 accounts changed to a past due/collection status in 2003 and 2004. The debt in subparagraph 1.o. became delinquent in February 1998. The telecommunications debt in subparagraph 1.m. became delinquent in March 2002.

Applicant provided a letter from a collection agency for the account listed in subparagraph 1.e. The letter is dated February 7, 2006, and indicates the account was settled in full; however, no settlement amount is stated. Applicant indicated in her December 7, 2005 reply to the FORM that she settled the medical account (subparagraph 1.e.) for \$100.00. She also claimed she contacted the other listed creditors but could not work out payment plans. Another claim she made was that she paid the debt in subparagraph 1.o., and the debt was supposed to be removed from her credit report. She provided no proof to support her claims of taking any action to satisfy the other debts.

POLICIES

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

Burden of Proof

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

Financial Considerations (FC)

An individual who is financially overextended is at risk of being pressured to engage in illegal acts to generate funds.

CONCLUSIONS

A review of the SOR demonstrates that since 1998, Applicant has accumulated 14 delinquent debts totaling \$11,907.00. Applicant contends in her September 2004 affidavit that before she was fired in January 2003, she was paying all her creditors. However, the credit reports show two debts had gone into delinquency in 2002 and 1998. FC disqualifying condition (DC) E2.A6.1.2.1. (*a history of not meeting financial obligations*) applies. While Applicant promised to pay some of the outstanding debts in September 2004, the absence of evidence affirming partial or full payment to 13 of the 14 creditors makes FC DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*) applicable to the circumstances of this case.

Having weighed all the mitigating conditions (MC) under the FC guideline with the circumstances of Applicant's case, I conclude FC MC E2.A6.1.3.1. (*the behavior was not recent*) and FC MC E2.A6.1.3.2. (*it was an isolated incident*) are inapplicable. Several of the debts became delinquent in 2004, less than three years ago. The presence of 13 debts is clearly outside the scope of isolated conduct.

Though everyone wants to demonstrate financially responsible habits at all times, sometimes there are events preventing individuals from paying their bills on time. Applicant's loss of her job in January 2003 activates FC MC E2.A6.1.3.3 (*the conditions that resulted in the behavior were largely beyond the person's control*) because the employment action removed Applicant's source of income and required her to seek shelter (subparagraph 1.c.) with a friend for an unknown period of time. However, the extenuating weight Applicant receives under FC MC E2.A6.1.3.3. is decreased by her employment background as a security officer since 1997. Having been in the security field for at least six years, Applicant knew or should have known she would have to qualify her weapon periodically, just as she would have to periodically certify she could perform other elements of her job. She was aware that termination could result from failing to qualify her weapon. Without having any more information regarding the reasons she could not qualify her new weapon, Applicant receives only limited extenuation under FC MC E2.A6.1.3.3. Furthermore, the loss of her job does not, by itself, outweigh the disqualifying conditions under the FC guideline.

FC MC E2.A6.1.3.4. (*the person has received or is receiving counseling for the problem and there are clear indications the problem is being resolved or is under control*) does not apply because there is no evidence of counseling or that the Applicant has a plan to address her debt troubles.

FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies because of Applicant's settlement with the creditor listed in subparagraph 1.e. Therefore, subparagraph 1.e. is found in Applicant's favor. However, Applicant's settlement with only one of 14 creditors, and the limited, extenuating weight to be given to FC MC E2.A6.1.3.6. do not overcome the unresolved, financial delinquencies, and substantiates findings against Applicant under subparagraphs 1.a., 1.b., 1.c., 1.d., 1.h., 1.i., 1.j., 1.l., 1.m., 1.n., 1.o., and 1.p. Subparagraphs 1.f. and 1.g. are found in Applicant's favor as they are duplicate allegations of the same account. In

reaching my adverse finding against Applicant under the FC guideline, I have also considered the general factors of the whole person concept set forth at E2.2. of the Directive. The lack of a plan to repay her debts indicates her financial problems will probably persist in the future.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (Financial Considerations, Guideline F): AGAINST THE APPLICANT.

Subparagraph 1.a. Against the Applicant.

Subparagraph 1.b. Against the Applicant.

Subparagraph 1.c. Against the Applicant.

Subparagraph 1.d. Against the Applicant.

Subparagraph 1.e. For the Applicant.

Subparagraph 1.f. For the Applicant.

Subparagraph 1.g. For the Applicant.

Subparagraph 1.h. Against the Applicant.

Subparagraph 1.i. Against the Applicant.

Subparagraph 1.j. Against the Applicant.

Subparagraph 1.k. Against the Applicant.

Subparagraph 1.l. Against the Applicant.

Subparagraph 1.m. Against the Applicant.

Subparagraph 1.n. Against the Applicant.

Subparagraph 1.o. Against the Applicant.

Subparagraph 1p. Against the Applicant.

DECISION

In light of all 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.

Paul J. Mason

Administrative Judge

1. Subparagraphs 1.f. and 1.g are found for Applicant.