

DATE: June 30, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-04676

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT

John B. Glendon, Esquire, Department Counsel

James B. Norman, Esquire, Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's falsification of her clearance application and financial irresponsibility renders her an unsuitable candidate for a security clearance. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 28 October 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of her clearance because of financial considerations and personal conduct. ⁽¹⁾ Applicant answered the SOR on 1 December 2005, and requested a hearing. The case was assigned to me 17 February 2006, and I convened a hearing 29 March 2006. DOHA received the transcript (Tr.) 10 April 2006.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR. Accordingly, I incorporate her admissions as findings of fact. She is a 41-year-old communication specialist for a defense contractor since February 2000. She has never applied for a clearance before. She was divorced from her first husband in June 1998 and remarried in July 2001.

When Applicant applied for her security clearance in February 2004, ⁽²⁾ she answered "no" to six questions (questions 34-39) seeking adverse financial information within the last seven years. In fact, Applicant knew that she had several accounts that were past due and should have been reported as 90- or 180-days past due (questions 38 and 39). These include a debt for unpaid rent that resulted in her being evicted from the apartment in 1998 (SOR 1.d.), a debt for an unpaid cable bill at the same address (SOR 1.c.), ⁽³⁾ and a December 1997 deficiency judgment for a repossessed automobile (SOR 1.b.). Applicant asserts that she was not aware that the repossession deficiency had been reduced to judgment. However, she was aware that there was a deficiency amount on the repossession, she was aware that her

husband had agreed to take responsibility for the debt in their divorce settlement, and she was aware that her husband had not continued to make payments as he was required. In her October 2004 sworn statement (G.E. 3) she did not claim to have been unaware of her past due accounts when she was discussing her adverse financial history with the investigator. Further, she offers no credible explanation for her failure to disclose any of these delinquent accounts in response to questions 38 and 39.

The four debts alleged in the SOR total nearly \$19,000. Applicant attributes her financial difficulties to her 1998 divorce, but tax lien (SOR 1.a.) and the automobile repossession (SOR 1.b.) were joint debt--incurred before the divorce--that her ex-husband agreed to pay. That agreement might give Applicant a claim against her husband for his failure to pay, but would not extinguish the creditors' rights to pursue payment from her. The past due cable bill (SOR 1.c.) and rent (SOR 1.d.) were individual debts she incurred before the divorce. She claims that she moved and never got the bills, but there is no indication she gave those creditors her new address. Further, she was evicted from the apartment for non-payment of rent, so she knew she was obligated to that creditor.

In her October 2004 sworn statement, Applicant claimed that she had reached repayment schedules with the creditors at 1.b. (\$200 per month beginning November 2004), 1.c. (\$100 per month beginning November 2004), and 1.d. (\$200 per month beginning November 2004). Applicant's financial statement showed approximately \$1,500.00 per month positive cash flow, more than enough to meet these scheduled. However, she paid on the account at 1.b. for only two months and did not satisfy the creditor until March 2006, when she made a lump sum payment of \$14,000 (A.E. A, B)--funded by her husband's refinancing of his home. She made no payments to the creditor at 1.c. until November 2005, when she paid the account in full (answer). She made no payments to the creditor at 1.d. until August 2005, when she paid the account in full (answer). In September 2005, she reached a repayment agreement with the state tax lien (answer), and corroborated that she had made the scheduled payments through the date of the hearing (A.E. C). The amount owed includes both the joint taxes that her husband failed to pay and her own, later past due taxes.

POLICIES AND BURDEN OF PROOF

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽⁴⁾

CONCLUSIONS

The Government established a Guideline F case under disqualifying conditions 1 and 3,⁽⁵⁾ and Applicant did not mitigate the security concerns. Although her divorce may have exacerbated her financial problems, the debts alleged in the SOR were all incurred before her divorce.⁽⁶⁾ Applicant made no effort to pay her past due rent and cable bill.

Although her husband was responsible under their divorce settlement to pay the tax debt and the automobile deficiency, she did not take any action to ensure that he paid these debts as agreed, and when she discovered that he had not paid them as agreed, she did not follow-up on her obligation to pay them. Even though she was clearly aware of the automobile deficiency, past due rent, and past due cable bill in October 2004, and had negotiated repayment schedules with these creditors, she failed to pay as scheduled. This delay does not demonstrate good faith in addressing her debts. (7) Rather, Applicant appears to have addressed some of her debts (1.b. and 1.c. 1.) only because of the SOR and pending hearing. This is irresponsible financial behavior and suggests that Applicant is unwilling to meet her financial obligations unless compelled to. I conclude Guideline F against Applicant.

The government established a Guideline E case and Applicant did not mitigate the security concerns. Applicant's clearance application gives no hint of her substantial financial trouble and she has offered no credible explanation for her failure to disclose that information to the government. It does not appear that she sought to disclose the adverse financial information between the time she completed her clearance application and her October 2004 subject interview. Nor does it appear she disclosed the financial information before being presented with the adverse credit report during her subject interview. I conclude Guideline E against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against Applicant

Subparagraph e: For the Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against 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 denied.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. Although Applicant signed the application in 2004, there is evidence she might have started placing information in the computer database in October 2001.
3. Credit reports in the record (G.E. 4-8) prove that the debt at 1.c. and 1.e. are the same account. Accordingly, I find 1.e. for Applicant to avoid duplication of findings.
4. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
5. E2.A6.1.2.1. A history of not meeting financial obligations; E2.A6.1.2.3. Inability or unwillingness to satisfy debts

6. E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment. . .).

7. E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.