

KEYWORD: Financial, Personal Conduct

DIGEST: Applicant is a 48-year-old postal clerk for a defense contractor. She successfully mitigated the security concerns stemming from her history of not meeting financial obligations. However, she has failed to mitigate the personal conduct security concerns based on her falsification of the security clearance application when she deliberately omitted her use of hashish in 1988 and failed to disclose her Chapter 13 bankruptcy filed in June 2003 to an investigator. Applicant also has been delinquent in paying state and federal income taxes. Clearance is denied.

CASE NO: 05-08863.h1

DATE: 06/26/2006

DATE: June 26, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-08863

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 48-year-old postal clerk for a defense contractor. She successfully mitigated the security concerns stemming from her history of not meeting financial obligations. However, she has failed to mitigate the personal conduct security concerns based on her falsification of the security clearance application when she deliberately omitted her use of hashish in 1988 and failed to disclose her Chapter 13 bankruptcy filed in June 2003 to an investigator. Applicant also has been delinquent in paying state and federal income taxes. Clearance is denied.

STATEMENT OF THE CASE

On June 27, 2003, Applicant applied for a security clearance and completed a Security Clearance Application (SF 86).
(1) On January 30, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR detailed reasons under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) 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 a clearance should be granted or revoked.

In a sworn, written statement, dated February 14, 2006, Applicant responded to the SOR allegations and elected to have her case decided on the written record in lieu of a hearing. (2) Department Counsel prepared the government's written case on March 29, 2006, but it was not forwarded to Applicant until April 4, 2006. A complete copy of the file of relevant material (FORM) (3) was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She had 30 days to respond to the FORM, and any such submissions were due by May 28, 2006. She chose to respond by letter dated April 28, 2006. The case was assigned to me on May 17, 2006.

FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to financial considerations under Guideline F (subparagraphs 1.a. and 1.b.) and personal conduct under Guideline E (subparagraphs 2.a. through 2.d.). Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 48-year-old postal clerk for a defense contractor. She has previously held a security clearance without an adverse incident or problem. She divorced in 1985, and remarried in 1989. She has a teenage child still at home and an independent adult child.

On June 10, 1998, Applicant filed for Chapter 7 bankruptcy. She reported assets of approximately \$25,675 and liabilities of approximately \$50,759. This bankruptcy was discharged on September 23, 1998. ⁽⁴⁾ The Chapter 7 bankruptcy was precipitated because the family moved from one state to another. Applicant's job was transferred to the new state, but her husband's was not. Without his income, the family's debt mounted and created havoc in maintaining financial order in their household. After the Chapter 7 bankruptcy was discharged, Applicant quit her job and moved back to the state she originally came from to take care of her sick mother. She was unemployed but her husband found part-time work. Their finances were headed toward delinquency because their debts exceeded their income.

Applicant was unemployed from August 2001 to June 2003. Her husband, a military retiree, found civilian employment to support his family when she was unemployed. ⁽⁵⁾

On June 9, 2003, Applicant filed for Chapter 13 bankruptcy. She reported assets of approximately \$10,750 and liabilities of \$26,106. An Order Confirming Chapter 13 Plan is dated August 26, 2003. ⁽⁶⁾ As of February 24, 2005, Applicant had paid the trustee a total of \$1,956. She makes a biweekly payment of \$58.00.

Applicant answered "no" to Question 24 (*Your Police Record - Alcohol/Drug Offenses: Have you ever been charged with or convicted of any offenses(s) related to alcohol or drugs?*) on her SF 86, dated June 27, 2003. While serving in the U.S. Army in a foreign country, however, she received a non-judicial punishment (Article 15) in 1988 for the offense of possession and use of a controlled substance (Hashish). ⁽⁷⁾ Applicant answered "no" to Question 28 (*Your Use of Illegal Drugs and Drug Activity Use in Sensitive Positions: Have you EVER illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly and immediately affecting public safety?*) on her SF 86. While holding a security clearance during her service in the U.S. Army in a foreign country, however, she used hashish in 1988.

For the tax year 2001, Applicant was delinquent in paying state and federal income taxes. These taxes were included in the Chapter 13 bankruptcy. Both are listed as creditors on her case status report for the bankruptcy trustee. ⁽⁸⁾

In a signed, sworn statement dated November 4, 2003, during a Department of Defense investigation, Applicant omitted material facts concerning her financial situation. She deliberately failed to disclose that she filed a Chapter 13 bankruptcy in her sworn statement and SF 86.

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. ⁽⁹⁾ The government has the burden of proving controverted facts. ⁽¹⁰⁾ The burden of proof is something less than a preponderance of evidence. ⁽¹¹⁾ 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

her. ⁽¹²⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. ⁽¹³⁾

No one has a right to a security clearance ⁽¹⁴⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ⁽¹⁵⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. ⁽¹⁶⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. ⁽¹⁷⁾ 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): *The Concern:* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal.

Guideline E (Personal Conduct): *The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard 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, and I reach the following conclusions.

Financial Considerations

Under Guideline F, a security concern exists for an individual who is financially overextended. This person 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, negligent, or careless in properly handling and safeguarding classified information.

In September 1998, Applicant filed Chapter 7 bankruptcy. Then, in June 2003, Applicant filed for Chapter 13 bankruptcy. She failed to pay her federal and state income taxes for 2001. Financial Considerations Disqualifying Conditions (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*) both apply.

Various conditions can mitigate security concerns arising from financial difficulties. The evidence demonstrates that Appellant is an example of an individual who could benefit from financial counseling. She needs to fully understand how money should be handled properly within the context of the dynamics of earning, budgeting, and spending responsibly. She has not, however, pursued such counseling. FC MC E2.A6.1.3.4 (*the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*) does not apply.

The Chapter 7 bankruptcy was precipitated because the family moved from one state to another. Applicant's job was transferred to the new state, but her husband's was not. Without his income, the family's debts mounted. After the Chapter 7 bankruptcy was discharged, Applicant quit her job and moved back to the state she originally came from to take care of her sick mother. She was unemployed, but her husband found part-time work. However, their debt was again in a precarious situation. Almost five years later, she filed a Chapter 13 bankruptcy. While bankruptcy protection is not the favored method for establishing a clean record, it is a legally available method for satisfying debt. Moreover, by pursuing Chapter 13 bankruptcy, Applicant did not totally relinquish her financial responsibilities. Instead, she will receive a proportionate share of relief by payments amounting to less than the full sum owed. In a Chapter 13 bankruptcy, Applicant makes a monthly payment to the trustee. That trustee then makes payment to those creditors listed in the schedules of creditors. Even though it is a court ordered repayment plan, it is still a repayment plan. Thus, FC MC E2.A6.1.3.6 (*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 creditor*) apply. Applicant has mitigated the government's case. Accordingly, allegations 1.a. and 1.b. of the SOR are concluded for Applicant.

Personal Conduct

Personal conduct is always a security concern because it asks the central question whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Having financial problems is the type of personal conduct which causes security concerns. While there are no express disqualifying conditions under personal conduct guideline that cover judgment lapses associated with financial difficulties, the core judgment and reliability concern of the guideline is implicit in Applicant's past troubles with finances.

Applicant falsified material facts on her SF 86 when she answered "no" to Question 24. While serving in the U.S. Army in a foreign country, Applicant received non-judicial punishment in 1988 for the offense of possession and use of a controlled substance (hashish). Applicant also falsified material facts on her SF 86 when she answered "no" to Question 28. Applicant knew that she used hashish in 1988 while holding a security clearance during her service in the U.S. Army while in a foreign country.

Applicant admits that she failed to timely pay state and federal taxes, which demonstrates a pattern of rules violation that has security implications because of her inability to comply with federally mandated rules. Applicant admitted that she failed to disclose to the Department of Defense investigator her recent Chapter 13 bankruptcy filing. Personal Conduct Disqualifying Conditions (PC DC) E2.A5.1.2. (*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*), PC DC E2.A5.1.2.3 (*deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination*), and PC DC E2.A5.1.2.5 (*a pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*) apply. None of the Personal Conduct Mitigating Conditions apply in this case because of Applicant's deliberate falsification of material facts on her SF 86 and her failure to timely pay state and federal income taxes. Under these circumstances, Applicant has failed to mitigate or overcome the government's case. The evidence leaves me with doubts as to Applicant's security eligibility and suitability. Accordingly, allegations 2.a. through 2.d. of the SOR are concluded against Applicant.

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. It is not clearly consistent with the national interest to grant Applicant a security clearance.

For the reasons stated, I conclude Applicant is not suitable or access to classified information.

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 F (Financial Considerations): FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Paragraph 2. Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Jacqueline T. Williams

Administrative Judge

1. Item 4 (Security Clearance Application, dated June 27, 2003).
2. Item 2 (Applicant's Answer, dated February 22, 2006).
3. The Government submitted 10 items in support of the allegations.
4. Item 7 (Chapter 7 Discharge of Debtor, dated September 13, 1998).
5. Item 5 (Sworn Statement, dated November 4, 2003).
6. Item 8 (Order Confirming Chapter 13 Plan, dated August 26, 2003).
7. Item 10 (Documents related to Applicant's 1988 non-judicial punishment).
8. Item 8, note 6, *supra*.

9. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
10. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
11. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
12. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.
13. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.
14. *Egan*, 484 U.S. at 531.
15. *Id.*
16. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
17. Executive Order 10865 § 7.