

DATE: August 10, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-08954

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a logistics program analyst for a defense contractor. She admits some and denies other delinquent debts listed on credit bureau reports. She presented documentation to establish disputes on only one of the debts, and no documentation to establish any payments of the debts. She deliberately did not list all of her past due obligation in response to questions on the security clearance application. Clearance is denied.

STATEMENT OF THE CASE

On November 8, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). Applicant acknowledged receipt of the SOR on November 18, 2005. The SOR alleges security concerns under Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on December 5, 2005. She admitted seven and denied 12 of the allegations under Guideline F, and denied the two allegations under Guideline E. She requested a hearing before an administrative judge and the request was received by DOHA on December 7, 2005. Department Counsel was prepared to proceed with the case on May 1, 2006. The case was assigned to another administrative judge on May 8, 2006, and reassigned to me on May 18, 2006. A notice of hearing was issued on May 25, 2006, and the hearing convened on June 8, 2006, in Charleston, South Carolina. Applicant waived the 15 day notice requirement. ⁽¹⁾ Six government exhibits, marked as Government Exhibits 1 to 6, were received without objection. Applicant's testimony, and four Applicant exhibits, marked Applicant Exhibits A-D, were received without objection during the hearing. The record was held open for Applicant to submit additional documents. Applicant timely submitted four additional documents, marked Applicant Exhibits E thru H, and received without objection. DOHA received the transcript (Tr.) on June 22, 2006.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is a 44-year-old logistics project analyst for a defense contract. She is divorced with one grown child. Applicant is no longer employed by the defense contractor because of the pending security clearance determination. If she receives a security clearance, she will be recalled for employment with the defense contractor. [\(2\)](#)

Credit bureau reports indicated Applicant had 19 delinquent debts. Most of the delinquent debts are listed on all of the reports. [\(3\)](#) Applicant admits seven of the delinquent debts listed in SOR allegations 1.a.; 1.c.; 1.d.; 1.f.; 1.g.; 1.h.; and 1.q. [\(4\)](#) She admitted the delinquent debts, and provided explanations for them in her testimony as noted below. However, she provided no documentation to support her testimony.

SOR debt 1.a. is for \$466 to a department store. Applicant stated this debt has not been paid and her last contact with the creditor was in 2003 by phone. The company wanted a lump sum payment and Applicant could not afford the payment. She has not tried to contact the creditor since receiving the SOR. [\(5\)](#)

SOR debt 1.c. is for a credit card. Applicant stated the original debt was for approximately \$334 but it is now \$1,278 because of interest and charges. The last contact she had with the creditor was in 2005 when she tried to reach a settlement. The creditor wanted a payment for the entire amount owed, but she was not able to pay the entire debt. There is no agreement. [\(6\)](#)

SOR debt 1.d. is to a collection agency for a department store for \$707. SOR debt 1.f. is to a collection agency for a credit card for \$1,275. SOR debt 1.h. is to a collection agency for a department store for \$677. SOR debt 1.q. is to a collection agency for a telephone company for \$556. Applicant stated she has not made contact with any of these creditors in some time. All of the creditors indicated they wanted a lump sum payment, and Applicant was unable to afford the payments. No payments have been made on these debts. [\(7\)](#)

SOR debt 1.g. is for a car loan on a car that was voluntarily repossessed in March 2003. Applicant stated she made no payments on this account. [\(8\)](#)

Applicant disputes SOR debt 1.b. which is a collection account for a credit card and not her debt. Her purse was stolen and someone used her identification to get credit cards. She wrote numerous letters to the credit report agency about the debt but it was not resolved. She did not provide copies of the letters to the credit card company. Applicant received a settlement letter from the collection agency in December 2005. She did inform them that she disputed the debt. The debt has not been settled because of the dispute. [\(9\)](#)

Applicant disputes SOR debt 1.e. for \$585 for rent of an apartment. Applicant left the apartment but the landlord stated she owed rent for another month for early termination of the lease. She contacted the landlord but there was a new manager. She did not hear from them nor did she contact them again. The debt has not been settled. [\(10\)](#)

Applicant disputes SOR debts 1.i. and 1.j. for medical expenses of \$160 and \$126. Applicant believed the expenses were covered by the medical insurance from her employer. She contacted both the insurance company and the medical provider in 2003 and informed them the bills should have been paid by to the insurance company. She provided no documentation of the dispute or notice to the provider or insurance company. The debt has not been settled or paid. [\(11\)](#)

Applicant disputes SOR debt 1.k. for a telephone bill in collection for \$1,550. Applicant denied having telephone service with the billing company but did admit to having service with a company that may have been later purchased by the billing company. She has not contacted anyone concerning the debt and it has not been settled. [\(12\)](#)

Applicant states that SOR debt 1.l. for \$42 on a returned check has been paid. She was unable to present any proof of payment. [\(13\)](#)

SOR debt 1.m. is for \$21 to a veterinarian. Applicant states she never owed them any money since you have to pay your bill before leaving the veterinarian's office. She did not present any documentation the bill was paid. (14)

Applicant disputes SOR debt 1.n. in collection for a medical service for \$39. She does not know about the debt and does not remember incurring any such debt. She made no inquiries concerning the debt. (15)

Applicant disputes SOR debt 1.o. for \$265 in collection for a cable company. She disputed her bill with the company but presented no documentation supporting the dispute. When she purchased the service, she was quoted one price but her bill was significantly different. (16)

Applicant disputes SOR debt 1.p. of \$143 in collection for an insurance company. She does not know the company or the debt and has not contacted anyone concerning the debt. (17)

Applicant disputes SOR allegation 1.r. of \$2,363 for rent due on an apartment. Applicant lost her job and had to move from her apartment. She left before the lease expired and the landlord charged her two months rent for early termination of the lease. Applicant presented the notice she provided the landlord that she would be terminating the lease. She states she was released from the lease by the manager but the corporation owning the building would not release her. She does not have documentation to establish the landlord or manager agreed to release her early from the lease. (18)

Applicant disputes SOR allegation 1.s. of \$168 in collection. Applicant stated she had a zero balance on this account but did not present any documentation to verify the balance. (19)

Applicant completed a security clearance application on September 15, 2003. She responded "YES" to question 38 asking "In the last 7 years, have you been over 180 days delinquent on any debt(s)." She listed her car loan debt of \$23,567. She responded "NO" to question 39 asking "Are you currently over 90 days delinquent on any debt(s)." In fact, she had the debts listed under SOR allegations 1.a. through 1.f, and 1.h. through 1.s. that were more than 90 and 180 days overdue. Applicant believed that the car loan was the only debt she had that was over 180 past due. She did not list it in response to question 39 because she felt her response to question 38 was automatic for question 39. She also stated she had difficulty with the computer assisted input to the application.

Applicant presented letters of recommendation. One of the letter was from her brother, an executive in the company she plans to work for if the clearance is granted. (20) The other letter is from her pastor. (21) She also presented letters of recommendation from a supervisor and a co-worker who were to testify at the hearing but were unable to remain at the hearing to testify. (22) Both attested to Applicant's honesty and responsibility. They stated she is a hard worker and should be granted a security clearance. Applicant presented information she was denied unemployment benefits for falsifying her employment application. (23)

POLICIES

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." (24) Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. (25)

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the "whole person concept," and (26)

consider and carefully weigh the available, reliable information about the person. An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence. ⁽²⁷⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. ⁽²⁸⁾ 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.

Initially, the government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information. ⁽²⁹⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts. ⁽³⁰⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ⁽³¹⁾ The government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating condition, and an Administrative Judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition. ⁽³²⁾ "[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." ⁽³³⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." ⁽³⁴⁾

Based upon a 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 for an individual who is financially irresponsible. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations 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: A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person 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 section below.

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The government has established its case under Guideline F. Applicant's delinquent debts reported by credit reports and partly admitted by Applicant, brings the matter within Financial Considerations Disqualifying Conditions E2.A6.1.2.1 (*a history of not meeting financial obligations*), and E2.A6.1.2.3 (*an inability or unwillingness to satisfy debts*). Applicant accumulated delinquent debts because of unemployment and lower paying jobs. Applicant's credit and financial history shows she has not met her financial obligations and is unwilling or unable to satisfy her debts even after finding employment. I conclude the above disqualifying conditions have been established.

I have considered Financial Consideration Mitigating Conditions E2.A6.1.3.1 (*The behavior was not recent*), and E2.A6.1.3.2 (*It was an isolated incident*). Applicant's delinquent debts started to accumulate as early as 2000. Many of

these debts remain unpaid today. The debts range from credit cards, car loans, medical bills, to past due rent. The debts are not recent and not isolated, since they are long standing, not paid, and from various sources. The mitigating conditions do not apply.

Applicant states she was unable to pay her debts because she lost employment. Applicant presented no information concerning her attempts to pay her debts even when she was employed. During periods of employment, she did not resolve any of her delinquent debts. Mitigating Condition E2.A6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person's control*) does not apply.

Applicant admitted seven of the debts and that she has taken no action to pay them or develop a payment plan. While she either denied, disputed, or stated the other 12 delinquent debts were paid, she presented information to show a dispute on only one of the debts. She presented no information on disputes or payment of the others. Her testimony raises Mitigating Condition E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). However, her testimony alone, with no documentation or proof, is not sufficient to establish that the disputed debts are not her debts or have been paid. Applicant has failed to carry her burden to establish the mitigating condition, except for SOR allegation 1.b. I conclude Applicant has not mitigated the security concerns for financial considerations.

Applicant's answers on the security clearance application listed only one unpaid debt, her car loan, in response to a question on her security clearance application. Her failure to list all debts past due over 180 days and 90 days brings the matter under Personal Conduct Disqualifying Condition E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from the personal security questionnaire, personal history statement, or similar form used to conduct investigations . . . determine security clearance eligibility or trustworthiness*). Applicant stated at the time she completed the security clearance application, she thought only her car loan was past due. However, a credit bureau report developed only 15 days after Applicant completed the security clearance application, shows numerous debts past due over 90 days and 180 days. Applicant later admitted to some of these past due debts. It is not plausible under the circumstances that she did not know at the time she completed the application of all debts past due over 180 days or 90 days. She also stated she had trouble completing the computer version of the security clearance application and could not list all of her past due debts on it. She also believed that by listing debts under the question pertaining to debts past due over 180 days, the computer program would automatically list the debts under those past due over 90 days. If Applicant did have trouble completing the program and knew she had delinquent debts to list, she should have sought assistance. I find Applicant deliberately failed to provide correct information in response to questions 38 and 39 on the security clearance application.

I carefully considered all of the circumstances in light of the "whole person" concept. I have considered the letters of recommendation from her brother, her supervisor, and her co-worker, as well as the information provided by her pastor. I have also considered in the "whole person" concept, that she was denied unemployment benefits because she falsified her employment application. I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: For 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.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: Against Applicant

Subparagraph 1.p.: Against Applicant

Subparagraph 1.q.: Against Applicant

Subparagraph 1.r.: Against Applicant

Subparagraph 1.s.: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

DECISION

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

Thomas M. Crean

Administrative Judge

1. Tr. 8; Court Exhibit 1 (Waiver of 15 day rule, dated May 30, 2006).
2. Tr. 16-22; Government Exhibit 1 (Security Clearance Application, dated Sep. 15, 2003).
3. *See*, Government Exhibit 4 (Credit Bureau Report, dated Oct. 1, 2003); Government Exhibit 5 (Credit Bureau Report, dated Oct. 12, 2005); Government Exhibit 6 (Credit Bureau Report, dated Apr. 27, 2006).
4. Case File (Response to SOR, dated Dec. 5, 2005).
5. Tr. 23-24.
6. Tr. 26-27.

7. Tr. 26-32; Tr. 38-39.
8. Tr. 31.
9. Tr. 24-25; Applicant Exhibit A (Settle Letter and response, dated Dec. 6, 2005).
10. Tr. 28.
11. Tr. 32-33.
12. Tr. 33-36.
13. Tr. 36.
14. Tr. 37
15. Tr. 37-38.
16. Tr. 38.
17. Tr. 39.
18. Tr. 39-40.
19. Tr. 40.
20. Appellant Exhibit B (Letter, dated Jun.5, 2006).
21. Appellant Exhibit C (Letter, dated Jun 7, 2006).
22. Appellant Exhibit G (Letter of Recommendation, undated); Appellant Exhibit H (Letter of Recommendation, undated).
23. *See*, Applicant Exhibit D (Unemployment benefits, dated Jan. 5, 2005).
24. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
25. Directive ¶ E2.2.1.
26. *Id.*
27. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
28. *See* Exec. Or. 10865 § 7.
29. Directive ¶ E3.1.14.
30. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
31. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
32. ISCR Case No. 99-0597 (App. Bd. Dec 13, 2000).
33. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
34. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.