

KEYWORD: Financial

DIGEST: Applicant has a history of unresolved financial delinquencies, some which date to 1996 and 1997, and others which are of recent occurrence. At her hearing, she demonstrated that, after receiving DOHA's Statement of Reasons, she made progress in paying or arranging to pay a number of her debts. While Applicant's recent efforts to satisfy her creditors are laudable, they are not a substitute for a consistent record of timely remedial action. Applicant failed to mitigate security concerns under Guideline F, Financial Considerations, of the Directive. Clearance is denied.

CASE NO: 05-09566.h1

DATE: 06/28/2006

DATE:

In Re:

PARKER, Christina Lynn

SSN: 224-33-0505

Applicant for Security Clearance

ISCR Case No. 05-09566

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

John Bayard Glendon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of unresolved financial delinquencies, some which date to 1996 and 1997, and others which are of recent occurrence. At her hearing, she demonstrated that, after receiving DOHA's Statement of Reasons, she made progress in paying or arranging to pay a number of her debts. While Applicant's recent efforts to satisfy her creditors are laudable, they are not a substitute for a consistent record of timely remedial action. Applicant failed to mitigate security concerns under Guideline F, Financial Considerations, of the Directive. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On December 7, 2005, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on December 29, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me March 2, 2006. On April 3, 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and submitted ten exhibits (Ex.) for admission to the record (Ex. 1 through 10). The Government's exhibits were admitted to the record without objection. Applicant testified on her own behalf and called four additional witnesses. She submitted 23 exhibits, which were identified as Applicant's Ex. A through W, and admitted to the record without objection. At the conclusion of the hearing, I left the record open until close of business April 17, 2006, so that Applicant could, if she wished, submit additional information for the record. Applicant timely filed four documents, which were identified as Applicant's Ex. X, Y, Z, and A-1, and admitted to the record without objection. On April 19, 2006, DOHA received the transcript (Tr.) of the proceeding.

FINDINGS OF FACT

The SOR contains twenty-three allegations of disqualifying conduct under Guideline F, Financial Considerations. In her answer to the SOR, Applicant admitted twenty allegations, denied two, and neither admitted nor denied one. She offered mitigating circumstances. Applicant's admissions are incorporated as findings of fact.

Applicant is 38 years old and been employed as a lead technical writer by a government contractor since February 2002. She has eight years of experience as a technical writer for government contractors, and she has been steadily employed since 1999. (Ex. 1; Tr. 43-44; 65-66.)

Applicant was married in 1988. Applicant's husband was irresponsible, frequently unemployed, and abusive. He fathered two children in a relationship he carried on during his marriage to Applicant. In 2001, Applicant and her husband separated, and they were divorced in September 2004. When they divorced, Applicant and her husband did not have an agreement about which one of them would be responsible for paying debts accrued during the marriage. (Answer to SOR; Ex. 1; Tr. 44; 46-47; 95.) Applicant and her ex-husband are the parents of three children, ages 17, 14, and 9. The children live with Applicant. Applicant's daughter was in a serious automobile accident and required extensive medical treatment. Applicant owes a medical provider over \$5,000 for medical helicopter services to transport the daughter to a hospital after the automobile accident. (SOR ¶ 1.m.; Tr. 54.) The ex-husband has failed to timely pay child support or to help with the children's medical expenses. Applicant intends to seek court support in requiring the ex-husband to pay the children's medical expenses. (Tr. 47; 54-55.)

Applicant attributes her financial problems to her ex-husband. (Ex. 2 at 1.) During their marriage, Applicant and her husband had financial difficulties. In November 1998, when Applicant was interviewed by a special agent of the Defense Security Service (DSS) during a security clearance investigation, she was asked about several debts on her 1998 credit bureau report. She acknowledged a bad debt for approximately \$6,100 on an automobile loan and a delinquency of approximately \$5,372 resulting from involuntary repossession of an automobile. She stated she was making a payment of \$50 a month to one of the creditors and would begin making \$50 per month payments to the other creditor in December 1998. She also acknowledged a debt of \$99 dating to 1996, said she had contacted the creditor, and would pay the debt in December 1998. (Ex. 8; Ex. 10 at 1-3; Tr. 68-73.)

Those three debts were alleged on the SOR served on Applicant in December 2005 in subparagraphs 1.a., 1.b., and 1.c. In her Answer to the SOR, Applicant stated she was contesting the \$99 debt alleged at subparagraph 1.a. At her hearing, she said she was sure she paid the debt. She said she thought her former husband was responsible for paying the bad debt on the automobile loan alleged at subparagraph 1.b. and the involuntary repossession delinquency alleged at subparagraph 1.c. (Answer to SOR at 1; Tr. 68-73.) She also acknowledged that the repossession delinquency was the same debt as alleged at subparagraph 1.p. of the SOR. She acknowledged she had made no payments on the judgment but had agreed to pay \$300 a month beginning April 30, 2006. (Ex. P)

In her 1998 statement to the DSS investigator, Applicant said she relied upon her mother and father for financial assistance. She also stated: " I intend to have all my debts cleared up within the next two years." (Ex. 10 at 3.)

At her hearing, Applicant testified she settled the debt alleged at subparagraph 1.e. of the SOR with \$500 given to her by her mother. She also testified she used money her mother gave her to settle the judgment alleged at subparagraph 1.n. of the SOR. Applicant also stated her mother co-signed a loan agreement with her for \$5,000, which she used to pay her bills. (Tr. 94.) She said she still owed \$600 on the loan and would pay it off with a tax refund. (Tr. 98-99.)

Applicant's credit bureau report for October 2005 lists a debt of \$21,800 for the purchase of an automobile. The original balance on the purchase was \$27,360 and the monthly payments on the automobile loan were \$524. Applicant acknowledged the automobile loan was hers. She said her mother refinanced her home and used some of the proceeds to pay off Applicant's automobile loan. (Ex. 6; Tr.99-101.)

DOHA alleged Applicant was responsible for 23 financial delinquencies. At her hearing and in post-hearing submissions, Applicant provided credible proof of payment for the delinquencies alleged at ¶¶ 1.e., 1.h., 1.i, 1.j., 1.k., 1.l., 1.o., 1.n., 1.r., 1.s., and 1.w. She further demonstrated she had negotiated payment plans for the debts alleged at 1.f., 1.m., 1.p., 1.t., and 1.u. However, since most of the payment plans were recently negotiated, she was not able to show consistent and regular payment over time.

Applicant estimated she would receive approximately \$7,000 in tax refunds, and she said she planned to use the refund money to pay her outstanding debts. She stated: "I just intend to pay off everything that I owe. I will be out of debt in the next 12 months." (Tr. 90-91.)

In post-hearing submissions, Applicant provided letters of character reference from an official and a project manager with whom she works. (Ex. Y; Ex. Z.) Both letters attested to Applicant's hard work and good character. She also submitted a letter from her landlord, who asserted she has always paid her rent on time. (Ex. A-1.)

POLICIES

"[No one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States,

strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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 establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline F-Financial Considerations

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Applicant has a history of not meeting her financial obligations, and she has not demonstrated a willingness to satisfy

her debts. These conditions raise security concerns under subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

In the SOR, DOHA alleged that Applicant owed a creditor approximately \$99 on an account placed for collection in about April 1996, and, as of July 6, 2001, the debt had not been satisfied (§ 1.a.); that she owed a creditor approximately \$6,128 on an account charged off as a bad debt in about November 1996 and, as of March 3, 2005, the debt had not been satisfied (§ 1.b.); that she owed a creditor approximately \$4,657, the balance due after the sale of her automobile, which had been repossessed for non-payment in about August 1997, and, as of March 3, 2005, the debt had not been satisfied (§ 1.c.); that she owed a creditor approximately \$370 for an account placed for collection in about February 1998 and, as of July 2001, the debt had not been satisfied (§ 1.d.); that she owed a creditor approximately \$1,805, on an account placed for collection in about March 1998, and, as of March 3, 2005, the debt had not been satisfied (§ 1.e.).

DOHA also alleged that Applicant was indebted to a creditor for approximately \$1,253 on an account placed for collection in about February 1999 and, as of October 11, 2005, the debt had not been satisfied (§ 1.f.); that she was indebted to a creditor for approximately \$82 for a judgment entered against her in about October 1999, and, as of October 11, 2005, the debt had not been satisfied (§ 1.g.); that she was indebted to a creditor for approximately \$28 on a medical account placed for collection in about August 2000, and, as of October 11, 2005, the debt had not been satisfied (§ 1.h.); that she owed a creditor approximately \$1,096 for a judgment entered against her on about November 13, 2000, and, as of November 2004, the debt had not been satisfied (§ 1.i.); that she owed a creditor approximately \$144 on a medical account placed for collection in about February 2001, and as of October 11, 2005, the debt had not been satisfied (§ 1.j.); that she owed a creditor approximately \$393 on an account placed for collection in about April 2001 and, as of July 6, 2001, the debt had not been satisfied (§ 1.k.); that she owed a creditor approximately \$1,513 on an account charged off as a bad debt in about January 2002, and, as of June 2, 2004, the debt had not been satisfied (§ 1.l.); that she owed a creditor approximately \$5,175.50 on a judgment entered against her on about June 10, 2002 and, as of October 11, 2005 the debt had not been satisfied (§ 1.m.); that she owed a medical facility approximately \$174.50 on a judgment entered against her on about September 12, 2002, and, as of October 11, 2005, this debt had not been satisfied (§ 1.n.).

DOHA also alleged Applicant owed a creditor approximately \$5,305.98 for a judgment entered against her on about October 3, 2002, and, as of October 11, 2005, the debt had not been satisfied (§ 1.o.); that she owed a creditor approximately \$3,719.76 for a judgment entered against her on about October 18, 2002 and a wage garnishment that was granted on about July 8, 2003, and, as of October 11, 2005, the debt had not been satisfied (§ 1.p.); that she owed a creditor approximately \$25 on an account placed for collection in about February 2003, and, as of October 11, 2005, the debt had not been satisfied (§ 1.q.); that she owed a creditor approximately \$25 on an account placed for collection in June 2003, and, as of October 11, 2005, the debt had not been satisfied (§ 1.r.); that she owed a creditor approximately \$272 on an account placed for collection in about July 2003, and, as of October 11, 2005, the debt had not been satisfied (§ 1.s.); that she owed approximately \$719 to a creditor on an account charged off as a bad debt in about September 2003, and, as of October 11, 2005, the debt had not been satisfied (§ 1.t.); that she owed a creditor approximately \$638.13 for a judgment entered against her on about May 27, 2004, and, as of October 11, 2005, the debt had not been satisfied (§ 1.u.).

Additionally, DOHA alleged Applicant owed a debt of approximately \$241 on a medical account placed for collection in about July 2004, and, as of October 11, 2005, the debt had not been satisfied (§ 1.v.); and that she owed a debt of approximately \$223 on an account placed for collection by a creditor in about June 2005, and, as of October 11, 2005, the debt had not been satisfied (§ 1.w.).

The Government has established, through Applicant's admissions and the record evidence, a *prima facie* case that Applicant is financially overextended. Applicant provided no persuasive evidence to rebut the financial concerns specified in the SOR and identified as disqualifying conditions under §§ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. (3)

Applicant has been on notice since 1998 that her financial delinquencies were of concern to the Government and could impact her eligibility for a security clearance. In an interview with a security investigator in 1998, Applicant promised to pay all of her outstanding debts within two years. Again, at her hearing in 2006, she promised to have all her debts paid within a year. Some of the debts Applicant promised to pay in 1998 were the same debts she again promised to pay in 2006. DOHA's Appeal Board has stated that promises to pay one's debts in the future are not a substitute for a clear record of debts actually paid. ISCR Case No. 98-0188 at 3 (App. Bd. Apr. 29, 1999) In determining an individual's security worthiness, the Government cannot rely on the possibility that the applicant might resolve his or her outstanding debts at some future date.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's acknowledged delinquencies date to at least 1996 or 1997. Her financial delinquencies involve long-standing debts, and her inability or unwillingness to pay them is recent. Thus, neither mitigating condition E2.A6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies. (4)

The record shows Applicant was separated in 2001 and divorced in 2004. She attributed her financial problems to her ex-husband. However, Applicant has been steadily employed since 1999, and she presented no credible evidence that after her divorce she set about devising a plan to identify and satisfy her long-term debts. Instead of assuming responsibility for budgeting her own resources to pay her financial delinquencies, she has permitted others, especially her parents, to give her money to pay her debts.

If a person's financial delinquencies were largely caused by conditions beyond his or her control, then mitigating condition E2.A6.1.3.3 might apply. Assessing the applicability of this mitigating condition often requires a two-part analysis. First, an administrative judge must review and weigh the existing evidence to determine if the applicant's financial difficulties initially arose from circumstances outside of his or her control. Second, assuming that some or all of the circumstances were beyond the individual's control, the judge may consider whether the applicant acted in a reasonable manner when dealing with those financial difficulties. *See e.g.*, ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999).

In assessing the applicability of mitigating condition E2.A6.1.3.3. in Applicant's case, I conclude Applicant's difficult marriage and her daughter's serious automobile accident, while unfortunate, do not explain or mitigate her long-standing financial difficulties and her unwillingness to approach her creditors and arrange payment or settlement. Her present financial problems do not appear to be primarily the result of conditions beyond her control. Thus, mitigating condition E2.A6.1.3.3. applies only in part.

Applicant did not present evidence that she had received consumer financial credit counseling to help her manage her financial problems, and she did not present clear indications that her financial problems are being resolved or are under control. Therefore, mitigating condition E2.A6.1.3.4. is inapplicable. While she presented some evidence she had paid some of her overdue creditors or otherwise resolved her debts, her assertions of promises to pay several of her larger obligations in the future were not persuasive in light of her earlier unfulfilled promises to resolve her debts. Accordingly, mitigating condition E2.A6.1.3.6. is also inapplicable, and the Guideline F allegations in the SOR are concluded against the Applicant.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6., as amended.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1.: Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: For Applicant

Subparagraph 1.l.: For Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: For Applicant

Subparagraph 1.o.: For Applicant

Subparagraph 1.p.: Against Applicant

Subparagraph 1.q.: Against Applicant

Subparagraph 1.r.: For Applicant

Subparagraph 1.s.: For Applicant

Subparagraph 1.t.: Against Applicant

Subparagraph 1.u.: Against Applicant

Subparagraph 1.v.: Against Applicant

Subparagraph 1.w.: For Applicant

DECISION

In light of all of 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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Disqualifying Condition E2.A6.1.2.1. reads: "A history of not meeting financial obligations." Disqualifying Condition E2.A6.1.2.3. reads: "Inability or unwillingness to satisfy debts."
4. Mitigating Condition E2.A6.1.3.1. reads: "The behavior was not recent." Mitigating Condition E2.A6.1.3.2. reads: "It was an isolated incident."