

KEYWORD: Financial Considerations, Personal Conduct

DIGEST: Applicant has incurred significant credit card debt, most of which remains unpaid. Her salary does not provide her with sufficient monthly income to meet her monthly expenses and pay her old debt. She has not provided documentation showing that she has made an effort to pay. She falsified her responses to her security clearance application regarding her financial situation. She has not mitigated or overcome the government's concerns regarding her security eligibility and suitability based on financial considerations. The government has not established its case regarding her personal conduct. Clearance is denied.

CASE NO: 05-11428

DATE: 06/16/2006

DATE: June 16, 2006

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In re:

SSN:

Applicant for Security Clearance

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ISCR Case No. 05-11428

**DECISION OF ADMINISTRATIVE JUDGE**

**MARY E. HENRY**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant has incurred significant credit card debt, most of which remains unpaid. Her salary does not provide her with sufficient monthly income to meet her monthly expenses and pay her old debt. She has not provided documentation showing that she has made an effort to pay. She falsified her responses to her security clearance application regarding her financial situation. She has not mitigated or overcome the government's concerns regarding her security eligibility and suitability based on financial considerations. The government has not established its case regarding her personal conduct. Clearance is denied.

### STATEMENT OF THE CASE

On December 21, 2005, 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 Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. 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. Specifically, the SOR set forth security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. On January 12, 2006, Applicant submitted a notarized response to the allegations. She elected to have her case decided on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy on April 27, 2006. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She did not submit a response or additional evidence. This case was assigned to me on May 23, 2006.

## FINDINGS OF FACT

Applicant admitted the allegations under Guidelines E and F of the SOR.<sup>(1)</sup> Those admissions are incorporated as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact.

Applicant is a 56-year-old mail clerk for a defense contractor.<sup>(2)</sup> She has worked for this contractor for 33 years.<sup>(3)</sup> She has held a secret clearance for the same length of time.<sup>(4)</sup> She completed a security clearance application (SF 86) in April 2001.<sup>(5)</sup>

Applicant earned approximately \$35,000.00 in 2004 in her full-time job.<sup>(6)</sup> Her estimated gross monthly income is \$2,912.00, and her net monthly income is \$1,300.00.<sup>(7)</sup> She also works part-time and has a net monthly income of \$170.00 from this job for a total net monthly income of \$1,470.00.<sup>(8)</sup> Her monthly expenses are: \$773.00 for mortgage, \$200.00 for groceries, \$207.00 for car expenses, and \$200.00 for utilities.<sup>(9)</sup> These expenses total \$1,380.00, leaving a balance of \$90.00 per month.<sup>(10)</sup>

Applicant's debts alleged in the SOR, including current status, are summarized in the following table:

SOR ¶	TYPE OF DEBT	AMOUNT	STATUS
1.a.	credit card <sup>(11)</sup>	\$3,098.00 <sup>(12)</sup>	Unpaid <sup>(13)</sup>
1.b.	credit card <sup>(14)</sup>	\$2,292.00 <sup>(15)</sup>	Unpaid <sup>(16)</sup>
1.c.	loan <sup>(17)</sup>	\$7,284.00 <sup>(18)</sup>	Unpaid <sup>(19)</sup>
1.d.	credit card <sup>(20)</sup>	\$2,378.00 <sup>(21)</sup>	Unpaid <sup>(22)</sup>
1.e.	credit card <sup>(23)</sup>	\$2,545.00 <sup>(24)</sup>	Unpaid <sup>(25)</sup>
1.f.	credit card <sup>(26)</sup>	\$3,640.00 <sup>(27)</sup>	Unpaid <sup>(28)</sup>
1.g.	credit card <sup>(29)</sup>	\$3,354.00 <sup>(30)</sup>	Paid <sup>(31)</sup>

Applicant states that she has paid one debt and that she continues to pay the remaining debts.<sup>(32)</sup> The credit reports reflect that she has paid the \$3,354.00 debt listed.<sup>(33)</sup> She acknowledges her debts, but has not provided any additional

documentation that indicates any further payments. (34)

On April 30, 2001, Applicant completed her security clearance application. She answered "no" to each of the following questions in the SOR: (35)

Question 38. Your Financial Delinquencies - 180 days

In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?

Question 39. Your Financial Delinquencies - 90 Days

Are you currently over 90 days delinquent on any debt?

She did not list her overdue and outstanding debts identified in the SOR. (36) In her 2004 signed statement, she indicates that she intended to answer "yes", but in her hurry to complete the application, forgot. (37) She has not provided any further explanation for her conduct. The record does not contain any evidence that she lied in her responses on previous security clearance applications.

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the adjudicative process provision in Paragraph E2.2., Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. 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. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. <sup>(38)</sup>

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. <sup>(39)</sup> The government has the burden of proving controverted facts. <sup>(40)</sup> The burden of proof is something less than a preponderance of the evidence. <sup>(41)</sup> Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her. <sup>(42)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. <sup>(43)</sup>

No one has a right to a security clearance, <sup>(44)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." <sup>(45)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. <sup>(46)</sup> Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant. <sup>(47)</sup> 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 a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

**Financial Considerations - Guideline F: 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 acts.**

**Personal Conduct - Guideline E: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulation could indicate that the person may not properly safeguard classified information.**

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

The government has established its case under Guideline F. Applicant has a history of excessive debt, which has not been paid. Applicant's financial problems clearly fall within the Financial Considerations Disqualifying Conditions E2.A6.1.2.1. (*A history of not meeting financial obligations*) and E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*).

A security concern based on financial problems can be mitigated in several ways. Applicant's debt problems have been ongoing for a number of years, are recent, and are not an isolated incident. Thus, she has not established a mitigating condition under Financial Considerations Mitigating Conditions (FC MC) E2.A6.1.3.1. (*The behavior was not recent*) and E2.A6.1.3.2. (*It was an isolated incident*). Likewise, since she has not received counseling for her credit problems, and has not established a repayment plan for her debt, 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.

Applicant has worked for the same company for more than 30 years. Her employment has been stable, but her income has not been high. Once she pays her monthly expenses, she has little money left to pay her outstanding debts, which total more than \$21,000.00. She states that she is paying these debts, but has not provided any evidence to document any recent payments. While she is not required to pay off old debt to be granted a security clearance, her failure to establish, through documentation, any payments on her outstanding debt militates against granting her a security clearance. Guideline F is found against Applicant.

Under Guideline E, the government alleges that Applicant deliberately falsified material facts on her latest security clearance application when she answered "no" to Questions 38 and 39. In her signed statement, she acknowledges that she forgot to change her "no" answer to "yes", which is not an admission to intentionally falsifying her answers. Although she admitted to the allegation in her response to the SOR, the allegation is written in two parts, and thus, easily misread. It is reasonable to assume that she did not understand the difference between admitting to answering the question incorrectly and admitting to intentional falsification. The government established that under Guideline E, Applicant admitted to an omission of material facts in her SF 86.

When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.<sup>(48)</sup> For Personal Conduct Disqualifying Conditions (PC DC) E2.A5.1.2.2. (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . .*) and PC DC E2.A5.1.2.3. (*Deliberately providing false or misleading information concerning relevant and material matters to an investigator . . .*) to apply, the government must establish that Applicant's omission, concealment or falsification in his answers related to a relevant and material fact and was deliberate.

Applicant did not explain what she meant by forgot to change her "no" answer. In all probability, her employer provided her previous completed security clearance application to review, make changes and sign, because she clearly acknowledged her debts and accepted responsibility for payment at the time she met with the investigator. For more than 30 years, she has held a security clearance without any allegations of mishandling any classified documents. The record contains no evidence that she lied when answering her previous security questionnaires. There is no evidence that she has ever acted in an untruthful manner or contrary to government interests. The government has not established that she intentionally falsified her answers to Questions 38 and 39 under Guideline E, which is found for Applicant.

For the reasons stated under Guideline F, it is not clearly consistent with the national interest to grant a security clearance to Applicant.

### **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): 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: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: For Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: 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 a security clearance for Applicant. Clearance is denied.

Mary E. Henry

Administrative Judge

1. Item 3 (Response to SOR, dated January 12, 2006) at 1-2.
2. Item 4 (Applicant's security clearance application, dated April 30, 2001) at 1.
3. *Id.*
4. *Id.* at 7.



5. *Id.* at 1.
6. Item 5 (Applicant's signed statement, dated November 11, 2004) at 4.
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. Item 6 (Credit report, dated October 24, 2005) at 3; Item 7 (Credit report, dated April 21, 2006) at 2.
12. *Id.*
13. *Id.*
14. Item 5, *supra* note 6, at 1.
15. *Id.*
16. Item 6, *supra* note 11, at 3; Item 7, *supra* note 11, at 2.
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.*
27. Item 6, *supra* note 11, at 3.
28. Item 7, *supra* note 11, at 2.
29. Item 5, *supra* note 6, at 1.
30. Item 7, *supra* note 11, at 2.
31. *Id.*
32. Item 3, *supra* note 1, at 3.
33. Item 6, *supra* note 11, at 3; Item 7, *supra* note 11, at 2.

34. Item 5, *supra* note 6, at 1.
35. Item 4, *supra* note 2, at 8.
36. *Id.*
37. Item 5, *supra* note 6, at 1.
38. Directive, Enclosure 2, ¶ E2.2.1.1. through E2.2.1.9.
39. ISCR Case No. 96-0277 (July 11, 1997) at 2.
40. ISCR Case No. 97-0016 (App. Bd., December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
41. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
42. ISCR Case No. 94-1075 (App. Bd., August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
43. ISCR Case No. 93-1390 (App. Bd. Decision and Reversal Order, January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
44. *Egan*, 484 U.S. at 531.
45. *Id.*
46. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
47. Executive Order No. 10865 § 7.
48. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).