

DATE: December 11, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-13397

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

John B. Glendon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 55 years old and has worked for the same federal contractor for 34 years as a material handler. She has numerous delinquent debts that she has failed to pay for a substantial period of time, despite having expendable income. On her security clearance application, she failed to list that she had delinquent debts more than 180 days. She has successfully mitigated the security concerns regarding Guideline E, personal conduct, but failed to mitigate the security concerns regarding Guideline F, financial considerations. 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 March 13, 2006, 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) and Guideline E (personal conduct) of the Directive. Applicant answered the SOR in writing on April 4, 2006, and elected to have a hearing before an administrative judge. In her Answer, Applicant admitted all of the allegations under Guidelines F and E. The case was assigned to me on October 12, 2006. A notice of hearing was issued on October 27, 2006, scheduling the hearing for November 15, 2006. I conducted the hearing as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance. The Government offered four exhibits for admission in the record marked as Government Exhibits (GE) 1-4. The exhibits were admitted into evidence without objection. Applicant testified on her own behalf and did not offer any exhibits for admission in the record. DOHA received the hearing transcript (Tr.) on November 29, 2006.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 55 years old and has worked for a federal contractor for 34 years as a material handler. In 1986 she separated from her husband and was divorced in 1988. She retained custody of their three young children. Her ex-husband failed to pay child support and she struggled with her finances. She attempted to provide those things that children require while growing up. In approximately 2001, when her two younger children were in high school, and her older child was 25, she got each a cell phone and also bought one for herself. The phones were in Applicant's name. The bills on each phone as listed in SOR ¶¶ 1.d, 1.e, 1.f, 1.g, 1.h, became delinquent and remain unpaid. Applicant claims that two of the phone debts are duplicates. In September 2006, she contacted the phone company to determine which two were duplicates. Because the accounts were so old and had been sold to a collection company, the phone company needed more time to research it. Applicant did not follow up with the phone company. Each account is listed under her social security number. Applicant has never asked her now grown children to reimburse her or assist her in repaying these debts.

Applicant's delinquent debts in SOR ¶¶ 1.a, which has been outstanding since 2000, and 1.c, which has been outstanding since 2002, are for credit cards. Her delinquent debt in SOR 1.b is a department store credit card that has been outstanding since 2002. She occasionally sent a payment, but it was not regular or consistent. Her debt in SOR ¶ 1.j is also a department store debt that has not been paid since 2003. The debt listed in SOR ¶ 1.i is the same debt as in ¶ 1.k. The amount owed has escalated to \$3,148, including penalty and finance charges. Applicant purchased a DVD player for her daughter-in-law and another item she cannot remember at an electronics store. She made a \$50 payment in February 2006 and was to make two additional \$50 payments before the store would settle the debt. Applicant failed to make the two additional payments and the debt remains delinquent.

Applicant moved into her boyfriend's home approximately three years ago and contributes \$800 a month for all of her living expenses, including rent, utilities, phone and other household expenses including food. Applicant's youngest daughter now lives in the home because in January 2004, she was diagnosed with a serious debilitating disease. In 2003, Applicant withdrew \$2,500 from her 401K to help pay for her daughter's college expenses. This action incurred a tax liability that she is repaying, and the debt has a remaining balance of \$1,500. She also took a loan from the same account for \$1,300 as a buffer in the event she got behind in her car payments. She is repaying this loan through a deduction in her paycheck. Her 401K has a balance of approximately \$22,000. After paying all of her expenses and her daughter's expenses, including making monthly payments on her student loan, she has \$600 remaining in expendable income. Applicant's medical insurance covers her daughter. She has not used her expendable income to repay her debts and had no explanation for why she did not use this money.

Applicant signed her security clearance application on November 5, 2003. In response to Question 38, which asks whether she had any debts delinquent more than 180 days, she answered "No."⁽³⁾ Applicant deliberately and intentionally failed to provide truthful information in response to the question. She admitted she was aware that she was more than 180 days past due on some accounts, but was humiliated and stated:

"I knew I was over on some of my accounts. When I filled out my security questionnaire and it got it that question, I was kind of like really humiliated. In a company like I work for, everybody talks about everybody's business even though they're not supposed to as far as security or anything else. And I just answered no because I knew the minute I wrote down what I had, it would go through the place. I was already humiliated like going through my divorce and all that stuff, and I found all that stuff very humiliating. And I just didn't want anyone out there talking about me, and I just did a wrong thing. I knew at the time I really should not do this, but I wrote no anyways."⁽⁴⁾

Applicant has not had any disciplinary issues with her employer during her entire 34-year tenure. She currently does not have any credit cards and pays for items with cash. She has no money in her savings account. She has not sought any financial counseling. Although she has a budget for her current expenses, she does not have one that includes repayment of her delinquent debts. Her total amount of delinquent debts is approximately \$11,700. Applicant wanted a chance to work with her creditors to pay her bills so she could get her security clearance.

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.⁽⁵⁾ The government has the burden of proving controverted facts.⁽⁶⁾ The burden of proof is something less than a preponderance of evidence.⁽⁷⁾ 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 him.⁽⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

No one has a right to a security clearance⁽¹⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹²⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹³⁾ 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 guideline most pertinent to the evaluation of the facts in this case:

Guideline F- Financial Considerations-a security concern exists when a person has significant delinquent debts. An individual who is financially overextended 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, or careless in their obligation 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 is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that 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. The government has established a *prima facie* case for disqualification under Guidelines F and E.

Based on all the evidence, Financial Considerations Disqualifying Condition (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*), apply in this case. Applicant has a history of accumulated delinquent debts that are unpaid.

I have considered all of the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2 (*It was an isolated incident*), FC MC E2.A6.1.3.3 (*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)*), 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), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant has many debts that remain delinquent and therefore are recent. FC MC E2.A6.1.3.1 and FC MC E2.A6.1.3.2 do not apply. Applicant finances became an issue when she was a single mother and not receiving child support. Her financial difficulties initially began due to circumstances outside of her control. However, it is appropriate to consider whether she acted in a reasonable manner when dealing with her financial difficulties. (14) Applicant purchased cell phones for her children and herself years after her divorce. She has failed to pay these debts. Her children are now grown, and she has not asked them to help pay their bills. She has expendable income, but has not made an effort to resolve any of her debts. Although initially she had trouble with her finances due to her divorce, her situation was worsened by her voluntary decision to purchase luxury items she could not afford. I have also considered her daughter's medical problems, but conclude many of Applicant's debts were incurred prior to the medical problems and are not related to her debts. I have considered FC MC E2.A6.1.3.3 and conclude it applies, but it is not enough to overcome the manner she chose to deal with her finances. Applicant was on notice that her delinquent debts were a concern for over seven and a half months, yet she made only minimal attempts to contact some creditors and did not resolve any of the debts listed in the SOR. She has not made a good faith effort to resolve her debts, nor sought counseling for the problem in an attempt to resolve it. Her request to be given a chance to resolve her debts so she can get a security clearance is not a substitute for a consistent record of timely action. She had an opportunity to show some progress toward paying her debts and failed to do so. Therefore, I find FC MC E2.A6.1.3.4 and FC MC E2.A6.1.3.6 do not apply.

Based on all the evidence, I have considered Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*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*), and conclude it applies. Applicant claimed she did not have any delinquent debts over 180 days. She admitted she knew she had outstanding debts at the time she completed the form, but was humiliated and did not want others to know.

I have considered all of the mitigating conditions and especially considered Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.2 (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*), PC MC E2.A5.1.3.3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), and PC MC E2.A5.A.3.5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*) and conclude none apply. Applicant was aware she was not providing a truthful answer because she was concerned about people talking about her. There is no evidence that she voluntarily provided her correct financial status prior to being questioned or before being confronted with the facts. Therefore, PC MC E2.A5.1.3.2 and PC MC E2.A5.1.3.3 do not apply. Applicant realizes she made a grave error in responding untruthfully to her security clearance application. Her recent understanding as to gravity of her error and new understanding as to the seriousness of her responses, exemplifies that she has taken positive steps to reduce her vulnerability to coercion or exploitation. Therefore, I find PC MC E2.A5.1.3.5 applies.

The Whole Person Analysis

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered the whole person in this case. I considered Applicant was a single mother and recently has a child with a serious medical condition. I considered that she has worked for the same company for 34 years apparently without any disciplinary problems. I considered that she was humiliated by her debts and failed to honestly respond to her security

clearance application. I also considered how long her debts have been delinquent, her lack of effort to resolve them, the fact that the items purchased were not necessities and that she has expendable income that has not been budgeted toward resolving her debts. After a careful review of all the facts I find Applicant failed to mitigate the security concerns under Guideline F, financial considerations. I also find that she has successfully mitigated the security concerns under Guideline E, personal conduct. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F is decided against Applicant and Guideline E, is decided for 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: AGAINST APPLICANT

Subparagraph 1.a.-1.k: Against Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For 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.

Carol G. Ricciardello

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. Question 38 states: *In the last 7 years, have you been over 180 days delinquent on any debt(s)?*
4. Tr. 37-38.
5. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).
6. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
7. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
8. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
9. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
10. *Egan*, 484 U.S. at 531.
11. *Id.*
12. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
13. Executive Order 10865 § 7.

14. ISCR Case No. 02-02116 at 4 (App. Bd. Sep. 25, 2003).