

DATE: September 28, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-15960

DECISION OF ADMINISTRATIVE JUDGE

DAVID M. WHITE

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant accumulated eleven charged off and past due debts totaling more than \$11,000 with neither the apparent means nor any stated intention to resolve them in her current financial situation. She did not list these debts when completing her Security Clearance Application, instead listing only two credit card delinquencies totaling \$400 which she claimed were resolved some four years earlier. She admitted to all matters set forth in the Statement of Reasons, without offering explanation or mitigation of the security concerns raised by her history of not meeting financial obligations, inability or unwillingness to satisfy debts, and personal conduct in falsifying material facts on her Security Clearance Application. Clearance is denied.

STATEMENT OF THE CASE

Applicant applied for a security clearance in conjunction with her employment for a defense contractor in December 2003. On March 6, 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, continued, denied, or revoked.

In an undated sworn written statement, Applicant responded to the SOR allegations, admitting the truth of every one, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on May 9, 2006. A complete copy of the file of relevant material (FORM) ⁽¹⁾ was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. No submission was made by the June 17, 2006, deadline. The case was assigned to me on September 7, 2006.

FINDINGS OF FACT

Applicant admitted the truth of every factual allegation set forth in the SOR pertaining to financial considerations under Guideline F (subparagraphs 1.a. through 1.k.) and personal conduct under Guideline E (subparagraphs 2.a. and 2.b.). Those admissions are incorporated herein as a 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 27-year-old employee of a defense contractor seeking to obtain a security clearance. From age 16 to 18, she worked as a cashier for several fast food and grocery retailers. She was unemployed from June 1997 until July 2000, except for a four-month stint as a grocery cashier in early 1999 and four months of work as an administrative assistant for the Census Bureau in early 2000. She then enlisted in the Army, served for just under three years on active duty, and was discharged with the rank of Corporal (E-4) in July 2003. She has never married and has one son born in November 2002. She was hired by her current employer in December 2003 after a five-month period of post-service unemployment.⁽²⁾

Applicant has admitted all eleven allegations of indebtedness contained in the SOR, totaling slightly more than \$11,000.⁽³⁾ She submitted no explanation, no statement of intent to resolve these obligations, and no other mitigating information in connection with these debts.⁽⁴⁾ Many of these debts are in collection or were charged off as a loss.⁽⁵⁾ Her personal financial statement, dated February 15, 2006, does not indicate sufficient means to repay these delinquent debts.⁽⁶⁾

The debts in question can be separated into three groups. The four debts specified in SOR paragraphs 1.h. through 1.k. (comprising three credit cards and a phone bill totaling \$1,210) were incurred during her mostly unemployed period between 1997 and 2000.⁽⁷⁾ There was no payment toward any of these debts during the five years preceding her clearance application and all were in collections. These debts are now more than seven years old and no longer appear on her credit report.⁽⁸⁾ The four debts specified in SOR paragraphs 1.a., 1.b., 1.c. and 1.g. (a credit card, two installment loans and a cable bill totaling \$1,157) were incurred during her service in the Army. She stopped paying two of them before leaving the Army, but continued paying the other two until mid 2004, while she held her current job.⁽⁹⁾ The final three debts specified in SOR paragraphs 1.d. through 1.f. (a VA overpayment, car loan and phone bill totaling \$8,686) were incurred and became delinquent during her current employment while her security clearance application was pending consideration.⁽¹⁰⁾

Applicant listed the debt specified in SOR paragraph 1.j. in response to question 38 (any financial delinquencies in excess of 180 days during the last 7 years), and responded, "No" to question 39 (any current financial delinquencies in excess of 90 days) when she completed her Security Clearance Application on December 29, 2003.⁽¹¹⁾ On that date, the debts specified in SOR paragraphs 1.b., 1.c.⁽¹²⁾, 1.g., 1.h., 1.i. and 1.k. were delinquent in excess of 180 days. Accordingly, they should have been listed in response to both questions 38 and 39. They were not so listed.

In her response to the SOR, applicant admitted to falsifying material facts and deliberately failing to disclose her pertinent debts in her responses to questions 38 and 39.⁽¹³⁾ However, her understanding of the full implications of these admissions is in some doubt. When asked via interrogatory to explain her decision to omit listing these delinquent debts, she stated under oath, "When I initially [sic] completed the EPSQ, I couldn't remember all of the debts because I wanted forget [sic] about them and some of them were so old I forgot so I didn't list them."⁽¹⁴⁾ She went on to say, "I didn't intentionally omit and [sic] information."⁽¹⁵⁾ These statements will be considered, in the Conclusions discussion below, in light of the following additional evidence. None of the debts that should have been listed in response to both questions were older than the two credit card delinquencies which she did list in response to question 38. Those accounts were opened in August and December 1997.⁽¹⁶⁾ It appears that she made only one or two payments totaling \$20 against the initial balance of \$184 on the account opened in August,⁽¹⁷⁾ making this also the account that was delinquent for the longest period. Two of the debts that should have been listed were on accounts opened less than a year before the application date.⁽¹⁸⁾ I find as a fact that she did intentionally omit responsive information in her answers to questions 38 and 39 of the application.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

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 Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (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 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 pertinent 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.

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 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 could mitigate security concerns, pertaining to both adjudicative guidelines are set forth and discussed in the Conclusions section below.

Because protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security," or "clearly consistent with the national interest."⁽¹⁹⁾ For the purposes herein, despite the different language in each, I have concluded both standards are one and the same. In reaching this Decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance. Any doubt in this regard will be resolved in favor of the national security.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship 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. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. 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." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The government has established its case under Guideline F. The eleven admitted and proven delinquent debts set forth in paragraphs 1.a. through 1.k. of the SOR span periods of pre-service employment, active duty with the Army, and post-service employment in Applicant's current position. This pattern of bad debts reflects neither an isolated and resolved financial circumstance nor an isolated or remote time in her life. Her bad debts have consistently increased in number and amount over the past nine years, while employed and unemployed, and even after filing her application for this clearance. Applicant's actions in failing to satisfy her outstanding financial obligations give rise to Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. (*history of not meeting financial obligations*); and FC DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*).

Applicant's financial difficulties remain totally unexplained, exacerbated by her statement that she, "wanted [to] forget about them." Throughout most of the period concerned, she received either military pay or her current wages. Quite noticeable by their absence is any effort by Applicant to seek financial guidance or counseling, or to make a reasonable, timely effort to resolve her outstanding financial obligations. In these circumstances, I find that neither Financial Considerations Mitigating Condition (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)*), nor 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*) applies. Applicant's clear, continuing inaction negates the application of FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant has offered no evidence of extenuation, nor any explanation to mitigate or overcome the government's case as it pertains to allegations 1.a. through 1.k. of the SOR. The evidence leaves me with doubts as to Applicant's security eligibility and suitability. Accordingly, allegations 1.a. through 1.k. of the SOR are concluded against Applicant.

The government has established its case under Guideline E. In December 2003, Applicant completed an SF 86, and falsely answered two questions regarding her financial delinquencies. She admitted in her response to the SOR that she deliberately failed to disclose the true facts for each of those questions. Her earlier quasi-justification in her response to the government's interrogatory is neither credible nor persuasive. None of the improperly unlisted delinquent debts were as old as the two that were listed as resolved under question 38, and several of them were incurred within the year before the application was filed. While it may be true that she did not remember the specifics of each unreported delinquency at the time of completing the Security Clearance Application, her response that, "I wanted [to] forget about them," confirms a deliberate decision not to make any effort to investigate, collect and report what she knew would be responsive information on the application. This corroborates the government's allegation of a knowing and deliberate failure to disclose. Examination of her actions in this respect reveals conduct involving questionable judgment, untrustworthiness, unreliability, and lack of candor. It falls within 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). No Personal Conduct Mitigating Condition applies, none has been asserted by Applicant, and none is even raised by the facts of this case. 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. and 2.b. of the SOR are concluded against Applicant.

Weighing the foregoing determinations within the "whole person concept" I further find that the applicant's conduct:

- (1) reflects an extensive, ongoing and increasing pattern of not meeting her financial obligations and unwillingness to acknowledge or satisfy her debts, together with a completely and intentionally deceptive response to questions concerning those debts on her clearance application;
- (2) was a matter of knowing choice, both incurring additional indebtedness as time went on without satisfying older debts, and responding with false information because she didn't want to make the effort to respond accurately;
- (3) was repetitive and frequent on the bad debts, and recent with respect to both Guidelines;
- (4) concerning bad debts has worsened as she got older and, presumably, more mature;
- (5) was all voluntarily engaged in;
- (6) reflects no effort to seek assistance, counseling or rehabilitation, together with an unbroken pattern of disregard for her obligations;
- (7) was motivated by her choice to use available assets for other purposes and by not wanting to reveal these matters in connection with her application;
- (8) reflects minimal but some potential for pressure, coercion, exploitation or duress; and
- (9) shows every sign of continuing as it has even while this application has been pending.

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

FORMAL FINDINGS

Formal Findings For or Against Applicant on the allegations set forth in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1., Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: Against the Applicant

Paragraph 2., Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

DECISION

In light of all 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.

David M. White

Administrative Judge

1. The government submitted 6 items in support of the allegations.
2. Item 4 (Security Clearance Application, dated December 29, 2003) at 2-6.
3. Item 3 (Undated sworn response to SOR). The FORM incorrectly summarizes the allegations under Guideline F as ten charged off or past due debts in the approximate amount of \$10,000.
4. Item 5 (Applicant's Response to Interrogatory, dated February 15, 2006) at 3 (Note: Pages in Item 5 are numbered consecutively from 2 through 17, with no page 1).
5. *Id.*, at 7-16; Item 6 (Credit Report, dated April 2, 2004) at 74-76 (Note: Pages in Item 6 are numbered consecutively from 72 through 76 with no pages 1 through 71).
6. Item 5, *supra* note 4, at 4.
7. Item 6, *supra* note 5, at 74-76; Item 2, *supra*, note 2 at 3.
8. Item 5, *supra* note 4, at 6-16.
9. *Id.*, at 8, 10-12, 16.
10. *Id.*, at 9, 11, 15-16.
11. Item 4, *supra* note 2, at 9. Although she incorrectly reported that this debt was satisfied in January 2001 under question 38, falsification with respect to this debt was not alleged in SOR paragraph 2.a. so it will not be considered adverse to Applicant under Guideline E. Her question 38 response also identified a resolved credit card debt to another retailer. Her credit reports indicate only that she reported that card has having been stolen.
12. Item 5, *supra* note 4, at 10-12; Item 6, *supra*, note 5, at 75. Although it was more than 240 days delinquent, SOR paragraph 2.a. and the FORM Discussion do not allege this particular debt in connection with falsifying her response to question 38. Accordingly, it will not be considered adverse to Applicant on that issue.
13. Item 3, *supra* note 3, at 2.
14. Item 5, *supra* note 4, at 3.

15. *Id.*

16. Item 6, *supra* note 5, at 73, 75

17. *Id.*, at 75.

18. Item 5, *supra* note 4, at 10-12.

19. The Directive, as amended by Change 4, dated April 20, 1999, uses "clearly consistent with the national interest" (Sec. 2.3.; Sec.2.5.3.; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.; Sec. E3.1.26.; and Sec. E3.1.27.), "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.).