

DATE: October 18, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-00599

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 49 years old and has served as a systems engineer since November 2004. Her outstanding delinquent debts total approximately \$18,133 and she admits to debts totaling \$17,733. She deliberately falsified questions on her security clearance application when divulging information about her financial situation. Applicant has not mitigated security concerns. Clearance is denied.

STATEMENT OF THE CASE

On December 15, 2004, Applicant applied for a security clearance and completed a Security Clearance Application (SF 86).⁽¹⁾ On June 14, 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 or revoked.

In a sworn statement dated July 10, 2006, Applicant responded to the SOR allegations and elected to have her case decided on the written record in lieu of a hearing.⁽²⁾ Department Counsel prepared the Government's written case on July 28, 2006. A complete copy of the file of relevant material (FORM)⁽³⁾ was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She had 30 days to respond to the FORM, and her response was due on September 8, 2006. She chose not to respond. The case was assigned to me on September 25, 2006.

FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to financial considerations under Guideline F cited in the SOR, subparagraphs 1.a through 1.e, and she denied the factual allegation set forth in the SOR, subparagraph 1.f. Applicant denied the factual allegations pertaining to personal conduct under Guideline E cited in the SOR, subparagraphs 2.a and 2.b. Those admissions are incorporated herein as 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 findings of fact:

Applicant is a 49-year-old systems engineer who has worked for a defense contractor since November 2004. She commenced her college education in August 1979, and was awarded her degree in 1982. She married in 1981 and does not have children.

A January 19, 2006, credit bureau report, which serves as the basis of allegations in the SOR, indicated that Applicant had six delinquent debts, totaling approximately \$18,133. The debts at issue are these:

¶ **1.a/Collection Agency (\$3,679)** Account placed for collection in about May 2001. Applicant indicated that this account is the same as the account in ¶ 1.d *infra*.⁽⁴⁾ This debt was listed as at least 90 or 180 days delinquent. The debt has not been satisfied.

¶ **1.b/Bank Debt (\$744)** Account charged off as a bad debt in about June 2001. This debt was listed as at least 90 or 180 days delinquent. The debt has not been satisfied.

¶ **1.c/Bank Debt (\$4,783.95)** Judgment entered on February 19, 2004. This debt was listed as at least 90 or 180 days delinquent. The debt has not been satisfied.

¶ **1.d/Collection Agency (\$3,480.96)** Judgment entered on October 13, 2004. Applicant indicated that the account is the same as ¶ 1.a *supra*.⁽⁵⁾ The debt has not been satisfied.

¶ **1.e/Collection Agency (\$5,045)** Judgment entered in September 2005. Applicant indicated she was not aware of the judgment until she received the SOR.⁽⁶⁾ She stated she has contacted the company to set up a payment plan. The record is devoid of evidence of payment. The debt has not been satisfied.

¶ **1.f/Eye Center (\$400)** Applicant disputes the debt and states that it was paid in full.⁽⁷⁾ No evidence of payment was proffered.

When completing her SF 86 in December 2004, Applicant answered "no" to the questions regarding whether in the last seven years she had been more than 180 days delinquent on any debts or was she currently more than 90 days delinquent on any debts.⁽⁸⁾ In fact, she had both. She denies these allegations but has not proffered any evidence to support her position.

Applicant completed interrogatories on March 30, 2006, pertaining to her financial situation. A Discover Card charge for \$5,656 was listed in the interrogatories as 120 days delinquent.⁽⁹⁾ Her bill for the account shows a payment of \$175.00 as of the closing date of March 20, 2006. Her next payment due date was April 19, 2006, with a minimum payment of \$457. The bill does not show a past due or late payment.

Applicant stated she is making an effort to pay off her delinquent debts. She also contends she has not shirked her financial responsibilities because she did not file for bankruptcy to get out of paying these debts off.⁽¹⁰⁾ She indicated she has health insurance and monthly medical costs of more than \$300, but she did not elaborate further on that issue.⁽¹¹⁾

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 the 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.⁽¹²⁾ The Government has the burden of proving controverted facts.⁽¹³⁾ The burden of proof is something less than a preponderance of evidence.⁽¹⁴⁾ 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

her.⁽¹⁵⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁶⁾

No one has a right to a security clearance⁽¹⁷⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁸⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹⁹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽²⁰⁾ 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 guidelines most pertinent to the evaluation of the facts in the case:

Guideline F (Financial Considerations): *The Concern:* 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.

Guideline E (Personal Conduct): *The Concern:* 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 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, and I reach the following conclusions.

Financial Considerations

Under Guideline F, a security concern exists for an individual who is financially overextended. The person 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 unconcerned, negligent, or careless in properly handling and safeguarding classified information. Applicant has a history of financial problems. Her current delinquent debts total approximately \$18,133, of which she has admitted to \$17,733 in liability. Thus, Financial Considerations Disqualifying Conditions (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.

Various conditions can mitigate security concerns arising from financial difficulties. Applicant's delinquent debts total

\$18,133. She alleges that one debt totaling \$400 is paid in full, but has not proffered evidence of payment. Applicant also failed to provide any evidence as to what caused her debts to initially become delinquent. Although she mentioned medical costs of \$300 per month, she did not provide any explanation of how this should mitigate her financial situation. Thus, I cannot find that Financial Considerations Mitigating Conditions (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*), or FC MC E2.A6.1.3.6 (*the individual initiated a good faith effort to repay overdue creditor*) apply. Applicant has not mitigated the Government's case. Accordingly, allegations 1.a through 1.f of the SOR are concluded against Applicant.

Personal Conduct

Personal conduct is always a security concern because it asks the central question whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Having financial problems is the type of personal conduct which causes security concerns. While there are no express disqualifying conditions under personal conduct guideline that cover judgment lapses associated with financial difficulties, the core judgment and reliability concern of the guideline is implicit in Applicant's past troubles with finances. Applicant denied that she deliberately falsified questions in the SF 86 that asked if she had delinquent debt that was 90 or 180 days past due. Consequently, Personal Conduct Disqualifying Conditions (PC DC) E2.A5.1.2. (*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*) applies. Based on the record before me, none of the available Personal Conduct Mitigating Conditions apply in the 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.

I have considered all the evidence in the case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I conclude that Applicant has not mitigated security concerns because of her delinquent and unpaid debts totaling approximately \$18,133 together with the deliberate falsification of her SF 86. Applicant did not provide any evidence to substantiate that she either paid a debt or has made arrangements to pay off any debts. Likewise, she failed to elaborate about her medical condition or costs, which might have been used in mitigation. Applicant could benefit from credit counseling to get her finances under control since she is adamant that bankruptcy is not an option. Based on the evidence of record, however, it is not clearly consistent with the national interest to grant Applicant a security clearance. 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 Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph one. 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

Paragraph 2. Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

DECISION

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

Jacqueline T. Williams

Administrative Judge

1. Item 4 (Security Clearance Application, dated December 15, 2004).
2. Item 3 (Applicant's Answer, dated July 10, 2006).
3. The Government submitted six items in support of the allegations in the SOR.
4. Item 3, *supra*, at note 2.
5. *Id.*
6. Item 6 (Applicant's Response to DOHA Interrogatories, signed on March 30, 2006) at 3.
7. Item 3, *supra*, at note 2.
8. Question "38. Your Financial Delinquencies - 180 days In the last 7 years, have you been over 80 days delinquent on any debt(s)?" and Question "39. Your Financial delinquencies - 90 days Are you currently over 90 days delinquent of any debt(s)?"
9. Item 6, *supra*, note at 6. The SOR did not allege the Discover Card account was past due.
10. Item 6, *supra*, note 6.
11. *Id.*
12. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
13. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
14. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
15. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.
16. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.
17. *Egan*, 484 U.S. at 531.
18. *Id.*
19. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

20. Executive Order 10865 § 7.