

DATE: November 7, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ADP Case No. 06-02973

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr. Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has had a history of overdue debts that have not been resolved. Additionally, Applicant's credibility is suspect since she knew or should have known that the information that she provided to the Government in a Questionnaire for Public Trust Positions (QPTP) on August 16, 2004, regarding her indebtedness, was materially incorrect and incomplete. Mitigation has not been shown. Applicant's eligibility for assignment to a sensitive position is denied.

STATEMENT OF THE CASE

On May 16, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that Applicant is eligible for assignment to a sensitive position and recommended referral to an Administrative Judge to make a determination on this issue.

In a signed and sworn statement, dated June 6, 2006, Applicant responded to the SOR allegations (RSOR). She requested that his case be decided on the written record in lieu of a hearing.

On July 12, 2006, Department Counsel prepared the Department's written case. A complete copy of the File of Relevant Material (FORM) was provided to Applicant, and she was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due by August 23, 2006, but Applicant filed no response to the FORM. The case was assigned to this Administrative Judge on November 3, 2006.

Department Counsel offered eight documentary items (Exhibits 1-8), which have been admitted without objection. Applicant offered no documentary evidence into the record.

FINDINGS OF FACT

In the SOR, the Government alleges concern under Adjudicative Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. The SOR contains 12 allegations, 1.a., through 1.l., under Guideline F and one allegation, 2.a., under Guideline E. In her RSOR, Applicant has admitted every SOR allegation (Exhibit 2). The admitted allegations are incorporated herein as findings of fact.

Since this matter is being decided without a hearing, my evaluation is necessarily limited to the contents of the various documents that are found in the case file. After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the FORM, and the admitted documents, and upon due consideration of that evidence, I make the following additional findings of fact:

According to the information furnished in Applicant's QPTP, executed on August 16, 2004, (Exhibit 4), Applicant is 32 years old. She is married and has three children. Applicant is an employee of a defense contractor who seeks access to classified information.

Paragraph 1 (Guideline F - Financial Considerations)

The SOR lists 12 allegations of overdue debts, 1.a. through 1.l., under Adjudicative Guideline F totaling approximately \$10,000. As stated above, Applicant's has admitted each allegation (Exhibit 2). No evidence has been introduced to indicate that any of these debts has been resolved or even reduced. The debts will be listed in the same order as they were in the SOR:

- 1.a. This overdue debt to Creditor 1 is cited in the SOR in the amount of \$172.
- 1.b. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$1,145.20.
- 1.c. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$50.48.
- 1.d. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$524.
- 1.e. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$5,523.35.
- 1.f. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$388.
- 1.g. This overdue debt to Creditor 7 is cited in the SOR in the amount of \$625.18.
- 1.h. This overdue debt to Creditor 8 is cited in the SOR in the amount of \$251.
- 1.i. This overdue debt to Creditor 9 is cited in the SOR in the amount of \$395.
- 1.j. This overdue debt to Creditor 10 is cited in the SOR in the amount of \$274.
- 1.k. This overdue debt to Creditor 11 is cited in the SOR in the amount of \$564.33.
- 1.l. This overdue debt to Creditor 12 is cited in the SOR in the amount of \$148.

In a signed, sworn affidavit made by Applicant on December 15, 2004, she explained that she first became delinquent in paying her bills in 1995 when her son was ill (Exhibit 5). The illness forced her to work less than full time until April 1997. In July 1998, her daughter was born prematurely, and this again caused her to become overdue on her debts. In her affidavit, Applicant avers that she has worked on a full time basis from July 1996 until the present.

Applicant also stated in her affidavit that she intends to "fix her credit beginning in Jan 05."

Yet in Exhibit 6, Applicant's reply to Interrogatories propounded to her by the Government, dated April 3, 2006, Applicant responded to each debt by stating, "I have done nothing to resolve this debt."

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because when she completed a signed, sworn QPTP on August 16, 2004, she furnished untruthful information to the Government (Exhibit 4).

Question #22.b. asks, "Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government." Applicant answered "No" to this question. In Exhibit 5, Applicant claimed that she answered "No" to question #22.b. because "[Applicant] did not have any government loans delinquent at the time." Clearly, the question asked for all loans or financial obligations, not just those to the Federal Government.

At the time she completed the QPTP, Applicant had been over 180 days delinquent on all of the debts listed above, as 1.a. through 1.h., which totaled more than \$8,600. She should have answered "Yes" to this question and included all of these debts that were more than 180 days overdue.

POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only 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."

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in DoD 5200.2-R. "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." DoD 5200.2-R, ¶ C6.1.1.1. Appendix 8 of the Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

As set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of alcohol abuse and criminal conduct that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future."

The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to Guidelines F and E:

(Guideline F - Financial Considerations)

The Government has established its case under Guideline F. The record evidence clearly establishes Applicant's long history of indebtedness, and there is no evidence that Applicant has resolved these overdue debts.

Applicant's overall conduct pertaining to her financial obligations falls within Financial Considerations Disqualifying Condition (DC) (E2.A6.1.2.1.), and DC (E2.A6.1.2.3.), a history of not meeting financial obligations, and an inability or unwillingness to satisfy debts. I find that no Mitigating Condition (MC) is applicable to this case.

Until Applicant makes a good-faith effort to resolve her debts, and she can establish a record of financial responsibility and stability, concerns will continue to exist under Guideline F. I resolve Guideline F against Applicant.

(Guideline E -Personal Conduct)

With respect to Guideline E, the evidence establishes that Applicant knew or should have known that she provided false material information to the Government in response to a question on the QPTP that she signed on August 16, 2004. She should have answered "Yes" to question #22.b. and included all of the debts listed in the SOR that had been more than 180 days overdue.

In reviewing the DCs under Guideline E, I conclude that DC E2.A5.1.2.2. applies because the information that Applicant provided in her QPTP was known or should have been known by her to be omissions and concealment of relevant and material facts. No MCs apply.

In this case, Applicant failed to offer any independent evidence indicating that she has reformed and is now reliable and trustworthy. This precludes a finding that it is now clearly consistent with the national interest to grant her access to classified information. I resolve Guideline E against Applicant.

FORMAL FINDINGS

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.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against 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 Applicant's eligibility for assignment to sensitive duties.

Martin H. Mogul

Administrative Judge