

DATE: December 11, 2006

In re:

SSN: -----

Applicant for Trustworthiness Determination

P Case No. 06-04108

DECISION OF ADMINISTRATIVE JUDGE

JUAN J. RIVERA

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of failing to meet her financial obligations dating back to 1998. As of the date she answered the SOR, she had 19 accounts, totaling approximately \$21,008, that had been delinquent for many years. Except for payments made as a result of garnishments of pay resulting from judgments, she presented no evidence of efforts to settle, pay, or otherwise revolve her delinquent debts. Although she established circumstances beyond her control that mitigate the security concern to a certain extent, Applicant's evidence is insufficient to show she is in control of her finances, not overextended, and that she has a track record of financial responsibility. Eligibility for assignment to public-trust position is denied.

STATEMENT OF THE CASE

On June 27, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline F (Financial Considerations). The SOR informed Applicant that, based on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant her eligibility for a public-trust position. [\(1\)](#)

On July 21, 2006, Applicant answered the SOR (Answer) and admitted all the allegations, except for allegation 1.r. She denied allegation 1.r, and requested a clearance decision based on the written record without a hearing. On August 25, 2006, Department Counsel prepared a File of Relevant Material (FORM) which was mailed to Applicant on August 31, 2006. She acknowledged receipt of the FORM on September 8, 2006, and did not object to anything contained in the FORM or submit additional information for consideration within the 30-day period provided to her. On November 7, 2006, the case was assigned to me.

PROCEDURAL ISSUES

In the FORM, the government moved to amend the SOR by striking the introductory first paragraph on page one, and

substituting for a similar introductory paragraph clarifying the ADP-II position and the applicable directive, DOD Directive 5220.6, dated January 2, 1992. The amendment is granted as requested.

FINDINGS OF FACT

Applicant's admissions are incorporated herein as findings of facts. After a thorough review of the pleadings and the evidence, I make the following additional findings of facts:

Applicant is a 32-year-old customer service representative working for a government contractor. She has never been married and has two children, a boy age nine and a girl age 11.⁽²⁾ In April 2004, Applicant was hired by a Department of Defense (DOD) contractor, and requires eligibility for assignment to public-trust position to continue her employment. There is no evidence Applicant has mishandled or compromised classified information while at her current job.

A review of the CBRs of record showed that in 2004 Applicant had 23 accounts that were either delinquent and/or charged off as bad debts. The 2005 CBR reflects two legal judgments imposed against her as a result of delinquent accounts, and 22 accounts which were either delinquent and/or charged off as bad debts. Finally, the 2006 CBR showed two legal judgments and 12 delinquent and/or charged off debts. The information contained in the three CBRs, in addition to information provided by Applicant in her December 2004 statement, and her response to the government interrogatories form the basis for the 19 SOR allegations. The total amount owed, based on the 19 SOR allegations is \$22,066. As noted above, Applicant disputed and denied allegation 1.r, owing in the amount of \$263. However, she presented no evidence, other than her statement of December 2004 and her response to the interrogatories, to corroborate her claims that she has in fact disputed the debt, or that the debt is not a valid financial obligation.

Applicant provided no evidence that she had attempted to pay, settle, or otherwise resolve any of the delinquent debts included in the SOR. The only payment information provided concerned two garnishments of pay being collected since 2004 as a result of two legal judgments levied against Applicant.

In her response to the SOR, dated July 21, 2006, Applicant provided a statement in which she established circumstances beyond her control that contributed to her financial problems. Her son's father left her in 1998 with most of the household financial obligations. She is a single mother of two who receives limited child support from her son's father. She claimed her earnings are not sufficient to pay for her family living expenses and her old debts. She stated her day care expenses average \$800 a month with a monthly income of approximately \$1,200. The majority of her delinquencies were for recurring medical services provided to her children when they were not insured, or for treatment not covered by their insurance. Applicant claimed she has been working second jobs to augment her income, but the \$300-\$500 a month garnishment of pay limits her ability to pay any debts. Additionally, she was unemployed from February 2004 to April 2004.

Applicant claimed she is not ignoring her debts, and stated that it is very difficult to pay her debts when she is barely surviving. She also claimed to be developing a strict budget, cutting costs, and looking to further her education and seeking a better paying job to resolve her financial situation. Applicant averred she is not a security risk, and submitted in support of her claim her good work performance. She has worked as a manager of a store and several customer service related jobs where she has received accolades for her good performance.

POLICIES

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's eligibility for access to classified information. The administrative judge must take into account both disqualifying and mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. The guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive, and the whole person concept. Having considered the record evidence as a whole, I conclude Guideline F (Financial Considerations)⁽³⁾ is the applicable relevant adjudicative guideline.

BURDEN OF PROOF

The purpose of a security clearance decision is to determine whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information. ⁽⁴⁾ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own.

The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish by substantial evidence ⁽⁵⁾ a prima facie case that it is not clearly consistent with the national interest for the applicant to have access to classified information. The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries a heavy burden of persuasion. ⁽⁶⁾ The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security. ⁽⁷⁾

CONCLUSIONS

Under Guideline F (Financial Considerations), a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk to engage in illegal or unethical acts to generate funds to meet financial obligations. ⁽⁸⁾ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his/her obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life can often indicate how a person may behave in other aspects of life.

Applicant has a history of failing to meet her financial obligations dating back to 1998. In December 2004, she was confronted by a government investigator about her financial problems, and was made aware of the government's concerns about her financial situation. She stated her intent to begin paying her debts as soon as the garnishments of her pay were paid off.

As of July 2006, when she submitted her response to the SOR, Applicant still had 19 outstanding delinquencies owing approximately \$22,066, most of which she has been carrying since 1998. Applicant's financial problems are recent, not isolated, and ongoing. Applicant's unwillingness or inability to honor her financial obligations is evidenced by the number and value of the delinquent debts she has been carrying for years, and her failure to show meaningful efforts to repay creditors or otherwise resolve her financial situation. 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 raised mitigating factors that are circumstances beyond her control contributing to her inability to pay her debts -- i.e., the separation from her father's son in 1998, she is a single mother of two children with limited income, her children's recurrent medical care requirements, and she lost her job and was unemployed for several months in 2004. 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, unexpected medical emergency, divorce or separation)* applies.

Notwithstanding, Applicant's evidence is not sufficient to show she has dealt responsibly with her financial obligations. Other than the payments made through the court-imposed garnishment of pay, Applicant presented little evidence of paid debts, settlements, negotiations, payment plans, budgets, financial assistance/counseling, or other efforts to resolve her financial situation. Based on Applicant's information, I find she is financially overextended and cannot pay her financial obligations. Furthermore, there is no information as to how she intends to prevent her financial difficulties from happening again. Applicant's financial history and lack of favorable evidence preclude a finding that she has a track record of financial responsibility. Applicant's evidence shows she is not in control of her financial situation and it is likely she will continue to have financial problems for some time to come.

I have carefully weighed all evidence, and I applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines. I specifically considered Applicant's good job performance, her age, the circumstances contributing to her financial problems, Applicant's statements, her limited efforts to rectify her financial situation, and the fact that there is no evidence that she ever mishandled or caused the compromise of classified information. Considering all available information, and the whole person concept, I find Applicant has not mitigated the Guideline F security concern.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Financial Considerations (Guideline F) AGAINST APPLICANT

Subparagraphs 1.a - 1.s: 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 a public-trust position. Eligibility is denied.

Juan J. Rivera

Administrative Judge

1. Required by Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (Directive), as amended.
2. Office of Personnel Management Public Trust Position Application, Standard Form (SF) 85P.
3. Directive, ¶ E2.A6.1.1.
4. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
5. ISCR Case No. 98-0761, at p. 2 (December 27, 1999)(Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.); ISCR Case No. 02-12199, at p. 3 (April 3, 2006)(Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.); Directive, ¶ E3.1.32.1.
6. *Egan*, 484 U.S. 518, at 528, 531.
7. *See Egan*; Directive, ¶ E2.2.2.
8. Directive, ¶ E2.A6.1.1.