

DATE: January 16, 2007

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-05376

DECISION OF ADMINISTRATIVE JUDGE

MARC E. CURRY

APPEARANCES

FOR GOVERNMENT

Fahryn E. Hoffman, Esq., Department Counsel

John Glendon, Esq.

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's accrual of approximately \$77,000 of delinquent debt over the past 10 years generates a security concern, which she failed to mitigate. Clearance is denied.

STATEMENT OF THE CASE

On June 12, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it was clearly consistent with the national interest to grant or continue a security clearance. ⁽¹⁾ The SOR alleged facts which raise a security concern under Guideline F (financial considerations). Applicant answered the SOR on June 28, 2006, and requested a hearing.

The case was assigned to me on September 6, 2006. DOHA issued a notice of hearing on September 27, 2006, scheduling it for October 26, 2006. The hearing was held as scheduled. During the hearing, I received six government exhibits, 13 Applicant exhibits, and the testimony of Applicant. At the conclusion of the hearing, I left the record open through November 17, 2006, for Applicant to submit additional exhibits. On November 13, 2006, she submitted three additional exhibits which I incorporated into the record. DOHA received the transcript on November 13, 2006.

FINDINGS OF FACT

Applicant's admissions are incorporated as findings of fact. In addition, I make the following findings of fact.

Applicant is a 43-year-old, single woman with no children. She has two years of college education in addition to a certification in network information security. Currently, she works as a network security engineer. ⁽²⁾ For the past two years, she has earned between \$54,000 and \$70,000 annually. ⁽³⁾

Applicant's financial problems began in approximately 1985 while a student in college. At the time, her income was lower than her expenses. In the late 1980s, she also began to accrue federal income tax delinquencies.⁽⁴⁾ Her failure to pay her income taxes led to the garnishment of her wages in the early 1990s.⁽⁵⁾ Her continued failure to pay her income taxes prompted the U.S. Internal Revenue Service (IRS) to obtain tax liens against her property in 1997, 1998, 2002, and 2004.⁽⁶⁾

In April 2006, the IRS obtained a lien for \$39,765, and seized all of the funds in Applicant's bank account in the amount of \$2,487.⁽⁷⁾ Since September 2006, she has been making payments to the IRS through a wage garnishment in the amount of \$418 per month.⁽⁸⁾ Currently, she owes approximately \$44,000 in income tax delinquencies.⁽⁹⁾

At the time of the SOR, Applicant also was delinquent in payment on a medical bill, two student loans, and a car note. In addition, she owed \$7,614 to a state agency for a judgment obtained against her in 2001 for a delinquent debt. The record is inconclusive with respect to the nature of the underlying debt that precipitated the judgment.

Applicant satisfied the delinquent medical bill.⁽¹⁰⁾ With respect to the student loans, she stated in her answer to the SOR that she was paying \$100 per month toward their satisfaction.⁽¹¹⁾ At the hearing, she testified that she was not making payments because she contested them.⁽¹²⁾ As for the car note, she stated in her answer to the SOR that she was in the process of arranging a payment plan.⁽¹³⁾ At the hearing, she testified that she could not locate the holder of the car note.⁽¹⁴⁾ The judgment entered on behalf of the state agency remains outstanding in its entirety.

Applicant financed the purchase of a time share for approximately \$7,000 in 2001.⁽¹⁵⁾ As of May 2005, she owed \$2,307 to the holder of the note.⁽¹⁶⁾ In February 2002, she purchased a \$1,500 vacuum cleaner.⁽¹⁷⁾ She also spends \$85 per month to maintain a post office box.⁽¹⁸⁾ On October 31, 2006, five days after the hearing, Applicant retained an attorney to assist her in filing a Chapter 13 bankruptcy.⁽¹⁹⁾

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 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 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. 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.

The following adjudicative guideline is raised:

Guideline F - Financial Considerations: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well

as those which could mitigate security concerns, are set forth and discussed in the conclusions below.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest." ⁽²⁰⁾ In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

The Government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the Government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

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 classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Applicant's loyalty is 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."

CONCLUSIONS

Financial Considerations

Over the years, Applicant accrued significant delinquent debts, and failed to take significant concrete steps to resolve them. Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*), and FC DC E2.A5.1.2.3. (*Inability or unwillingness to satisfy debts*) apply.

I have considered all of the mitigating conditions, and conclude none apply. The only payments Applicant has made toward the satisfaction of her income tax delinquencies occurred through wage garnishments, and on one occasion, the seizure of all of the funds in her bank account. Although her financial problems were originally caused by a lack of adequate income early in her career in the 1980s, she has perpetuated them over the past six years through inattention and financial mismanagement. She provided no evidence that she has either sought financial counseling or developed a payment plan.

Whole Person Concept

Despite earning a steady salary, and having no one to support, Applicant repeatedly failed to develop a payment plan for satisfying her past financial delinquencies. During part of the period in which these debts accrued, she lavished money on a time share vacation property, and made other frivolous purchases such as a \$1,500 vacuum cleaner. Considering this conduct in conjunction with the whole person concept, I conclude Applicant is an unacceptable security risk.

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.: 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.: For Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: 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 a security clearance for Applicant. Clearance is denied.

Marc E. Curry

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Exhibit C, Resume at 1.
3. Exhibit 3, Signed, Sworn, Statement, dated May 23, 2005, at 7; Tr. 66.
4. Tr. 37.
5. Tr. 27.
6. Exhibit 6, History of Judgments and Liens, printed June 5, 2006, at 2-4.
7. Exhibit G, Letter from Applicant's Bank to Applicant, dated April 24, 2006.
8. Exhibit D, Applicant's Pay Stub Covering September 23, 2006 to October 6, 2006. The amount of the garnishment is the first item listed under the column entitled "Deduction."
9. Exhibit N, IRS Account Transcript, dated October 31, 2006.
10. Exhibit L, Receipt of Payment, dated September 11, 2006.
11. Answer, dated June 28, 2006, at 1.
12. Tr. 58.
13. *See* note 11.
14. *See* note 12.
15. Tr. 84.

16. Exhibit 3, Affidavit, dated May 23, 2005, at 7.

17. Tr. 84.

18. Tr. 78.

19. Exhibit O, Letter from Attorney to Applicant, dated October 31, 2006.

20. *See generally*, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.