

DATE: November 28, 2006

In re:

SSN: -----

Applicant for Security Clearance

P Case No. 06-08260

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Since 1998, Applicant and her husband incurred over \$21,422 in delinquent debt. They have not filed state and federal income tax returns since 2001. Most of the financial problems resulted from Applicant supporting her parents when they became ill in 1998. Applicant works a part-time job to meet her monthly expenses but is unable to make payments towards her delinquent accounts. She intends to consult a credit counselor at the end of the year, but currently her financial situation remains unsettled. Applicant deliberately failed to list her delinquent accounts on her trustworthiness application. She has failed to mitigate the trustworthiness concerns raised under financial considerations and personal conduct. Applicant's eligibility for a assignment to a sensitive position is denied.

STATEMENT OF CASE

On September 24, 2004, Applicant submitted an application for a position of public trust, an ADP I/II/III position. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive").⁽¹⁾ On July 14, 2006, DOHA issued Applicant a Statement of Reasons (SOR) detailing the basis for its decision. The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct.

In a sworn statement dated August 7, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on September 6, 2006. A notice of hearing was issued on September 19, 2006, scheduling the hearing for October 5, 2006. The hearing was conducted on that date. The government submitted Government Exhibits (Gov Ex) 1- 5 which were admitted into the record without objection. Applicant testified on her own behalf, and submitted no exhibits. The record was held open until October 19, 2006, to allow Applicant to submit further documents. A 19 page document was timely submitted and marked as AE A and admitted without objection. DOHA received the hearing transcript (Tr.) on October 13, 2006.

FINDINGS OF FACT

In her SOR response, Applicant admits to all the SOR allegations under Guideline F, but denies the overall concern. She denies all of the allegations under Guideline E. Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 43 year old woman employed as a customer service representative for a Department of Defense contractor who is seeking a position of public trust. She has worked for her employer for two years. She has an associates degree. ⁽²⁾ She is married and has one son, age 23, and four grown stepchildren. ⁽³⁾

In 1998, Applicant and her husband started to have financial difficulty. During this time, Applicant took on the responsibility of caring for her parents, both of whom had serious health problems and limited income. At the time, she was only working part-time. Supporting two households put a strain on the family finances. She relied on credit cards to pay daily living expenses. Her husband is retired from the military and is partially disabled. He does not work. ⁽⁴⁾

On September 24, 2004, Applicant completed a Public Trust Position Application (SF 85-P). ⁽⁵⁾ She answered "No" in response to question 20. Your Financial Record - 180 Day Delinquencies which reads: "Are you now over 180 days delinquent on any loan or financial obligation? (Include loans or obligations funded or guaranteed by the Federal Government)." Her background investigation revealed six delinquent accounts with a total approximate balance of \$21,722. ⁽⁶⁾ The accounts included a \$2,756 credit card account charged off in August 2000 (SOR ¶ 1.a); ⁽⁷⁾ a \$3,599 credit card account charged off in June 2003 (SOR ¶ 1.b); ⁽⁸⁾ a \$1,138 credit card account charged off in August 2003 (SOR ¶ 1.c); ⁽⁹⁾ a \$9,091 account related to an automobile repossession charged off in December 2003 (SOR ¶ 1.d); ⁽¹⁰⁾ a \$4,000 debt owed to the Internal Revenue Service for unpaid taxes since 2001 (SOR ¶ 1.e); ⁽¹¹⁾ and a \$1,138 account charged off in August 2004 (SOR ¶ 1.f). ⁽¹²⁾

For the past year and half, Applicant's pay has been garnished for \$204 each pay period by the creditor in SOR ¶ 1.d related to the automobile repossession. She is paid every two weeks. ⁽¹³⁾ She has not made payments towards any of the other delinquent accounts. ⁽¹⁴⁾ With respect to SOR ¶ 1.b, Applicant's credit card was stolen. She contacted the credit card company and closed the account. She admits that a balance remains on the account. ⁽¹⁵⁾ Applicant and her husband have not filed state and federal income taxes for tax years 2002-2005. She claims they did not file tax returns based on financial hardship. ⁽¹⁶⁾

In a signed sworn statement provided on January 28, 2005, Applicant indicated that she and her husband intended to file for bankruptcy. ⁽¹⁷⁾ They later decided not to file for bankruptcy because they did not believe it would be beneficial to their circumstances. ⁽¹⁸⁾ Around April 2006, they consulted a representative from a consumer credit counseling agency and were getting their papers together to work out a repayment plan. ⁽¹⁹⁾ At hearing, Applicant indicated they had not entered into a repayment program. She is getting ready to meet with a credit counselor and hopes to have a plan within the next 30 days. ⁽²⁰⁾

Applicant works a part-time job in order to help meet expenses. ⁽²¹⁾ She earns \$1,992 a month from her full-time job and \$248 a month from her part-time job. Her husband receives a monthly military retirement check of \$800. Their monthly expenses include a \$600 mortgage payment and a \$500 car payment. Her husband's car is paid off. They have no open credit card accounts. ⁽²²⁾ She is able to pay their monthly expenses but claims there is no money left over which could be applied towards their delinquent accounts. ⁽²³⁾

Applicant indicated that she did not list her delinquent debts on her public trust position application because she did not recall the debts when she filled out the security clearance application. ⁽²⁴⁾ At hearing, she admitted that she was aware that she owed the IRS for back taxes. She did not intend to hide the debts from the government. She believes the government knows about everything and you cannot hide anything from the government. ⁽²⁵⁾

Applicant is highly regarded by her supervisors and co-workers at her full-time job. Her supervisor states that she is an

asset to the company. She describes Applicant as bright, self-motivated and hard-working.⁽²⁶⁾ Her team lead states that she displays a high degree of responsibility and integrity. She is organized, efficient, and willing to do whatever is needed to get a particular task finished.⁽²⁷⁾ She has received numerous awards and recognition based on her superior performance.⁽²⁸⁾ Her performance evaluations indicate that she meets day-to-day expectations.⁽²⁹⁾

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."⁽³⁰⁾ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline F - Financial Considerations - An individual who is financially overextended 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 irresponsible, unconcerned, or careless in their obligation to protect classified or sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Guideline E - Personal Conduct - 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 trustworthiness concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance."⁽³¹⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽³²⁾ An administrative judge should consider the following factors: (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.⁽³³⁾

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.⁽³⁴⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽³⁵⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽³⁶⁾ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.⁽³⁷⁾ The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F - Financial Considerations, and Guideline E - Personal Conduct.

Financial Considerations

Based on all the evidence, 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 to Applicant's case. Applicant had difficulty meeting her financial obligations since 1998. Currently, she has six delinquent debts with an approximate total balance of \$21,422, including back taxes from 2001.

I considered the Financial Considerations Mitigating Conditions (FC MC). Applicant's delinquent debts remain outstanding. Therefore, I cannot apply FC MC E2.A6.1.3.1 (*The behavior was not recent*), and FC MC E2.A6.1.3.2 (*The behavior was isolated*) because she still carries a significant amount of delinquent debt.

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)*) applies. Applicant and her husband encountered financial problems, in part, as a result of providing for her parents and partly, due to her husband's inability to work due to his partial disability. Although MC 3 applies which explains the cause of the debt, an applicant's actions towards resolving the debt should be considered as well.

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 under control*) does not apply. Applicant indicates that she intends to enter into a repayment plan with consumer credit counseling within the next 30 days. A promise to pay in the future is not sufficient to mitigate the financial considerations concern. Aside from the debt alleged in SOR ¶ 1.d which is being repaid through garnishment of Applicant's wages, all of the other debts remain outstanding. She has not taken steps to resolve these debts. At hearing, Applicant admitted that she and her husband have not filed federal and state income taxes since 2001. As a result, she and her husband may have more outstanding tax liabilities. Applicant's financial problems remain. It is unlikely they will be resolved in the near future.

FC MC E2.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is not applicable. In January 2005, Applicant indicated that she and her husband were filing for bankruptcy. In April 2006, she indicated that they would soon enter into a repayment plan with a credit counseling service. Both of these options are legally permissible ways to resolve financial problems. Unfortunately, Applicant did not pursue either of these actions prior to the hearing. She made no attempts to resolve any of the delinquent accounts or the income tax situation. I cannot conclude that she made a good-faith effort to resolve her debts.

Applicant has not mitigated the financial considerations trustworthiness concern. Guideline F is decided against Applicant.

Personal Conduct

Personal conduct under Guideline E is always a trustworthiness concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified and/or sensitive information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a trustworthiness concern. It is deliberate if it is done knowingly and willfully.

In this case, Applicant explained that she did not list her delinquent debts in response to question 20 on the public trust application because she was not aware of the full extent of the debt. Under cross examination, she admitted to at least being aware of the tax debt. I find that she intentionally withheld information about her delinquent debts in response to question 20 on her public trust application signed by her on September 24, 2004. In an affidavit, dated January 28, 2005, Applicant acknowledges that she has encountered financial problems since 1998 and describes the difficulties of supporting two households during this time. Contrary to her assertions, the evidence indicates that she was aware of her financial situation when she filled out her public trust application.

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) applies. Although Applicant claims that she had no intent to keep her financial problems from the government since she believed that the government already knew this information, she was required to provide a truthful answer to question 20. When she signed the application, she certified that her answers were "true, complete, and correct to best of her knowledge and belief and are made in good faith." However, she admits that she was aware of the delinquent taxes owed but did not list them on her public trust application. I find her actions were deliberate.

I find that none of the mitigating conditions apply under personal conduct. Applicant has failed to mitigate the personal conduct concern. Guideline E is decided against Applicant.

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence and the "whole person" in evaluating Applicant's trustworthiness. An applicant with a good or even exemplary work history may engage in conduct that has negative trustworthiness implications. It is premature to grant Applicant a trustworthiness position based on her deliberate failure to disclose her delinquent debts and her lack of action towards resolving her delinquent accounts. Based on the evidence in the record, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

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: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

DECISION

In light of all of the evidence presented in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

Erin C. Hogan

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended; and Memorandum from the Deputy Under Secretary of Defense Counterintelligence and Security, titled "Adjudication of Trustworthiness Cases," dated November 19, 2004.
2. Tr. at 7; Gov Ex 1.
3. Tr. at 34.
4. Tr. at 31-32; Gov Ex 2 at 3.
5. Gov. Ex. 1.
6. Gov. Ex. 2, 3, 4, 5.
7. Tr. at 20-21; Gov Ex 2 at 1-2; Gov Ex 4 at 2-3; Gov Ex 5 at 2.
8. Tr. at 21; Gov Ex 2 at 1-2; Gov Ex 4 at 2-3; Gov Ex 5 at 2.
9. Tr. at 21-22; Gov Ex 5 at 2.
10. Tr. at 22-23; Gov Ex 5 at 2.
11. Tr. at 23-24; Gov Ex 2 at 4.
12. Tr. at 24; Gov Ex 2 at 5; Gov Ex 4 at 3.
13. Tr. at 22.
14. Tr. at 20-24.
15. Tr. at 21.
16. Tr. at 23-24, 30.
17. Gov Ex 2 at 4.
18. Tr. at 24; Gov Ex 3 at 2.
19. Gov Ex 3 at 2.
20. Tr. at 26-27.
21. Tr. at 32; Gov Ex 3 at 2.
22. Tr. at 28-30.
23. Tr. at 33-34.
24. Tr. at 25; Answer to SOR.
25. Tr. at 25-26.
26. AE A at 2.
27. AE A at 3.
28. AE A at 4-11, 14-19.

29. AE 12-14.

30. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

31. Directive, ¶ E2.2.1.

32. *Id.*

33. *Id.*

34. Directive, ¶ E3.1.14.

35. Directive, ¶ E3.1.15.

36. ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).

37. Directive, ¶ E2.2.2.