

DATE: November 20, 2007

In re:

SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 07-07246
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**DECISION OF ADMINISTRATIVE JUDGE
HENRY LAZZARO**

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has numerous delinquent debts she failed to disclose in a security clearance application she submitted. Clearance is denied.

STATEMENT OF THE CASE

On July 27, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.¹ The SOR, which is in essence the

¹ This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

administrative complaint, alleges security concerns under Guideline F (financial considerations), Guideline E (personal conduct) and Guideline J (criminal conduct). Applicant submitted an undated response to the SOR that was notarized on August 27, 2007. She admitted all allegations contained in the SOR except subparagraphs 1.a-1.f, 1.h-1.i, 1.l-1.p, 1.v, 1.x-1.z, 1.bb-1.ee, 1.gg, 1.ii, 1.mm-1.oo, 1.qq-1.tt, 1.vv-1.ww, 1.aaa-1.ccc, and 3.a-3.c, which she denied, and subparagraph 1.ddd, which she did not respond to at all. Applicant requested a clearance decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on September 5, 2007, that was mailed to Applicant that same date. Applicant acknowledged receipt of the FORM on September 17, 2007, and did not submit an objection or response to the FORM within the 30-day time period provided to her. The case was assigned to me on November 9, 2007.

FINDINGS OF FACT

Applicant's partial admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 38 years old, has two children, ages nine and six, and has been married since May 1997. She attended college from August 1990 until May 1993. The FORM does not indicate whether she received a degree. She has been employed as a photo imaging specialist by a defense contractor since February 2002. She was employed in a similar capacity by a different defense contractor from January 1994 until February 2002. The FORM indicates she has held a secret security clearance since approximately May 1997, and there is no indication any prior action has been initiated to revoke, suspend, or downgrade that clearance.

The SOR alleges 55 debts totaling well over \$30,000.00 that have been submitted for collection, charged off, were past due, and/or resulted in liens or judgments being entered against Applicant. While she denies most of the debts without explanation, and submitted some evidence that several debts have been paid (those alleged in subparagraphs 1.a, 1.d and 1.e), Applicant admitted in her response to the SOR her liability for 20 debts, totaling more than \$20,000.00.

The accounts Applicant admits to include such items as numerous bad checks written for such items as pizzas, an automobile repossession, and multiple revolving charge accounts. Applicant provided no explanation for why she accumulated so many delinquent debts, no plan to resolve any of the admitted delinquent debts, and no reason to expect she will display financial responsibility in the future.

Applicant admits, as alleged in the SOR, to being arrested and charged with passing bogus checks in July 1993 and December 2003. She admitted in the security clearance application contained in the FORM that she paid a fine and made restitution for a bogus check charge in November 2004. There is no information in the FORM to indicate this charge is or is not related to either of the charges alleged in the FORM.

Applicant submitted a security clearance application November 2006, in which she answered "No" to questions asking if she had any property repossessed within the previous seven years, had

any liens placed against her property with the last seven years, had any judgments entered against her in the last seven years, was currently more than 90 days delinquent on any debts, and if she had been more than 180 days delinquent on any debts in the preceding seven years. All of those answers were false. Applicant admitted in her response to the SOR that at the time she submitted the security clearance application she “then knew and sought to conceal” that she was currently more than 90 days delinquent on any debts, and she had been more than 180 days delinquent on any debts in the preceding seven years.

Applicant stated in her response to the SOR that she voluntarily returned the vehicle that was alleged to having been repossessed and was unaware of the lien as explanations for her inaccurate responses to the security clearance questions asking about those events. She did not provide any explanation as to why she answered no in response to the security clearance application question asking about judgments being entered against her and then denied the SOR allegation relating thereto.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person’s eligibility to hold a security clearance. Chief among them are the disqualifying conditions and mitigating conditions for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. 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 this policy guidance. Considering the evidence as a whole, Guideline F, pertaining to financial considerations, Guideline J, pertaining to criminal conduct, and Guideline E, pertaining to personal conduct, with their respective disqualifying and mitigating conditions, are most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.² The government has the burden of proving controverted facts.³ The burden of proof in a security clearance case is something less than a preponderance of evidence⁴, although the government is required to present substantial evidence to meet its burden of proof.⁵ “Substantial evidence is more than a scintilla, but

² ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

³ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁴ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

less than a preponderance of the evidence.”⁶ 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.⁷ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁸

No one has a right to a security clearance⁹ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁰ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹¹

CONCLUSIONS

Under Guideline F, a security concern exists when a person has significant unpaid debts. Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

As alleged in the SOR and evidenced by Applicant’s credit reports, Applicant allowed numerous accounts, totaling more than \$30,000.00, to become past due, charged off as bad debts, submitted for collection, and/or result in liens and judgments being filed against her. All but three accounts remain unsatisfied. Disqualifying Conditions 19(a): *Inability or unwillingness to satisfy debts* and 19(c): *A history of not meeting financial obligations* apply.

There is no evidence in the FORM to support the allegation alleged in subparagraph 1.ddd. Applicant submitted evidence to support finding she has paid the debts alleged in subparagraphs 1.a, 1.d and 1.e. However, she submitted no evidence other than her unexplained denials to indicate any payments have been made on any of the other listed accounts, that any of the accounts are not properly alleged in the SOR, that she has made any effort to resolve any of those accounts, or that she has any plan to resolve any of the accounts. Accordingly, I have considered all Guideline F mitigating conditions and none apply.

⁶ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

⁷ ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

⁸ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

⁹ *Egan*, 484 U.S. at 528, 531.

¹⁰ *Id* at 531.

¹¹ *Egan*, Executive Order 10865, and the Directive.

Criminal conduct under Guideline J is a security concern because criminal conduct creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, criminal conduct calls into question a person's ability or willingness to comply with laws, rules and regulations.

Applicant was charged with bogus checks in 1993 and 2003. The FORM does not provide any further information about the 1993 charge. The SOR allegation to which Applicant admitted alleges Applicant pled not guilty to that charge and it was dismissed. While Applicant admitted in the security clearance application she submitted that she was fined and required to pay restitution for a bogus check charge in 2004, there is no evidence sufficient to connect that admission to either of the SOR allegations. As a result, there is insufficient evidence in the FORM to establish that the two charges alleged create a security clearance concern.

Applicant admits she deliberately provided false information in response to two questions asking about her financial status when she submitted a security clearance application in November 2006. As discussed below, I also find she deliberately provided false information in response to a third question asking about her financial status in that application. The false answers she gave in the security clearance application constitute an offense under 18 U.S.C. § 1001. Disqualifying conditions 31(a): *a single serious crime or multiple lesser offenses*; 31(c) *allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted* apply in this case. I have considered all mitigating conditions under Guideline J and none apply.

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information.

Applicant admitted to deliberately providing false answers to questions inquiring about debts that were more than 90 and 180 days delinquent in the security clearance application she submitted. Although she denied she deliberately provided a false answer to the question inquiring about judgments, she failed to provide any explanation for why she answered the question as she did. Considering the sheer number of judgments entered against her, that unexplained denial is not believable. However, her explanations for answering the questions concerning repossessions and liens do adequately explain her reasons for answering those questions incorrectly.

Disqualifying condition 16(a): *deliberate omission, concealment, or falsification of relevant 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. I have considered all mitigating conditions under Guideline E, and none apply.

The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Having done so, I conclude that Applicant has failed to present sufficient evidence of refutation, extenuation, and mitigation to overcome the case against her. Accordingly, Guideline F, Guideline J and Guideline E are decided against Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline F:	Against Applicant
Subparagraphs a, d & e:	For Applicant
_____ Subparagraphs b & c	Against Applicant
Subparagraphs f-ccc:	Against Applicant
Subparagraph 1.ddd:	For Applicant
_____ SOR ¶ 2-Guideline J:	Against Applicant
Subparagraphs a & b:	For Applicant
Subparagraph c:	Against Applicant
_____ SOR ¶ 1-Guideline E:	Against Applicant
Subparagraphs a & b:	For Applicant
Subparagraphs c - e:	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.

Henry Lazzaro
Administrative Judge