



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



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| In the matter of: |) | |
| |) | |
| _____ |) | |
| SSN: _____ |) | ISCR Case No. 08-10513 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Jennifer Goldstein, Esquire, Department Counsel
For Applicant: -----, Personal Representative

August 31, 2009

Decision

WESLEY, Roger C., Administrative Judge:

Statement of Case

On January 23, 2009, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on February 18, 2009, and requested a hearing. The case was assigned to me on April 15, 2009, and was scheduled for hearing on May 19, 2009. The hearing was convened as scheduled for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, or deny, Applicant's application for a security clearance. At hearing, the Government's case consisted of eight exhibits; Applicant relied on two witnesses (including herself) and eight exhibits. The transcript (I R.T.) of the initial proceeding was received on May

28, 2009; the transcript of the resumed proceeding (II R.T.) was received on July 10, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural Rulings and Evidentiary Issues

At the outset of the hearing, Applicant moved to amend her answer to respond to the allegations covered by subparagraphs 2.a and 2.b. Department Counsel did not interpose any objections to Applicant's motion, and for good cause shown, Applicant was permitted to respond to her answer by inter-lineation. She entered denials to each of the allegations.

Before the close of the hearing, Applicant requested leave to supplement the record with documented payments of her listed debts. For good cause shown, Applicant was granted 13 days, to June 1, 2009, to supplement the record. The Government was afforded three days, to June 4, 2009, to respond. Applicant did not supplement the record.

Prior to the close of the hearing, the Government moved to continue the remainder of the hearing to afford Applicant the opportunity to obtain the services of a certified court-translator to assist her in discerning the questions posed to her by Department Counsel. For good cause shown, the hearing was tentatively convened to June 1, 2009 (R.T., at 137).

On May 27, 2009, JPAS received a confirmation of Applicant's service separation (effective May 27, 2009). Applicant's personal representative advised Department Counsel on June 1, 2009 of Applicant's separation and her corresponding intention not to appear at the rescheduled hearing (II R.T., at 2-3). Because the hearing process had already commenced, DOHA was required to complete the hearing and issue a written decision on the merits in accordance with Section 4.41 of the Directive.

A conference call was convened with the parties on May 26, 2009, to consider a change in the tentatively rescheduled June 1, 2009 hearing. In this conference call, Department Counsel and Applicant's personal representative (appearing in behalf of Applicant) agreed to a June 24, 2009 date for reconvening the hearing.

At the reconvened hearing on June 24, 2009, Department Counsel appeared on behalf of the government. Applicant and her representative did not appear or provide any documented or oral reasons for her non-appearance.

Department Counsel was afforded leave to summarize the Government's case in a closing argument. Department Counsel cited prejudice from Applicant's failure to afford her the opportunity to complete her cross-examination in the reconvened hearing as good cause to enter an administrative default. Alternatively, Department Counsel urged denial of Applicant's clearance application on substantive grounds under both controlling guidelines: financial considerations and personal conduct.

In accordance with the guidance furnished by Section 4.41 of the Directive, and the absence of any countervailing guidance from the Appeal Board, disposition of the case must be resolved based on a thorough review of the evidence compiled to date.

Summary of Pleadings

Under Guideline F, the SOR alleges that Applicant (a) filed for Chapter 7 bankruptcy relief in August 1992 and received her discharge in December 1992; (b) had a judgment entered against her in April 2007 by creditor 1.b in the amount of \$4,171; (c) had a judgment entered against her in May 2007 by creditor 1.c in the amount of \$4,238; and (d) accumulated six delinquent debts exceeding \$36,000.

Under Guideline E, the SOR alleges that Applicant: (a) omitted her outstanding judgments when answering question 27(d) of her security clearance application of February 2008 and (b) omitted her debts delinquent over 180 days, and 90 days currently delinquent, respectively, when responding to questions 28(a) and 28(b).

For her response to the SOR, Applicant admitted to petitioning for Chapter 7 bankruptcy relief and receiving her discharge of financial liability. She admitted, too, to having outstanding debts with creditors 1.d, 1.e, 1.f and 1.g. But she denied having any outstanding judgments with creditors 1.b and 1.c (claiming she satisfied these judgments), and she denied any outstanding debts with creditors 1.h and 1.i (claiming satisfaction of each of these accounts).

Applicant did not respond to the allegations pertaining to creditors 2.a and 2.b. In her cover letter accompanying her answer, she claimed she did not appreciate the seriousness of her financial delinquencies caused by her husband's business failure, and felt too ashamed to disclose it. She claimed that most of her delinquent debts were solved through collection agencies, and the rest will be settled in a few months with recoveries from her husband's business development.

Findings of Fact

Applicant is a 48-year-old former senior technician of a defense contractor who seeks a security clearance. The allegations covered in the SOR that were admitted by Applicant are incorporated herein and adopted as relevant and material findings. Additional findings follow.

Before 1992, Applicant and her husband (H) operated two businesses. She aided her husband in his operations of one of the businesses (a one-hour photo shop according to her account), but not very much, if at all, according to H's account (*compare* ex. 2; I R.T. at 78-79, 82)); while H managed an electronics business (see ex. 2). H claimed that he handled all of the finances for both businesses (I R.T., at 79-81).

Both Applicant and H accumulated a number of delinquent debts prior to 1992, when business conditions deteriorated for both businesses. Unable to address their

debts with the resources available to them, Applicant and H petitioned jointly for Chapter 7 bankruptcy relief in August 1992 (see ex. 2). In their petition, they scheduled \$268,000 in secured claims, \$6,758 in unsecured priority claims (covering personal and property taxes), and \$236,189 in unsecured, non-priority claims (see ex. 3). Applicant and H received their bankruptcy discharge in December 1992.

Following their bankruptcy discharge, Applicant and H accumulated additional delinquent debts they could not resolve with their available income. H attributes most of these debts to his business failure in 2002. H accepts personal responsibility for these debts, and for sometimes concealing creditor billings from Applicant to avoid upsetting her (see ex. D; I R.T., at 74-80). Applicant never involved herself in H's businesses and had only limited knowledge of the debts associated with his businesses. She and H sold their house to cover their debts, but the sale proceeds were insufficient to satisfy all of their debt delinquencies.

Two of the listed creditors (creditors 1.b and 1.c) obtained default judgments against Applicant and H (see exs. 4 through 8). Records show that creditor 1.b obtained a default judgment in April 2007 in the amount of \$4,171. Creditor 1.c obtained a similar default judgment in May 2007 in the amount of \$4,238.

When asked about the initiated lawsuits of these two creditors, scheduled hearings, and default judgment entries, H assured that the debts and ensuing judgments were his responsibility, and he never kept Applicant informed of litigation developments in the two cases (I R.T., at 81-82, 90). He expressed doubt, in turn, that she was aware of the judgments obtained by the same creditors (I R.T., at 80-81).

Based on the presented evidence, neither H nor Applicant mounted any defenses to these creditor 1.b and 1.c suits, and both creditors obtained default judgments against Applicant and H (I R.T., at 87-89). These judgments remain unsatisfied (see exs. 4 through 8 and A).

In an interview with an agent from the Defense Investigative Service (DIS) in October 1998, Applicant acknowledged her awareness of five debts listed in her credit report since her bankruptcy discharge. Although H seldom apprised her of the details of specific debts, he did keep her generally informed of their debts (I R.T., at 92, 95).

When told by the interviewing DIS agent of two other unpaid credit card accounts in her credit report, she denied any knowledge of these accounts. She told the agent that she apprised her husband of these two debts, and that H told her that the debts were unpaid medical accounts for services furnished their son in 1993-1994 (see ex. 2). Without any supporting documentation, both Applicant and H claimed these bills should have been paid by their insurance company. Their claims lack probative proof.

Besides the two adverse judgments entered against them, Applicant and H accumulated six additional debts exceeding \$36,000. Credit reports document that Applicant and H accrued seven additional debts exceeding \$32,000 between 2002 and

2007 (see exs. 5 through 8). To date, none of these debts have been satisfied. H attributes these joint and several debts to his failed business (I R.T., at 75). Having turned bill-paying responsibilities over to H, Applicant paid little attention to her bills. H, in turn, neglected Applicant's joint debts, claiming he was too pressed with his troubled finances of his own businesses to address the debts that directly affected Applicant.

To date, Applicant and H have not been able to make any tangible headway in addressing their debts listed in the SOR. H's exhibits do not reflect any payments or payment plans with any of the listed creditors. H assures he handled all of his family's finances, and never shared any of his billing details with his wife (I R.T., at 92-93). Although he made Applicant generally aware of his financial problems associated with his business, he never relinquished control of his direct dealings with the individual creditors.

Both H and Applicant were embarrassed over the "unhealthy state" of their finances (I R.T., at 80-81, 97). H assured that Applicant was generally aware at all times of their financial problems with their creditors (I R.T., at 80, 95). Applicant corroborated H's testimony.

H claims he has achieved some success in 2008 with a new start-up business (I R.T., at 76-77). With his increased liquidity from his business, he hopes to be able to address his listed delinquent debts (I R.T., at 76). Applicant and H project their joint income for 2009 to total around \$160,000 (see ex. G). They estimate expenses to total around \$124,000, and expect to have a net annual remainder of \$36,000 (ex. G). With their added income, they believe they will be able to pay off all of their remaining debts.

Asked to complete an e-QIP in February 2008, Applicant omitted both of her two outstanding judgments (when answering question 27d) and her debts delinquent more than 180 days in the last seven years, and 90 days currently delinquent. H prepared Applicant's answers to the financial questions; however, he did so with Applicant's acquiescence and awareness of their delinquent debts (R.T., at 95). In the certified letter Applicant signed and submitted with her accompanying answer in February 2009, she did not question her delinquent debts in issue, and assured she did not realize the seriousness of the "financial delinquency" caused by H's business failure. She felt "shame to disclose it" (see February 2009 letter that accompanied her answer in exhibit file). She affirmed her signature on this letter at her hearing.

In addressing his own impressions of Applicant's awareness of their delinquent debts, H acknowledged that Applicant was embarrassed about their financial situation and knew that H had lost "a lot of money" (I R.T., at 97). He acknowledged, too, that Applicant knew that he and Applicant had debts over 180 days delinquent in the past seven years and had some debts that were currently over 90 days past due (I R.T., at 98-99).

In her defense, H claimed he prepared the letter and e-QIP answers for her signature (I R.T., at 95-96). But when asked by Department Counsel whether she was

aware of the two judgments and delinquent debts when she signed her e-QIP, and falsely answered “no” to the questions, she initially answered in the affirmative (I R.T., at 105, 114-15). When asked for clarification by Department Counsel, she changed her answers first back to “no,” and then to “yes” again (I R.T., at 117, 121-25).

Before Applicant could answer any more clarification requests from Department Counsel, H objected anew that she did not understand the questioning by Department Counsel (R.T., at 123-24). At this point, the hearing was adjourned to afford Applicant the opportunity to obtain a certified translator to assist her in the resumed hearing (I R.T., at 127-28).

Granted the opportunity to testify on her behalf at the rescheduled hearing, Applicant failed to appear. Based on the documented evidence of Applicant’s financial history and e-QIP omissions of her judgments and delinquent debts, inferences warrant that Applicant possessed general awareness of her delinquent debts covered in the SOR and took no active steps to resolve them, or note any of them in her e-QIP.

Character evidence

Applicant has been a valued employee of her defense contractor employer. She was awarded a certificate of service in November 2006 in appreciation of her valued service to the company over the previous 10 years (see ex. F).

Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision-making process covering DOHA cases. These Guidelines require the judge to consider all of the “[c]onditions that could raise a security concern and may be disqualifying” (Disqualifying Conditions), if any, and all of the “Mitigating Conditions,” if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudicative policy factors are pertinent herein:

Financial Considerations

The Concern: “Failure or inability 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts." Adjudication Guidelines, ¶ 18.

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. AG ¶ 15.

Burden of Proof

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common-sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted facts alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case. Because Executive Order 10865 requires that all security clearances be clearly consistent with the national interest, "security-clearance determinations should err, if they must, on the side of denials." *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant is a former senior technician for a defense contractor with a considerable history of financial indebtedness. She and her husband attribute most of their accrued debts to their business failures (mostly his). Their business failures prompted both of them to petition for Chapter 7 bankruptcy in 1992.

Following the discharge of their financial responsibilities, H returned to his business venture efforts and accumulated more delinquent debts when his business faltered. Their accrued debts included judgments and accumulated consumer debts they have been unable to resolve.

Applicant's e-QIP omissions of her unsatisfied judgments, debts over 180 days delinquent in the past seven years, and debts currently 90 days delinquent, raise security concerns, too, about her judgment, reliability, and trustworthiness. Applicant was not able to credibly explain her omissions before the adjournment of the first scheduled hearing. Because she did not attend the reconvened hearing, she was not able to answer Department Counsel's questions about her omissions, or otherwise credibly provide any good faith reasons for her omissions.

Applicant's finances

Security concerns are raised under the financial considerations guideline of the revised Adjudicative Guidelines where the individual applicant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can raise questions about the individual's reliability, trustworthiness and ability to protect classified information, and place the person at risk of having to engage in illegal acts to generate funds.

Applicant's accumulation of debts through the small company her husband owns and manages, her outstanding judgment indebtedness, and their past inability to pay these debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines for financial considerations: DC 19(a), "inability or unwillingness to satisfy debts," and DC 19(c), "a history of not meeting financial obligations."

Applicant's debts are attributable in part to recurrent income shortages following her husband's recurrent business failures. To date, neither she nor her husband have been able to address any of their debts in any tangible way. Without any documented payment or resolution of her debts, ascertainment of her payment intentions at this time cannot be made without considerable speculation.

Applicant does not provide adequate explanations either as to why she has not made more concerted earlier attempts to work out payment arrangements with her creditors. Nor has she provided any convincing justifications for failing to make any material attempts to resolve the two outstanding judgments against her.

Mitigation credit to Applicant is very limited based on her furnished proofs. While none of the listed debts are of recent creation, they represent outstanding and continuing obligations. As a result, MC 20(a), “the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment,” cannot be applied to Applicant’ situation.

Because Applicant has not chosen to seek any counseling advice relative to her identified personal judgments and delinquent debts, she may take no advantage of ¶ MC 20(c), “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control.” ¶ MC 20 (d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” has no applicability either.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required to ensure the Government’s trust and confidence in the holder of the clearance. While the principal concern raised by a clearance holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are explicit as well in financial cases.

A whole person assessment does not help Applicant to overcome the judgment lapses associated with her debt accruals. Her work history with her current employer deserves praise. Her failure, though, to diligently monitor and ensure timely payment efforts to her identified judgment holders and other creditors reflects the lack of adequate attention to her fiducial duties of meeting her personal debt obligations. These concerns are not mitigated under the whole person concept.

Taking into account all of the facts and circumstances surrounding Applicant’s debt accumulations and the absence of sufficient efforts to demonstrate her financial responsibility and trustworthiness in managing her finances, Applicant does not mitigate security concerns related to her proven debt delinquencies. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.i.

Applicant’s e-QIP omissions

Security concerns over Applicant’s judgment, reliability and trustworthiness are raised under Guideline E as the result of her intentional omissions of her judgments and delinquent debts over 180 days delinquent in the past seven years and debts currently 90 days delinquent, respectively. By her determined intentional omission of her outstanding adverse judgments and delinquent debts, Applicant failed to furnish materially important information about her finances that was needed for the Government to properly process and evaluate her security clearance application.

Applicant's omissions are not accompanied by any convincing explanations of the circumstances surrounding completion of her e-QIP. Standing alone, without any credible explanations from her testimony to alter her stated reasons for her omissions in the letter she enclosed with her response, the omissions manifestly reflect her conscious decisions to omit material information concerning her outstanding judgments and her delinquent debts. Her hearing answers vacillated between admissions and denials that could not be reconciled before adjourning the hearing. Applicant, in turn, was afforded an opportunity to provide additional explanations on her own behalf, but evidently chose not to attend the reconvened hearing.

Based on the inferences drawn of Applicant's intentional omissions of her judgments, her debts over 180 days delinquent in the past seven years, and her debts currently 90 days delinquent, respectively, the alleged omissions in the SOR are concluded to be proven as stated.

In evaluating all of the circumstances surrounding Applicant's e-QIP omissions, her explanations are insufficient to enable her to convincingly mitigate the deliberate falsification allegations. Questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations are core security concerns of the personal conduct guideline (AG ¶15). They are clearly evident under the facts and policy considerations developed under this Guideline. Overall, Applicant's omissions reflect serious lapses of judgment and trust that are not mitigated by any showing of prompt, voluntary corrections.

Taking into account all of the evidence produced in this record, unfavorable conclusions warrant with respect to the Guideline E allegations that Applicant knowingly and wilfully omitted her outstanding judgments, her debts more than 180 days delinquent in the past seven years, and her debts currently 90 days delinquent, respectively, in the e-QIP she completed.

In reaching my decision, I have considered the evidence as a whole, including each of the E2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Sub-paras. 1.a through 1i: Against Applicant

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-paras. 2.a and 2.b: Against Applicant

Conclusions

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.

Roger C. Wesley
Administrative Judge