

STATEMENT OF THE CASE

_____ Applicant challenges the 23 April 2007 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of her clearance because of financial considerations and personal conduct.¹ Applicant answered the SOR 9 May 2007, and requested a hearing. The case was assigned to me 11 June 2007, and I convened a hearing 10 July 2007. DOHA received the transcript (Tr.) 18 July 2007.

PROCEDURAL RULINGS

Before the hearing, Department Counsel (DC) moved to amend the SOR by adding six additional debts totaling over \$9,300. At hearing, DC acknowledged that the information supporting the new allegations was known to the government when the original SOR was issued, and produced no persuasive argument that the government would suffer prejudice if the motion was not granted. In the interest of judicial economy, I denied the motion (Tr. 24).

FINDINGS OF FACT

Applicant admitted the financial allegations of the SOR. Accordingly, I incorporate her admissions as findings of fact. She denied falsifying her clearance application. She is a 43-year-old administrative aide for a defense contractor since May 1978. She appears to have held a clearance since March 1992.

When Applicant submitted her clearance application in September 2005 (G.E. 1), she answered “no” to two questions (questions 28 a. and b.) asking if she had been 180 days delinquent on any accounts within the last seven years, or was currently 90 days delinquent on any account. In fact, she had been 180 days delinquent on 17 accounts totaling over \$49,000, and was currently 90 days delinquent on those 17 accounts, plus one more account referred for collection in April 2005. Applicant has offered no credible explanation for her failure to disclose her financial difficulties. She has variously claimed that she overlooked the question, or knew that the background investigation would uncover any adverse information. However, she also acknowledged that she had gone to court on a delinquent account in 2004, was having her state income tax refunds seized by her state to pay back taxes, and had numerous debts that she knew were delinquent (Tr. 84-89). Further, Applicant knew that she had been receiving collection letters from the creditors, and that she was not paying on each account every month.

Applicant has a history of financial problems dating back to April 2000. She ascribes her financial difficulties to separating from her husband in July 2000, and their final divorce in 2005. However, the record demonstrates that her financial problems were emerging before her separation, with two delinquent accounts in April 2000 and one delinquent account in July 2000. Although she went from a two-income family to a one-income family in July 2000, her financial difficulties were

¹Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended and modified—most recently in August 2006 (Directive).

really due to her failure to live within her means and spending significant sums on non-essential items (Tr. 80). After her separation from her husband, she opened credit accounts without regard for her ability to repay the creditors. When those accounts became delinquent and closed to further charges, she would open new credit accounts and repeat the process. In this fashion, she accrued numerous delinquent accounts in 2000, 2001, 2002, 2003, and 2004, until she had a last delinquent account in April 2005. She accumulated 18 delinquent debts totaling nearly \$50,000, none of which she made any effort to repay despite the fact that several of the debts were less than \$200 each. She was goaded into seeking credit counseling, which resulted in a referral to a bankruptcy attorney, only after the judgment creditor at SOR 1.n. succeeded in attaching her bank accounts in November 2006 (Tr. 52). Even though she only actually lost three paychecks (Tr. 56-57), she had to borrow about \$4,500 from family and friends until the holds were removed in March 2007 (Tr. 53-54). Although she began the counseling-bankruptcy process in February or March 2007, her bankruptcy petition had not yet been filed because she had not accumulated the cash to pay the bankruptcy attorney.

POLICIES AND BURDEN OF PROOF

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.²

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

CONCLUSIONS

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Government records reflect nearly \$50,000 of delinquent debt acquired after Applicant's separation from her husband in July 2000.³ In effect, she is a serial abuser of credit, opening accounts that she knows she is unable to pay, purchasing non-essential items, defaulting on her payments, then opening new accounts to start the process anew.

Applicant meets none of the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple;⁴ indeed they appear to be ongoing. Applicant has not established that her debts were due to circumstances beyond her control, or that she has acted responsibly in addressing her debts.⁵ There is no evidence that she has sought credit counseling or otherwise brought the problem under control.⁶ Applicant has taken no verifiable steps to address her debts.⁷ Even if I assumed that she would soon be filing her bankruptcy petition and would obtain necessary financial relief, there is nothing in the record to suggest that Applicant would be able to remain financially stable in the future. I conclude Guideline F against Applicant.

The government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. She deliberately concealed the nature and extent of her financial problems.⁸ Further, none of the Guideline E mitigating conditions apply. There is no evidence demonstrating that she corrected the falsification before being asked about it.⁹ There is no evidence to suggest that Applicant receive bad advice about what she was required to disclose on her clearance application.¹⁰ I conclude Guideline E against Applicant.

³¶19.(a) inability or unwillingness to satisfy debts; (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; (c) a history of not meeting financial obligations;

⁴¶20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

⁵¶20.(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

⁶¶20.(c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

⁷¶20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

⁸¶16.(a) 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, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

⁹¶17.(a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

¹⁰¶17.(b) the refusal or failure to cooperate, omission or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process . . . [later] the individual cooperated fully and truthfully.

FORMAL FINDINGS

Paragraph 1. Guideline F: AGAINST APPLICANT

- Subparagraph a: Against Applicant
- Subparagraph b: Against Applicant
- Subparagraph c: Against Applicant
- Subparagraph d: Against Applicant
- Subparagraph e: Against Applicant
- Subparagraph f: Against Applicant
- Subparagraph g: Against Applicant
- Subparagraph h: Against Applicant
- Subparagraph i: Against Applicant
- Subparagraph j: Against Applicant
- Subparagraph k: Against Applicant
- Subparagraph l: Against Applicant
- Subparagraph m: Against Applicant
- Subparagraph n: Against Applicant
- Subparagraph o: Against Applicant
- Subparagraph p: Against Applicant
- Subparagraph q: Against Applicant
- Subparagraph r: Against Applicant
- Subparagraph s: Amendment Denied
- Subparagraph t: Amendment Denied
- Subparagraph u: Amendment Denied
- Subparagraph v: Amendment Denied
- Subparagraph w: Amendment Denied
- Subparagraph x: Amendment Denied

Paragraph 2. Guideline E: AGAINST APPLICANT

- Subparagraph a: Against Applicant
- Subparagraph b: 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 denied.

John G. Metz, Jr.
Administrative Judge