

DATE: June 10, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-10344

DECISION OF ADMINISTRATIVE JUDGE

BURT SMITH

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's numerous delinquent debts and adverse court judgments indicate a lack of personal reliability. Applicant's intentional false statements on security questionnaire indicate a lack of trustworthiness. Clearance is denied.

STATEMENT OF THE CASE

On February 4, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to Applicant. The SOR details reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. It recommended referral to an Administrative Judge to determine whether a clearance should be granted or denied. In a written answer dated March 11, 2003, Applicant responded to the SOR, and she elected to have her case decided on the written record in lieu of a hearing.

A complete copy of the Government's File of Relevant Material (FORM) was provided to Applicant on April 3, 2003, and she was afforded thirty days to file objections and/or submit further material in refutation, extenuation, or mitigation. Applicant received the FORM on April 8, 2003, and she submitted a letter dated May 7, 2003, with documents attached, which arrived at DOHA on May 9, 2003. ⁽¹⁾ The case was assigned to me on May 15, 2003.

RULINGS ON PROCEDURE

The Government's SOR contains lettering errors. The subparagraph following 1.h. should be identified as 1.i., but it is erroneously lettered as 1.g. This disruption of sequence then causes further lettering errors throughout the remainder of the SOR. To correct these errors, the subparagraphs following 1.h. of the SOR are hereby changed to 1.i. through 1.q., and the SOR is so modified in pen and ink. Applicant noted the errors, and she made necessary adjustments in her written answer to the SOR. Department Counsel furnished no comments.

FINDINGS OF FACT

Paragraph 1 (Guideline F - Financial Considerations). The Applicant is fifty years old, and she is employed by a defense contractor as an administrative assistant. The Government alleges Applicant is indebted to approximately seventeen creditors in overdue amounts ranging from \$107 to \$4,987, for a total overdue indebtedness of \$22,754. Three of the delinquent debts have been reduced to judgments. (Subparagraphs 1.c.; 1.p.; and 1.q., and FORM Items 6, 7, and 8 at p. 13)

In responding to the SOR and the Government's FORM, Applicant admits to most of the debts. However, Applicant claims the \$4,987 debt at subparagraph 1.i. is current, and she claims the \$107 debt at subparagraph 1.o. is now paid in full. Applicant presents letters from both creditors confirming these two debts are either current or fully paid. (Applicant's answer to SOR, attachments 2 and 3.) The debts at subparagraph 1.i. and 1.o. are found to be satisfactorily resolved.

Also, Applicant claims the debt alleged at subparagraph 1.h. is the same as the debt alleged at subparagraph 1.j. She further claims the debt alleged at subpara. 1.k. is the same as the debt alleged at 1.l. The debts at subparagraphs 1.h and 1.j. are identical in amount, and the debts at subparagraphs 1.k. and 1.l. are nearly identical. There being no evidence to contradict Applicant's claims, debts 1.j. and 1.l. are found to be duplicates of debts 1.h. and 1.k., respectively. The duplicate debts will not be considered.

Applicant also denies she owes the debt set forth at subparagraph 1.q. The Government's evidence as to this debts rests upon an entry in Applicant's credit report indicating in September 1998 the creditor bank was awarded a judgment against Applicant in the amount of \$1,961. (FORM, Item 8, p. 13.) Applicant presents no evidence in support of her claim she does not owe the debt, and her claim is not accepted.

With regard to her remaining debts, Applicant states she has made arrangements to pay the creditors through a credit counseling service (subparas. 1.a.-1.h.; 1.k.; 1.p.), and in some cases by direct payment (subparas. 1.m.; 1.n.). Applicant's evidence of payment through a credit counseling service is not sufficiently credible to find she has made firm payment arrangements. Her evidence consists of a credit report with pen and ink entries such as "Debt consolidation" and "Being paid personally." Another document is a payout forecast from the credit counseling service identifying creditors, balances, and proposed payments, but this is only a forecast and not evidence of payment through the credit counseling service.

In a sworn statement, Applicant asserts she was ill during the period 1996 until 1999, and she was unable to work. However, Applicant concedes she has been working full time since December 1999, an employment period of approximately three and one-half years. Applicant also claims she gives financial assistance to family members who are either unemployed or living on a reduced income. (App. Sworn Statement, FORM, Item 5.) These circumstances, while worthy of consideration, do not support a conclusion that Applicant's indebtedness was caused by unemployment or family hardship.

Paragraph 2 (Guideline E - Personal Conduct). On January 11, 2001, Applicant completed and signed an SF86 Security Clearance Application. (FORM, Item 4.) Question 37 asked Applicant if she had any unpaid judgments against her in the last 7 years. Question 38 asked Applicant if she has been over 180 days delinquent on any debt in the last 7 years. The Government's SOR alleges Applicant answered "No" to each question, and it further alleges Applicant willfully failed to identify judgments and overdue debts, described above.

The Government's allegation as to Question 37 is partly erroneous. Applicant did not answer "No" to the question as alleged. Applicant answered "Yes" to the question regarding court judgments, and she identified the two judgments set forth in SOR subparagraphs 1.c. and 1.p. She did not identify a third judgment set forth in subparagraph 1.q. As to this judgment, Applicant claims in her answer she had no knowledge of it. Applicant's explanations are found to be credible with regard to Question 37.

Concerning Question 38, the Government's allegation is again partly erroneous because Applicant answered "Yes" to this question and not "No," as alleged. However, Applicant failed to identify numerous debts which were over 180 days

delinquent. Instead, Applicant identified only the debt set forth at subparagraph 1.d. of the SOR. In reality, Applicant was delinquent on at least twelve more debts, but she failed to identify any of them. Considering the number and overdue status of these debts I find Applicant knew of them and she knowingly and intentionally omitted them.

POLICIES

Enclosure 2 of the Directive, as amended by DepSecDef Memo of June 7, 2002, sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. The guidelines are divided into those that may be considered in deciding whether to deny a security clearance (Disqualifying Conditions, hereafter DC) and those that may be considered in deciding whether to grant a security clearance (Mitigating Conditions, hereafter MC).

Based upon a consideration of the entire record, I find the following adjudicative guidelines have application in this case:

Guideline F (Financial Considerations). *The concern*: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Disqualifying Conditions applicable:

1. A history of not meeting financial obligations;
3. Inability or unwillingness to satisfy debts.

Mitigating Conditions applicable:

(None have application.)

Guideline E (Personal Conduct). *The concern*: 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.

Disqualifying Conditions applicable:

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;
4. Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail.

Mitigating Conditions applicable:

(None have application.)

The whole person concept. In addition to the above guidelines, the Directive provides in Para. E.2.2.1. that under the "whole person concept" the Administrative Judge shall also consider (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.

CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard this sensitive information 24 hours a day. The Government is therefore appropriately concerned where reliable information indicates an Applicant for clearance may be financially irresponsible and/or dishonest in official matters, thereby demonstrating a lack of reliability and trustworthiness. These unfavorable personal characteristics might easily lead to a compromise or loss of classified defense secrets.

Where an Applicant's overdue debts are recurring, chronic, and unpaid, it may be concluded that Applicant lacks a sense of responsibility and commitment toward important financial matters. An Applicant who shows little discipline or control in personal finances may easily demonstrate an undisciplined attitude toward security requirements. Furthermore, an Applicant who is not candid and open with the Government might not be completely truthful and reliable in the handling of classified information.

On the other hand, the Regulation provides that an Applicant may introduce evidence of mitigating conditions which offset or rebut negative information concerning personal finances and honesty. Where such mitigating evidence exists, it will be considered in reaching an ultimate determination as to Applicant's security worthiness.

Concerning burdens of proof, the Government must prove all controverted facts that tend to demonstrate Applicant is ineligible for clearance. Once this burden is met, the Applicant must overcome the Government's case by persuasive evidence in refutation, mitigation, or changed circumstances. However, the Applicant always bears the ultimate and overall burden of proving it is clearly consistent with the national interest to grant him or her a security clearance. Furthermore, the Directive provides "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (Directive, Para. E2.2.2.) Thus, the Applicant's burden is a heavy one.

In this case, Applicant's credit report identifies numerous overdue debts and court judgments. Applicant responds she was unable to pay the debts because of unemployment during the period 1996 and 1999, and she had burdens of family support. However, Applicant has been employed full time since December 1999, but she has made no serious effort to reduce or eliminate her indebtedness. DC 1 and 3 have application.

Applicant claims she has made progress toward the payment of her creditors, and she satisfactorily proves she has resolved the debts at subparagraphs 1.i. and 1.o. of the SOR. Also, she correctly points out the debts at subparagraphs 1.j and 1.l. are duplicates of subparagraphs 1.h. and 1.k. I find for Applicant as to subparagraphs 1.i.; 1.j.; 1.l.; and 1.o. Applicant claims she does not owe the debt at subparagraph 1.q., but she submits no proof in support of her claim. Subparagraph 1.q. is concluded against Applicant.

In her responsive materials, Applicant asserts she is receiving assistance from a credit counseling service, and she has made arrangements with this service to pay the remainder of her overdue debts and court judgments. However, Applicant's evidence of these arrangements is not persuasive, and I conclude against Applicant as to the remaining overdue debts, to include unsubstantiated direct payments to creditors.

The Government alleges Applicant knowingly and willfully provided false information with regard to Questions 37 and 38 of the SF86 Clearance Application. Applicant successfully rebuts the Government's allegations as to Question 37. She proves she answered "Yes" concerning two previous judgments, and she identified them. She failed to identify a third judgment because she was unaware of it. Applicant's proof is accepted, and subparagraph 2.a. is concluded in her favor.

Applicant also proves she answered "Yes" to Question 38 and not "No," as alleged in the SOR. However, Applicant identified only one overdue debt, and she failed to identify numerous other debts that were unpaid and delinquent over 180 days. DC 2 applies because this was a deliberate omission. DC 4 applies because Applicant's intentional false statement might render her vulnerable to pressure or duress in the event her falsifications became known to persons with interests hostile to the United States. Applicant provides no satisfactory explanation for her false answer to Question 38, and subparagraph 2.b. is concluded against her.

The whole person concept has also been considered, and all or part of factors (2); (3); (8) and (9) are applied against Applicant. Some of the remaining factors favor Applicant, but they are insufficient to support a finding that Applicant is

worthy of a security clearance based upon the whole person concept.

On balance, it is concluded Applicant has not presented evidence in mitigation or rebuttal sufficient to overcome or outweigh the Government's case against her, except where noted.

FORMAL FINDINGS

Formal findings For or Against the 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 the Applicant.

Subparas. 1.a.-1.h.: Against the Applicant.

Subparas. 1.i.-1.j.: For the Applicant.

Subparas. 1.k.: Against the Applicant.

Subpara. 1.l.: For the Applicant.

Subpara. 1.m-n.: Against the Applicant.

Subpara. 1.o.: For the Applicant.

Subparas. p.-q.: Against the Applicant.

Paragraph 2 (Guideline E): Against the Applicant.

Subpara. 2.a.: : For the Applicant.

Subpara. 2.b.: Against the 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 Applicant's request for a security clearance.

Burt Smith

Administrative Judge

1. Applicant's response was due no later than May 7, 2003, but it did not arrive at DOHA until May 9, 2003. Department Counsel does not object to the late response, and Applicant's submissions will be considered.