

DATE: April 6, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-10652

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Catherine Engstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant admits financial delinquencies, including bad debts and a judgment entered against her. Her unmitigated history of financial over extension raises serious security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On May 23, 2003, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on June 26, 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on September 10, 2003. On October 8, 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government submitted six exhibits, which were marked 1 through 6 and admitted into evidence. Applicant submitted six exhibits, which were marked A through F and admitted into evidence. At the end of the hearing, I granted a request by Department Counsel, which was concurred in by Applicant, that the record remain open so that Applicant could submit additional evidence. Accordingly, the record was held open until November 3, 2003 and Applicant submitted 11 additional documents, admitted without objection as Applicant's Exhibits G through Q. DOHA received the transcript (Tr.) of the proceeding on October 16, 2003.

FINDINGS OF FACT

The SOR contains 13 allegations of disqualifying conduct under Guideline F, Financial Considerations. Applicant admitted six allegations and denied six allegations. She neither admitted nor denied one allegation. Her admissions are incorporated as findings of fact.

At the time of her hearing, Applicant was 27 years old and unmarried. She was employed by a government contractor as a network engineer. She lost her security clearance when her employer learned of the SOR and her financial problems. Applicant remained with the employer as a consultant assigned to a lower-paying position which did not require a security clearance.

Applicant has been self-supporting and on her own since adolescence. She moved in with her grandmother when she was 16 and lived with the grandmother during her senior year in high school. After high school, she acquired her own apartment and began supporting herself. Applicant worked full-time and took out student loans to finance her education. At the time of her hearing, Applicant's student loan debt totaled approximately \$21,000.

Applicant moved often in pursuit of work and did not regularly provide forwarding addresses. In her late teens and early twenties, she acquired debts at her several residences and work locations and her creditors were unable to find her. Applicant acquired several debts for health care services, state taxes, car rentals, and utilities. Her credit report also showed a judgment for back rent.

In approximately late 1996 or early 1997, Applicant purchased a used car on credit. Within a month the car broke down on a major highway. Applicant left the car by the side of the road with the keys inside. She called the company that had financed her purchase of the car and said she no longer wanted the car. She told the finance company where she had left the car and requested that the company send someone to pick up the car and repossess it. The finance company claimed the car was not where Applicant said she had left it. Neither Applicant nor the company was able to locate the car. Applicant filed a police report, but did not retain a copy. She did not have the bill of sale or the vehicle's registration number. The vehicle was not found. Applicant's Exhibit B is a warrant in debt summoning her to appear in court on November 19, 2003, to answer the creditor's claim against her for the default balance due on her auto loan. The amount of the claim was over \$8,000 in principal, with interest at 22 percent from September 18, 1998, until paid, \$65 in costs, and approximately \$1,620 in attorney's fees.

In February 2003, Applicant sought help from a credit relief service that contacted her creditors, arranged repayment or settlement plans, and worked with the credit organizations to delete from her record any debts that had been paid or settled. In her post-hearing filing, Applicant supplied records to show she had paid \$50 per month for the credit relief service. Her post-hearing filing showed she had drawn approximately \$630 from her pension plan/savings account⁽³⁾ to pay in part three debts identified in the SOR. She also presented persuasive evidence to show she had paid a debt for overpayment of unemployment benefits to State A. Applicant presented a letter from an attorney for the judgment creditor memorializing her commitment to pay off the judgment in full by December 1, 2003.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline F-Financial Considerations

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Directive ¶ E2.A6.1.1. Applicant has a history of not meeting her financial obligations, and her financial history suggests an inability or unwillingness to satisfy her debts, conditions which raise security concerns under subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

In the SOR, DOHA alleged Applicant had delinquent accounts placed in collection (¶¶ 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i. and 1.k.); accounts charged off as bad debts (¶¶ 1.i. and 1.j.); an unpaid civil judgment (¶ 1.a.), and a monthly surplus of income which was not used to extinguish debts identified in the SOR (¶1.m.).

Applicant provided persuasive evidence to show that the debt alleged at SOR ¶ 1.i. had been satisfied in full in June 2002. She also provided evidence that the debt alleged at SOR ¶ 1.f. had been settled for \$102.75 and that, on October 28, 2003, a partial payment of \$300 had been made on the debt alleged at ¶1.c. Additionally, she demonstrated at the time of her hearing she did not have a net monthly surplus of \$1018, as alleged at ¶1.m. She presented a letter of agreement from the counsel for a creditor identified at 1.a. of the SOR memorializing her promise to make full payment of the debt by December 1, 2003. She provided evidence that the creditor holding the debt alleged at ¶ 1.g. had agreed to a payment plan and she indicated she had made a payment of \$300, leaving a balance due of \$383.80. She was unable to show the debts alleged at ¶¶ 1.b., 1.d., 1.e., 1.j., and 1.l. had been paid or otherwise resolved. She denied the debt alleged at SOR ¶ 1.h. but was unable to explain why the debt was not hers. She also admitted the debt of approximately \$8,000 alleged at SOR ¶ 1.k. but failed to provide a credible explanation for why the debt should not be her responsibility.

The Government has established, through its Exhibits and Applicant's admissions, a *prima facie* case that Applicant is financially overextended. While Applicant provided some persuasive evidence to show that she had retired or settled certain debts, she provided no persuasive evidence to rebut other financial concerns specified in the SOR and identified as disqualifying under ¶¶ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's acknowledged delinquencies involve long-standing debts, some of which continue to be unsatisfied to this day. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies. While Applicant lost a position requiring a security clearance and took a lower-paying job, it would appear that her financial difficulties arose before she lost her job and experience a reduction in salary and were not beyond her control. Thus, mitigating condition E2.A6.1.3.3. does not apply.

In the past, Applicant has expressed intentions to pay her delinquent debts. To her credit, Applicant has recently sought to bring her financial problems under control. She has tapped her savings to pay debts and she has sought help from a credit counseling organization to pay some of her long-standing delinquencies. Thus, mitigating conditions E2.A6.1.3.4. and E2.A6.1.3.6. apply in part to the facts of her case. However, Applicant appears to lack a plan for mitigating the large debt alleged at ¶ 1.k. of the SOR, as well as several lesser debts, thus continuing her financial over extension and

creating a security risk.

In summary, Applicant has mitigated the allegations at ¶¶ 1.f., 1.i., and 1.m. of the SOR, and the finding is therefore for her as to those allegations. The allegations at ¶¶ 1.a., 1.b., 1.c., 1.d., 1.e., 1.g., 1.h., 1.j., 1.k., and 1.l. are, however, concluded against the Applicant.

In ISCR Case No. 98-0761 at 3 (Dec. 27, 1999), DOHA's Appeal Board states that an administrative judge, in deciding an applicant's security worthiness, "must consider the record as a whole (Directive Section F.3.) and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*." I have considered the record as a whole and have evaluated Applicant's conduct under the whole person concept of the Directive, and I conclude that Applicant has not successfully overcome the Government's case opposing her request for a security clearance.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

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.: For Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: For Applicant

DECISION

In light of all of 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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.

2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.

3. Applicant stated at her hearing that she was required to wait for 90 days after rolling over her Individual Retirement Account (IRA) holdings into a savings account before she could draw down funds without penalty. In her post-hearing submissions, she advised that she had been informed she could draw down ten percent of the total amount without penalty. Thus her withdrawal of approximately \$630 on October 9, 2003, to make partial payments on debts identified in the SOR.