

DATE: May 27, 2004

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-10772

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Department Counsel

FOR APPLICANT

Carmen Johnson, Personal Representative

SYNOPSIS

Applicant has successfully rebutted financial concerns and alleged falsifications pertaining to her financial history by demonstrating that she was an identity theft victim with regard to 18 of the 20 delinquent debts addressed by the SOR that total \$14,134.00. The Social Security Administration has reached the same conclusion and has issued her a new Social Security Number. The only two debts attributable to Applicant are a \$563.00 judgment collected against her on a contract she co-signed for her son and a \$102.00 cable service debt she paid. Although Applicant obtained a discharge in bankruptcy, it was 10 years ago and resulted from her boyfriend leaving her to face over \$25,000.00 in debts they jointly incurred. Clearance is granted.

STATEMENT OF THE CASE

On July 31, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant her access to classified information and recommends that her case be submitted to an Administrative Judge.

On August 13, 2003, DOHA received Applicant's response to the SOR, in which she requested a hearing. The case was assigned to me on December 22, 2003. A notice of hearing was issued on January 7, 2004 and the hearing was held on January 27, 2004. During the hearing, 18 Government exhibits (Govt Ex), 12 Applicant exhibits (Ap Ex) and the testimony of two Applicant witnesses, including Applicant, were received. The transcript (Tr) was received on February 4, 2004.

PROCEDURAL ISSUE

Department Counsel submitted a motion to amend the SOR to conform to the evidence. Applicant offered no objection.

After both parties presented their cases and Applicant had the opportunity to respond to the amended SOR, I granted the motion in accordance with E3.1.17 of the Directive.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 58-year-old mail clerk employed by a defense contractor. She is seeking a security clearance.

Applicant was a victim of theft on at least four occasions. The first occurred on November 5, 1992 and included the theft of Applicant's purse. The theft was reported to police on November 8, 1992.

On April 15, 1994, Applicant had property stolen from her apartment, including cash, when the perpetrator gained access to her apartment by posing as an employee of the phone company. The incident was reported to police on April 25, 1994.

On April 25, 1994, applicant filed for Chapter 7 bankruptcy. She was unable to pay the debts that she incurred with her boyfriend after he left her. Applicant's debts in the amount of \$25,474.49 were discharged on August 19, 1994 (SOR ¶ 1.s).⁽³⁾

On January 13, 1998, there was a burglary of Applicant's apartment, following forcible entry, in which personal belongings, including clothing, were stolen. The incident was reported to the police on January 14, 1998.

On November 6, 1998, Applicant was the victim of a purse snatching. The theft was reported to the police on the same day. At the time, Applicant carried a photocopy of her social security card in her purse.

On May 20, 1999, an apartment lessor obtained a judgment against Applicant in the amount of \$563.90 for unpaid rent. Applicant had co-signed for her son to obtain an apartment for which he had not paid the last month's rent. The apartment lessor collected the funds through an action against Applicant's bank account (SOR ¶ 1.a).

Applicant incurred a delinquent account for cable service in 2001. She subsequently paid the bill (SOR ¶ 1.f).

An unknown person or persons, without Applicant's knowledge or consent, used Applicant's identity to incur the delinquent debts addressed by SOR ¶ 1.b through SOR ¶ 1.e, SOR ¶ 1.g through SOR ¶ 1.r, and SOR ¶ 1.u.

On August 31, 2001, Applicant executed a security clearance application (SF 86). In response to question 34,⁽⁴⁾ Applicant answered, "no." (SOR ¶ 2.a and SOR ¶ 3.a).

In response to question 38⁽⁵⁾ on the same SF 86, Applicant answered, "no." (SOR ¶ 2.b and SOR ¶ 3.a).

In response to question 39⁽⁶⁾ on the same SF 86, Applicant answered, "no." (SOR ¶ 2.c and SOR ¶ 3.a).

On October 28, 2001, Applicant was interviewed by a special investigator for the Office of Personnel Management, Investigations Service (OPM), and provided a sworn statement in which she discussed her financial history, denied most of debts reflected in her credit report, and related that she had been a victim of theft on seven occasions since the 1990s.

On or about May 3, 2003, Applicant sought assistance from a credit counseling and credit restoration service, after learning her credit reports contained substantial indebtedness that she had not incurred.

Based on fraudulent use of her Social Security Number (SSN), on August 11, 2003, Applicant applied to the Social Security Administration for a new SSN.

After investigating the matter, on August 15, 2003, the credit counseling and credit restoration service reported the suspected theft of Applicant's identity to federal and local law enforcement authorities.

On October 23, 2003, the Social Security Administration granted Applicant a new SSN.

POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

Guideline F: Financial Considerations

The concern is that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Conditions that could raise a security concern and may be disqualifying include E2.A6.1.2.1, a history of not meeting financial obligations (Disqualifying Condition 1). They also include E2.A6.1.2.3, inability or unwillingness to satisfy debts (Disqualifying Condition 3).

Conditions that could mitigate security concerns include E2.A6.1.3.1, the behavior was not recent (Mitigating Condition 1), and E2.A6.1.3.3, the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation) (Mitigating Condition 3). They also include E2.A6.1.3.6, the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (Mitigating Condition 6).

Guideline E: Personal Conduct

The concern under Guideline E is 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. Conditions that could raise a security concern and may be disqualifying under Guideline E include E2.A5.1.2.2 (Disqualifying Condition 2). Disqualifying Condition 2 covers 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.

Guideline J: Criminal Conduct

The concern under Guideline J is a history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. Conditions that could raise a security concern and may be disqualifying under Guideline J include E2.A10.1.2.1, allegations or admission of criminal conduct, regardless of whether the person was formally charged (Disqualifying Condition 1).

CONCLUSIONS

Guideline F: Financial Considerations

There are no less than 20 delinquent debts addressed by the SOR and listed in Applicant's credit reports. They reflect both a history of not meeting financial obligations, as well as an inability or unwillingness to satisfy debts. This raises both Disqualifying Condition 1 and Disqualifying Condition 3.

Applicant denies responsibility for most of the delinquent debts alleged by the Government (SOR ¶ 1.b through SOR ¶ 1.e, SOR ¶ 1.g through SOR ¶ 1.r, and SOR ¶ 1.t). The record substantiates her denial and demonstrates that she was a victim of identity theft. As verified by police reports, Applicant was a victim of theft on at least four occasions between 1992 and 1998. These afforded the perpetrator the opportunity to obtain the information necessary to incur debts in her name. In the last incident in November 1998, her purse was snatched. It contained a copy of her Social Security Number (SSN). The Social Security Administration was sufficiently satisfied that Applicant's SSN had been misappropriated so as to issue her a new SSN in October 2003. Based on the evidence in the record SOR ¶ 1.b through SOR ¶ 1.e, SOR ¶ 1.g through SOR ¶ 1.r, and SOR ¶ 1.t resulted from the actions of another person or persons fraudulently using Applicant's identity and acting without her consent. Therefore, I find in favor of Applicant with regard to SOR ¶ 1.b through SOR ¶ 1.e, SOR ¶ 1.g through SOR ¶ 1.r, and SOR ¶ 1.u.

Applicant acknowledged a delinquent debt for cable service in her statement to the OPM special investigator but said that she had paid it. The debt is no longer reflected in her credit reports and Department Counsel did not rebut that Applicant has satisfied it. Pursuant to Mitigating Condition 6, I find in favor of Applicant with regard to SOR ¶ 1.f.

Applicant's bankruptcy was not recent, having occurred nearly 10 years ago. The conditions that resulted in her filing were largely beyond her control. Her dilemma was precipitated by her boyfriend leaving her to deal with debts for which he was jointly responsible and which she was unable to pay on her own. Under the circumstances, it was proper for Applicant to resolve the debts through a discharge in bankruptcy. In accordance with both Mitigating Condition 1 and Mitigating Condition 3, I find in favor of Applicant with regard to SOR ¶ 1.s.

Applicant admitted the judgment against her by an apartment lessor. She incurred the debt by co-signing for her son to obtain an apartment. The debt resulted from him moving without paying the rent that was due. The debt was fully paid from Applicant's funds. Given the numerous debts that were incurred by another or others using her identity, it is understandable why Applicant may not have been more responsive in understanding her responsibility and resolving the obligation.

Under the circumstances, any security concern has been mitigated. Therefore, I find in favor of Applicant with regard to SOR ¶ 1.a.

Guideline E: Personal Conduct

The Government has failed to establish Applicant falsified her response to question 34 on the security clearance application by not listing the wage garnishments addressed by SOR ¶ 1.a. and SOR ¶ 1.u. The record fails to establish either garnishment. The Government only provided a record of the judgment referred to in SOR ¶ 1.a. In both testimony and her earlier statement to the OPM special investigator, Applicant maintained that the judgment was collected directly against her bank account. The Government did not rebut Applicant by producing evidence of a garnishment. As previously stated, Applicant was an identity theft victim with regard to the debt addressed by SOR ¶ 1.u. Moreover, there is no evidence in the record that Applicant was subjected to a garnishment action as a result of the debt. Based on the record, Applicant did not falsify material facts by answering, "no," in response to question 34. Therefore I find in favor of Applicant with regard to SOR ¶ 2.a.

The Government has also failed to establish Applicant falsified her response to question 38 on the security clearance application by not listing the debts addressed by SOR ¶ 1.b, 1.d-1.e, and 1.g-1.l. Applicant was an identity theft victim with regard to all of these debts. She was not required to list any of them and did not falsify material facts by answering, "no," in response to question 38. Therefore I find in favor of Applicant with regard to SOR ¶ 2.b.

The Government has also failed to establish Applicant falsified her response to question 39 on the security clearance application by not listing the debts addressed by SOR ¶ 1.b-1e, 1.g-1.l, and 1.p. Applicant was an identity theft victim with regard to all of these debts. She was not required to list any of them in response to question 39. Applicant acknowledged the delinquent debt for cable service that is addressed by SOR ¶ 1.f in her statement to the OPM special investigator but said that she had paid it during the summer of 2001. The debt is no longer reflected in her credit reports and Department Counsel did not rebut that Applicant had satisfied it. It appears that she paid it prior to completing her SF 86, since that is dated August 31 of that summer. Therefore, Applicant did not falsify material facts by answering, "no," in response to question 38. I find in favor of Applicant with regard to SOR ¶ 2.c.

Guideline J: Criminal Conduct

The Government's failure to establish falsifications by Applicant under Guideline E results in a failure to establish the same as criminal conduct under Guideline J. Therefore, I find in favor of Applicant with regard to SOR ¶ 3.a.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: For Applicant

Subparagraph 1.k: For Applicant

Subparagraph 1.l: For Applicant

Subparagraph 1.m: For Applicant

Subparagraph 1.n: For Applicant

Subparagraph 1.o: For Applicant

Subparagraph 1.p: For Applicant

Subparagraph 1.q: For Applicant

Subparagraph 1.r: For Applicant

Subparagraph 1.s: For Applicant

Subparagraph 1.t: For Applicant

Subparagraph 1.u: For Applicant ⁽⁷⁾

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Paragraph 3. Guideline J: FOR APPLICANT

Subparagraph 3.a: For Applicant

DECISION

In light of the evidence of record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
3. Although SOR ¶ 1.s alleges the discharge was granted on August 26, 1994, Govt Ex 11 establishes that it was granted on August 19, 1994.
4. "In the last 7 years, have you had your wages garnished for any reason?"
5. "In the last 7 years, have you been over 180 days delinquent on any debt(s)?"
6. "Are you currently over 90 days delinquent on any debt(s)?"
7. Although SOR ¶ 1.u from the original SOR was not included or referred to in the amended SOR ¶ 1, it is reference in SOR ¶ 2.a of the amended SOR. Therefore, I have made findings with regard to SOR ¶ 1.u.