

DATE: January 22, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-00425

DECISION OF ADMINISTRATIVE JUDGE

WILLIAM R. KEARNEY

APPEARANCES

FOR GOVERNMENT

Michael H. Leonard, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant is presently working for a U.S. Government contractor. However, prior to working for a contractor, she was the owner and president of her corporation that had contracts with the U.S. Government. After running her corporation for approximately eight years, the corporation fell upon hard times and financial difficulties. The corporation had a dispute with the Federal government regarding payment for work performed. Applicant began to use her own personal funds to pay the corporations expenses and to keep it operating. At one time, she voluntarily filed a petition for a Chapter 13 bankruptcy. During the bankruptcy proceeding, the government settled its dispute with the Applicant's corporation. With the settlement funds she was able to pay or settle all of the corporate's debts, and she had the Court dismiss the bankruptcy proceeding. Of the debts alleged in the SOR, all but two where corporate debts. Applicant has paid or settled her outstanding creditors as alleged in the SOR. Clearance is granted.

STATEMENT OF THE CASE

On, June 4, 2001, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), issued a Statement of Reasons (SOR) to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked. In a sworn written statement, dated July 19, 2001, the Applicant responded to the allegations set forth in the SOR and requested a hearing.

The undersigned Administrative Judge received the case assignment on September 10, 2001, and a notice of hearing was issued on September 19, 2001. The undersigned held a hearing on October 23, 2001. The Department Counsel presented five (5) exhibits in support of its case. The Applicant's case consisted of the presentation of fifteen (15) exhibits and her own testimony. The record in this case was temporary closed on the day of the hearing and it was to remain open until November 13, 2001, to allow the Applicant to file additional documents in support of her case. On

November 15, 2001, the Applicant filed one additional exhibit. The undersigned Administrative Judge received the Transcript ("Tr") of the hearing on October 31, 2001.

FINDINGS OF FACT

The Statement of Reasons (SOR) consisted of allegations predicated on the guideline F (financial considerations) wherein paragraph 1, alleges five(5) past due accounts. The undersigned Administrative Judge completely and thoroughly reviewed the evidence of record, and upon due consideration of the same, makes the following Findings of Fact:

The Applicant is a forty-six (46) year old divorce female, and she has been an employee of a U.S. Government contractor for the past three (3) years. She is employed as an Environmental Program Manager. The Applicant seeks to retain her secret level personnel security clearance.

Prior to working for a Government contractor the Applicant was an owner and president of her corporation that had contracts with the U.S. Government. She had operated her own corporation doing business with the Federal Government for approximately eight (8) years, before she closed the corporation. Applicants' corporation ran into financial difficulties when a dispute arose concerning the payment of a contract. As a result, the Applicant personally spent her own money to keep her corporation viable and in good financial shape. However, on May 14, 1999, when it became too great financial hardship, she personally petitioned for Chapter 13 bankruptcy, as she did not have sufficient funds to pay all of her debts including the debts of her corporation. During the bankruptcy proceedings, the Government made a settlement or part payment on the corporation's disputed claim, and the Applicant was able to satisfy her creditors. The Applicant elected to allow her Chapter 13 bankruptcy case to be dismissed on September 27, 1999, and thereafter, she negotiated payments with all of her legitimate creditors.

The record reflects that the Applicant when running her corporation's business, she allowed the corporate financial obligations and her personal obligations to become mixed, and as a result she ended up being financially responsible for the corporate obligations. The Applicant in her sworn answer to the SOR, Paragraph 1, subparagraph 1.a, admitted the first sentence of subparagraph 1.a, and denied the remaining sentence. In fact, she denied all of the allegations contained in subparagraphs 1.b, 1.c, 1.d, 1.e, and 1.f, in the SOR.

Subparagraph 1.b; This bill is the personal bill of one of the salesman that worked for her corporation, which the corporation would reimburse the salesman and the salesman would pay the wireless company. She does not know how this bill became a bill of her corporation.

Subparagraph 1.c; The Applicant has testified, pursuant to Section 1001 of Title 10 of the U.S. Code, that she had a one year contract with this wireless phone company. When she completed the contract, she paid her bill in full and then cancelled the contract. Thereafter, she continued to receive bills from that company. She contacted them and the charge was removed from her account. However, the phone company failed to have the alleged charge of \$653.00 removed from her credit report.

Subparagraph 1.d; This was a corporate bill, for a subcontracting job. A bid of \$8,600.00 was given to the Applicant's corporation, and they paid this amount. Thereafter, the subcontractor submitted an other bill in a larger amount. The Applicant had her corporate attorney discuss this bill with the subcontractor's attorney, and as a result, the bill was taken off her account. However, the subcontractor failed to have this additional bill removed from the Applicant's credit report.

Subparagraph 1.e; The Applicant also testified under the terms of perjury that she personally paid this account in cash for a day care center for children on November 17, 1996. The Applicant has contacted the owner of the day care center, however, the Applicant has not received any written record that this account of \$95.00 has been paid in full. It is another case where the credit bureau did not take the debt off of the Applicant's credit report.

Subparagraph 1 f; The creditor, a home furnishing house, filed suit against the Applicant and obtained a \$5,597.00 judgment against her personally. The Applicant was able to settle this matter, and on October 26, 1999, the subject judgment was dismissed, as set forth in Applicant's Exhibit G.

POLICIES

Enclosure 2 of the Directive (32 C.F.R. part 154 appendix H) sets forth adjudicative guidelines which must be considered in evaluating an individual's security eligibility. The guidelines are divided into those that may be considered in determining whether to deny or revoke a clearance (Disqualifying Conditions or DC) and those that may be considered in determining whether to grant or continue an individual's access to classified information (Mitigating Conditions or MC). In evaluating this case, relevant adjudicative guidelines as set forth below have been carefully considered as the most pertinent to the facts of this particular case.

The guidelines, disqualifying conditions, and mitigating conditions most pertinent to an evaluation of the facts of this case are:

GUIDELINE F - FINANCIAL CONSIDERATIONS

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Conditions that could raise a security concern and may be disqualifying include:

[1st] A history of not meeting financial obligations;

[3rd] Inability or unwillingness to satisfy debts;

Conditions that could mitigate security concerns include:

[1st] The behavior was not recent;

[2nd] It was an isolated incident;

[3rd] The conditions that resulted in the behavior were largely beyond the person's control (e.g., a business downturn).

[6th] The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The Directive also requires the undersigned to consider, as appropriate, the factors enumerated in Section 6.3:

- a. Nature and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved.
- e. Absence or presence of rehabilitation.
- f. Probability that the circumstances or conduct will continue or recur in the future.

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an Applicant's security clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record. Determinations under the Directive include consideration of the risk that an applicant may deliberately or inadvertently fail to safeguard properly classified information as that term is defined and established under Executive Order 12958, effective on October 14, 1995.

Initially, the Government has the burden of proving controverted facts alleged in the Statement of Reasons. The burden of going forward with the evidence then shifts to the Applicant for the purpose of establishing her security eligibility through evidence of refutation, extenuation or mitigation of the Government's case or through evidence of affirmative defenses.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and during the subject hearing I had ample opportunity to evaluate the demeanor of the Applicant, observe her manner and deportment, appraise the way in which she responded to questions, assess her candor or evasiveness, read her statements, and listen to her testimony. Aside from the unexplained inconsistencies regarding the current status of some of the delinquent debts, it is my impression that her explanations regarding her past financial and corporate problems are consistent, and hence, considering the quality of the other evidence before me, have the solid resonance of truth. Therefore, the undersigned concludes that the Applicant has successfully rebutted and overcame the Government's case with regard to all the allegations contained in the SOR.

A review of the guidelines under Guideline F reveals that disqualifying conditions 1 and 3, (a history of not meeting financial obligations, and inability or unwillingness to satisfy debts), are not applicable to the facts in this case. As to the mitigating conditions, mitigating conditions numbered 1, and 2 may be applicable to this case, however, mitigating conditions 3 and 6 are most applicable to the facts in this case. Mitigating condition 3 (the condition that resulted in the behavior were largely beyond the person's control, e.g., a business downturn), is applicable as there was evidence that the Applicant's corporation was in financial straits, regarding a major claim against the federal government, and when that account was settled, the Applicant settled all of her outstanding debts. Mitigating condition 6 (the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts) is extremely applicable to this case. The evidence of record reveals that the Applicant made a good faith effort to satisfy her creditors and paid all of her legitimate bills

The Appellant has submitted substantial evidence that she has initiated a good faith effort to repay her overdue creditors or otherwise resolve her outstanding debts. She testified that she sought Chapter 13 bankruptcy instead of Chapter 7 bankruptcy, as she wanted to make sure all of her legitimate creditors were paid and satisfied. She paid all of her personal bills and she paid her corporate bills out of her personal funds, just to keep the corporation operating. All the outstanding accounts as set forth in the SOR have either been paid, settled or the proper person owing the debt has been identified.

The evidence of record reflects that in subparagraph 1.b of the SOR, the Applicant voluntarily had the Chapter 13 bankruptcy petition dismissed on September 27, 1999, and then proceeded to pay her outstanding creditors. As to subparagraph 1.b, she denied that this debt was hers and identified the true owner of that bill. As to subparagraph 1.c she took care of this account by proving to the creditor that she did not owe that bill. With reference to subparagraph 1.d, the Applicant took care of that account by pointing out to the creditor that he made a low bid and he could not increase his bid. As to \$195.00 child care bill, as set forth in subparagraph 1.e, the Applicant testified that she paid this account on November 17, 1996, and that she has talked to the owner of the child care center and she is attempting to obtain a paid receipt for this account. Finally, as to subparagraph 1.f, the Applicant offered into evidence Exhibit G, which is a praecipe which indicates that this account and the judgement in connection with it was settled and dismissed on October 26, 1999. Further, in view of the evidence and the testimony of the Applicant, it is reasonable to conclude that the majority of the alleged bills were associated with her corporation, which she was operating when the said bills were incurred, and that they were bills of the corporation and not her personal bills. The Applicant has satisfied all of her personal bills alleged in the SOR.

In reaching my conclusions and decision, I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; her motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstances or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal findings as required by Enclosure 1 of the Directive (see paragraph (7) of section 3 of Executive Order 10865, as amended) and the additional procedural guidance contained in item 25 of Enclosure 3 of the Directive are:

Paragraph 1. Guideline E: 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

DECISION

In light of all the circumstances presented by the record in this case, it is the determination of the undersigned that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

William R. Kearney

Administrative Judge