

DATE: March 26, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-03838

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated July 19, 2001, to the Applicant which detailed 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 the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on financial considerations (guideline F) because of unpaid delinquencies totaling approximately \$17,400.00 in the aggregate, including \$14,487.62 in student loan debt, and on personal conduct (guideline E) due to her failure to report her delinquent accounts on a March 1999 security clearance application.

On September 7, 2001, Applicant responded to the allegations set forth in the SOR, forwarding documentation from a consumer credit counseling service indicating she had received counseling from that nonprofit public service organization, but was unable to join a program because her problem was student loan debt. On October 9, 2001, Applicant submitted an amended answer in which she requested a decision without a hearing.⁽¹⁾ The Government submitted its File of Relevant Material (FORM) on January 8, 2002, a copy of which was forwarded to Applicant with instructions to submit material in explanation, extenuation or mitigation within thirty days of receipt. Applicant elected not to respond, and on March 7, 2002, the case was assigned to me for a decision based on the written record.

FINDINGS OF FACT

After a thorough review of the evidence, and on due consideration of the same, I render the following findings of fact:

Applicant is a 42-year-old electrical wirer who has been employed by a defense contractor (company X) most recently since March 1999, having also worked there from February 1982 to January 1993. Applicant seeks a security clearance for her duties there.⁽²⁾

Married in August 1988, Applicant in 1990 decided to pursue an associate's degree in computer science while continuing to work as an electrical wirer for company X. Applicant financed her studies over the next two years through student loans totaling in excess of \$10,000.00. (3) Applicant made payments on at least one of these loans through October 1993.

In the mid-1990s, Applicant began to experience financial difficulties, due in part to her spouse's lack of steady employment and his gambling activities. She terminated their troubled marriage, divorcing her spouse in May 1995. Following their separation, (4) Applicant was the sole financial support for her daughter. (5) Focused on paying living expenses, she made no payments on any of her student loans after October 1993, and the accounts fell into default. In November 1994, Applicant issued an insufficient funds check in the amount of \$14.47 to a pizza restaurant. In January 1995, Applicant obtained a cash advance of about \$1,000.00 from her income tax preparer based on her expected income tax refund. In February 1995, her income tax refund of \$225.10 was intercepted by the Government in partial repayment of one of her student loans, leaving her without the funds she had counted on to repay the \$1,000.00 cash advance.

After a couple of months of unemployment, Applicant in May 1995 secured a position as an A/R supervisor. (6) While employed in this capacity to February 1999, Applicant made no effort to address her student loan delinquency, although her income tax refunds for 1996, 1997 and 1998 were intercepted in partial repayment of one of the two student loans held by the U.S. Department of Education. She also did not pay the \$22.00 balance owed a radiologist for medical services rendered to her in June 1995. In late April 1996, Applicant was charged with worthless check for issuing the bad check to the pizza place back in November 1994. Unaware she had been charged, the summons remained outstanding as of June 1999. In September 1996, a local hospital dental clinic referred a \$219.00 past due balance for collection.

In March 1999, Applicant returned to work as an electrical wirer for company X. In conjunction with her employer's request that Applicant be granted a security clearance for her duties, Applicant on March 18, 1999, executed a security clearance application (EPSQ) on which she responded negatively to question 38. ["In the last 7 years, have you been over 180 days delinquent on any debt(s)?"] and question 39. ["Are you currently over 90 days delinquent on any debt(s)?"]. Aware that her student loan accounts were in default, and that she owed at least \$1,000.00 for the cash advance received in January 1995 and \$219.00 for dental services, Applicant feared that disclosure of her financial delinquencies would hinder her opportunity to be granted a security clearance.

In Fall 1999, Applicant fell behind on her utility payments due to the higher costs of home heating. By early 2000, her arrearage balance reached about \$1,256.13. In mid-January 2000, Applicant entered into a repayment agreement with the gas company whereby she promised to pay her monthly charges as well as an additional \$50.00 each month toward the arrearage with the gas company agreeing to reduce the arrearage balance by the amount equal to her extra payment. In March 2000, Applicant made a \$100.00 payment to the gas company toward the arrearage.

During the course of its investigation into Applicant's background for the security clearance, the Defense Security Service (DSS) ran a credit check which disclosed outstanding indebtedness of about \$14,445.32 for four separate student loan accounts in default, \$228.00 in unpaid dental charges which had been placed for collection, \$391.74 for cable services rendered sometime before June 1995, \$22.00 for radiology services owed since June 1995, \$1,014.00 for the cash advance extended to her in January 1995, and \$1,256.13 in arrearage balance on her account with a utility (gas service) provider.

Sometime prior to mid-April 2000, Applicant was informed by DSS about the adverse financial information listed on her credit record. Uncertain about some of the accounts reported as bad debts, Applicant was given an opportunity to ascertain the status of these accounts. Applicant contacted the local consumer credit counseling service (CCCS) for assistance. In mid-April 2000, Applicant formally engaged the services of CCCS at an enrollment cost of \$35.00 plus a monthly service charge of \$18.00, authorizing CCCS to obtain a copy of her credit report to be used in assessment of her financial situation. Applicant signed an agreement to cooperate in a debt repayment plan whereby she would pay \$339.00 per month to CCCS commencing in May 2000, with CCCS then making payments on her delinquent debts. With this payment, Applicant estimated she would be short each month in the amount of \$187.00.

One week after she consulted with CCCS, Applicant was interviewed by a DSS special agent about her adverse credit and failure to list her past due debts on her EPSQ. Applicant provided the DSS agent a copy of her agreement with CCCS, and explained that the \$339.00 monthly payments would be disbursed as follows: \$199.00 toward the \$9,935.78 balance owed on the first and \$60.00 toward the \$3,012.00 balance owed on the second of two student loan accounts held by the United States Department of Education; \$20.00 toward the \$1,005.54 defaulted balance owed a state student loan foundation; \$11.00 toward a delinquent student loan of \$492.00; \$10.00 toward payment of the dental debt in collection, and \$21.00 toward the unpaid \$1,000.00 cash advance on which she believed she owed \$1,014.00. Applicant attributed the default status on her student loans to irresponsibility, carelessness and bad judgment. Applicant explained that because of her difficulties in handling her personal life in the mid-1990s she did not care about the significance of her financial obligations. Applicant disputed a \$300.00 plus cable services debt as well as a listed \$64.00 debt for pediatric services. While she claimed no recall of the \$22.00 debt for radiology services, she expressed her intent to satisfy it within the next month. Concerning her arrearage to the gas company, Applicant indicated her intent to bring the account current by the summer of 2000. Applicant admitted she deliberately omitted her financial delinquencies from her EPSQ as she was concerned she would not have obtained a security clearance if she had disclosed the debts. During the interview, Applicant executed a personal financial statement on which she indicated a net monthly remainder of \$197.75 after debt payments totaling \$100.00. (7)

Applicant did not make the promised \$339.00 monthly payments to CCCS due to unforeseen car expenses. Around the time she planned to make the first payment, Applicant's car needed repair costing \$230.70. Later that month, she had brake service performed on her automobile costing \$387.05.

In June 2000, Applicant was reinterviewed by DSS to explain her failure to make the payments to CCCS. Applicant indicated she owed \$193.55 for the brake work and that the battery and alternator were scheduled to be replaced the following week at an estimated additional cost of \$362.00. Due to recent overtime opportunities at work, Applicant related she would be able to satisfy her car repair bills and send CCCS a payment in July 2000.

Before any payment was made by Applicant, the CCCS determined Applicant was not eligible to join a program because her main problem was student loan debt rather than unsecured debt. Applicant continued to make payments to her utility provider, thereby reducing the arrearage to \$200.00. She made no payments toward her delinquent student loans, the cash advance debt owed the tax preparer, the radiology debt or the dental services debt.

In response to the SOR, Applicant in September 2001 admitted she had made no payments on her delinquent accounts with the exception of the utility arrearage. As to whether she deliberately falsified her security clearance application by failing to list her delinquent accounts, Applicant responded, "delinquent student loans are not a priority with me. Rent, light & gas are!" In October 2001, Applicant filed an amended response to the SOR in which she denied any intentional falsification of her security clearance application.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. See Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. See Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Financial Considerations

E2.A6.1.1. The Concern: 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.

E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations

E2.A6.1.2.3. Inability or unwillingness to satisfy debts

E2.A6.1.3. Conditions that could mitigate security concerns include:

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).

Personal Conduct

E2.A5.1.1. 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.

E2.A5.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A5.1.2.2. 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.

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's 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 can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue her security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that she is nonetheless

security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to guidelines F and E:

Applicant began to experience financial difficulties in the mid-1990s because of her spouse's lack of steady employment and gambling. While she was involved in this troubled relationship, she focused on providing for herself and her daughter rather than paying on her student loans and other financial accounts. Her student loans fell into default, a dental debt of about \$219.00 was placed for collection, she issued a worthless check of \$14.47, and a \$22.00 balance for radiology services went unpaid. Moreover, with her income tax refund intercepted in partial repayment of her student loan obligations, she did not receive the monies she had expected to repay the \$1,000.00 advanced to her by her tax preparer. In 1999, four years after her divorce and months after she had returned to work for company X, Applicant fell more than \$1,000.00 in arrears in her home heating payments. Pursuant to an agreement with her utility provider, Applicant had reduced the arrearage to \$200.00, but the remaining debts, totaling in the aggregate about \$15,766.09, (8) remained unaddressed as of October 2001. With the exception of the minor \$22.00 balance owed for radiology services and the worthless check charge, Applicant was aware of her delinquent accounts when she was interviewed by the DSS agent in April 2000. Applicant's failure to address known financial obligations warrants consideration of disqualifying conditions (DC) E2.A6.1.2. (a history of not meeting financial obligations) and E2.A6.1.2.3. (inability or unwillingness to satisfy debts) under financial considerations.

Under the Directive, security significant financial considerations are potentially mitigated if the behavior was not recent (E2.A6.1.3.1.), it was an isolated incident (E2.A6.1.3.2.), the conditions that resulted in the behavior were largely beyond the person's control (E2.A6.1.3.3.), 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 (E2.A6.1.3.4.), or the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (E2.A6.1.3.6.). Whereas Applicant's financial problems in the mid-1990s were due at least in part to her spouse's lack of steady employment and/or his gambling, MC E2.A6.1.3.3. applies in mitigation of her failure to make her student loan payments during that time. Yet, her financial difficulties cannot all be attributed to her failed marriage, as evidenced by the substantial arrearage owed the utility provider in 1999. Of paramount concern in this case is Applicant's disregard of her student loan debt and other legitimate financial obligations--such as the \$1,014.00 owed her tax preparer for the cash advance taken in 1995--after she had terminated her marriage and secured gainful employment, initially as an A/R supervisor and since March 1999 as an electric wirer for her present employer. Applicant acknowledges having received notices from the U.S. Department of Education of her obligation to repay her student loans, but she took no action until April 2000, when following her initial meeting with a DSS agent, she contacted a consumer credit counseling organization for assistance. While Applicant told the DSS she was to begin in May 2000 making payments of \$339.00 per month to CCCS, she did not make any payments, because she had to devote discretionary funds to car repair. In June 2000, Applicant informed the DSS agent that she could make a first payment to CCCS in mid-July. Following an extensive review of her income, living expenses and debts, the CCCS determined Applicant was not eligible for its program because her debt consisted primarily of student loans. (9) In response to the SOR, Applicant indicated she had been advised the creditors did not want to comply. The letter from CCCS does not cite creditor refusal as the reason for Applicant's ineligibility. Assuming the student loan lenders would not work through CCCS, Applicant remains responsible for the student loan obligations (as well as her other legitimate debts). There is no evidence Applicant has taken the initiative to contact the individual creditors in an effort to arrange for repayment. While she indicated in April 2000 that she intended to satisfy the \$22.00 radiology debt within the following month, she provided no documentation of any payment.

Nor is it clear that Applicant's financial situation is under control. In response to the allegation of falsification, Applicant wrote, "Delinquent student loans are not a priority with me. Rent, light & gas are!" It may reasonably be inferred that Applicant's failure to address her debts is due to the lack of financial means to do so. Concerning the issue of her having \$197.75 in discretionary income available to her each month to devote to debt repayment, Applicant stated only,

"marital status has changed." The extent to which this change in marital status impacts her financial situation cannot be determined. Applicant has failed to demonstrate that she has the willingness and present monetary means to address those delinquent financial obligations for which she remains responsible. Adverse findings are warranted with respect to subparagraphs 1.a., 1.b., 1.c., 1.d., 1.f., 1.g., 1.h., 1.i., and 1.l., of the SOR, as those matters remain unaddressed. Favorable findings are returned with respect to subparagraphs 1.e., as the Government did not prove the existence of the debt which Applicant disputes; 1.j., as Applicant had been working with the utility provider; and 1.k., as while Applicant did not make the payments she told DSS she would make to CCCS, she was determined by CCCS to be ineligible for its program.

With Applicant's student loans in default since the mid-1990s, she elected to deny any financial delinquencies when she executed her March 1999 security clearance application because she feared disclosure would negatively impact her chance of obtaining the requested clearance. The deliberate omission of relevant and material facts from any personnel security questionnaire raises significant personal conduct concerns. (See DC E2.A5.1.2.2.). Applicant did not deny her financial indebtedness when initially contacted by the DSS special agent, but she lacked definitive answers regarding the accounts identified as bad debts in her credit report. ⁽¹⁰⁾ During a subsequent interview of April 2000, Applicant acknowledged her irresponsible handling of her student loan obligations and provided an accounting of her indebtedness. She also admitted to the DSS agent that she had deliberately denied and omitted from her EPSQ her financial delinquencies. While MC E2.A5.1.3.3. (the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts) has potential applicability where an applicant corrects during a DSS interview misrepresentations made on a recent SF 86, thirteen months passed before the rectification in this case. Furthermore, the correction came after Applicant had been presented with the adverse financial information on her credit report.

Her candor during her April 2000 and June 2000 interviews notwithstanding, concerns persist as to whether her representations can be relied on. When Applicant filed an amended response to the SOR in October 2001, she denied the deliberate falsification of her security clearance application. Having already admitted to the DSS agent back in April 2000 that she had intentionally omitted her financial delinquencies from her EPSQ, her denial to subparagraph 2.a. belies her claim of reform. An adverse finding is returned with respect to subparagraph 2.a. of the SOR.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: For the Applicant

Subparagraph 1.k.: For the Applicant

Subparagraph 1.l.: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.: 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 or continue a security clearance for Applicant.

Elizabeth M. Matchinski

Administrative Judge

1. In identifying as Item 5 this Answer notarized on October 9, 2001, Department Counsel mistakenly indicates Applicant requested a hearing. Department Counsel also states in the FORM that Applicant is 32 years of age. According to the SF 86 executed in March 1999, Applicant is 42 years old. In her Conclusions, Department Counsel makes reference to the SOR as amended. There was no motion to amend the SOR proposed by either party in the instant case.
2. Applicant executed the SF 86 as well as two sworn statements using a surname of origin not clearly apparent in the record. This surname was neither her maiden name nor the name by which she was known during her marriage from August 1988 to May 1995. It is noted that the surname is shared by Applicant's daughter who was born in 1981. Applicant either was married before or she just assumed the same last name as her daughter following her divorce in 1995. By the time she responded to the SOR, Applicant was using the surname of the male person with whom she was cohabitating. In response to SOR subparagraph 1.l., Applicant indicated her marital status had changed.
3. When interviewed by a Defense Security Service special agent in April 2000, Applicant indicated she borrowed somewhere between \$10,000.00 and \$20,000.00.
4. It is not clear when Applicant and her spouse separated. Their divorce was final in May 1995.
5. Applicant related in April 2000 that when she and her ex-spouse separated, she was "out on her own as a single parent and focused solely on financially providing for [her] daughter." (See Item 7). She did not indicate on her security clearance application that she had a child, but in discussing a medical bill for pediatric services, she related she had a daughter born in January 1981.
6. There is limited information about Applicant's employment during this period. The record is silent as to her earnings or monthly living expenses during this time.
7. Applicant listed a monthly debt repayment of \$100.00 but did not reveal the nature of the financial obligation(s) being repaid. It is not at all clear that the \$339.00 to be paid to CCCS each month was included in this accounting.
8. Applicant in April 2000 indicated she owed \$219.00 on the dental debt and \$9,935.78 on one of her student loans while the Government alleged Applicant owed \$228.00 and \$9,978.08, respectively. When Applicant responded to the SOR, she did not dispute the Government's figures. The difference in the amounts may well be due to interest charges.
9. It is not clear in the record when Applicant was told she was not eligible for the program. The only document of record from CCCS is a letter of July 25, 2001, notifying an unnamed party that Applicant was unable to join the program. The April 2000 agreement was primarily a retainer, whereby Applicant engaged the professional services of CCCS to provide debt management consulting services in negotiating a repayment plan with her creditors.
10. According to the sworn statement which Applicant executed in April 2000, during her initial interview, Applicant

expressed uncertainty about particular accounts in the credit report that were identified as bad debts. Without knowing of the specifics of the questions asked, it cannot be concluded that Applicant intentionally concealed financial information during that initial interview.