

DATE: January 25, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-04425

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On August 24, 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On September 15, 2001, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge based on the written record; i.e., without a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to Applicant on November 26, 2001. The FORM includes 9 exhibits, which have been marked and admitted as Government Exhibits (GX) 1 - 9. The Applicant was instructed to submit information in response to the FORM within 30 days of receipt of the FORM. Applicant did not submit a response to the FORM by its due date, January 7, 2002. The matter was assigned to me for resolution on January 11, 2002.

FINDINGS OF FACT

Applicant is a 37-year-old training coordinator employed by a defense contractor that is seeking a security clearance for Applicant (level not specified in the FORM materials). The SOR contains nine delinquent debt allegations, and a tenth involving a Personal Financial statement (PFS), all alleged under Guideline F (Financial Considerations). The SOR also contains one allegation under Guideline E (Personal Conduct), alleging one falsification on Applicant's Standard Form 86, pertaining to her being more than 180 days delinquent, within the previous seven years, on the debts alleged in SOR 1.a - 1.h. In her response to the SOR, Applicant admitted the first eight delinquent debt allegations, with explanations, and denied the 9th debt allegation (SOR 1.i.) because she believes the amount cited to be inaccurate. She denies SOR 2.a., again with an explanation. After considering the totality of the evidence in the case file, including Applicant's response to the SOR and the FORM, I make the following FINDINGS OF FACT as to each SOR allegation:

Guideline F (Financial Considerations)

As of September 15, 2001, the date of Applicant's response to the SOR:

1.a. - Applicant was indebted to Department Store A on an account past due since December 1993, in the amount of approximately \$11,151.00. This debt was written off and has not been satisfied. Applicant stated an intent not to pay the debt;

1.b. - Applicant was indebted to Company B, in the amount of \$1,078.00, for a bad debt past due since about December 1993, when the debt was turned over for collection. Applicant stated an intent not to pay this debt;

1.c. - Applicant was indebted to Company C, in the amount of \$75.00, for a bad debt past due since July 1994, which has been turned over for collection;

1.d. - Applicant was indebted to Bank D, in the amount of \$5,666.00, for a bad debt past due since March 1994;

1.e. - Applicant was indebted to Company E, in the amount of approximately \$667.00, for a bad debt past due since about March 1994;

1.f. - Applicant was indebted to Company F, in the amount of approximately \$40.00, for a bad debt past due since about October 1999, which was turned over for collection. This debt has subsequently been paid;

1.g. - Applicant was indebted to Company G, in the amounts of approximately \$42.00 and \$51.00, for bad debts past due since October 1998, which were turned over for collection. These debts have subsequently been paid;

1.h. - Applicant was indebted to Company H, in the amount of approximately \$4,038.00, for a bad debt past due since June 1999. Applicant stated an intent not to satisfy this debt.

1.i. - Applicant's Personal Financial statement (PFS), dated October 20, 2000, indicated that Applicant could make payments on at least some of the debts cited above, since her PFS showed a monthly net remainder of approximately \$245.00.

Guideline E (Personal Conduct)

2.a. - Applicant falsified material facts on her SF-86, dated December 29, 1999, when she answered "No" to Question **38 Your Financial Delinquencies - 180 Days**, when she knew she had been more than 180 days delinquent as to the debts cited in SOR 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., and 1.h., above, all of which had occurred within the previous seven years.

Much of Applicant's financial problems arose during the period of her former marriage and subsequent divorce. Her ex-husband refused to help her pay off the family debts. Her parents helped by cosigning a debt consolidation loan (Response to SOR), but she was unable to locate an appropriate job for a considerable period. Her finances are significantly improved at present. Once her "pay started to finally increase to where [she] is not struggling, many of [her] debts fell off [her] credit report" (Response to SOR). The balance of delinquent debts at present exceeds \$22,000.00.

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors,

individually and collectively, in reaching my overall conclusion.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above 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 financial and other judgment and conduct.

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to 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.

Conditions that could raise a security concern and maybe disqualifying include:

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

Condition that could mitigate security concerns include:

3. The conditions resulting in the behavior were largely beyond the person's control (e.g., loss of employment, business downturn, unexpected medical emergencies, or a death, divorce, or separation).

GUIDELINE E (Personal Conduct)

The Concern: Conduct involving questionable judgment, untrustworthiness, 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 include:

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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Conditions that could mitigate security concerns include:

None applicable under the facts of this case.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. In reaching the fair and impartial overall common sense determination based on the "whole person" concept required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that 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.

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted on to safeguard classified information and material twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an applicant for a security clearance, in his or her private life or connected to work, may be involved in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential, as well as the actual, risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and establishes conduct that creates security concerns 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 conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

CONCLUSIONS

The debts alleged in SOR allegations 1.a. - 1.h total slightly more than \$22,800.00. Except for the small debts cited in SOR 1.f. and 1.g., none of the cited debts have been totally or partially paid off. According to Applicant, the debts cited in SOR 1.a., 1.d., 1.e., and 1.h. "fell off of credit report" in February 2001, July 2001, and May 2001, or date unknown, respectively; the debts cited in SOR 1.b. were "scheduled to fall off of credit report" in October 2001. Applicant claims she is "unsure whether I paid off the debt" cited in SOR 1.c.

Since there has been no hearing and Applicant did not submit any evidence in response to the FORM, the evidence on which I must decide this matter is limited to that in the FORM. Specifically, the names of the creditors and the amounts owing, as cited in the SOR, are derived from a 2000 credit report (Government Exhibit (GX) 5) and three 2001 credit reports (GX 7, 8, and 9, all dated November 26, 2001). The information in the four credit reports has been considered first individually, and then in their totality. I have also considered Applicant's Response to the SOR (GX 3), her security clearance application (GX 4), and her Sworn statement to the Defense Security Service (GX 6).

The creditors and debt amounts alleged in SOR 1.a - 1.h. are derived from the 2000 credit report (GX 5, at pp.2, 3, or 4), which show the balances due and last dates of activity as cited in the SOR. The Government's case as to the above allegations is also supported by Applicant's admissions in her Response to the SOR (GX 3) and in her sworn statement to DSS (GX 6). The PFS monthly remainder balance alleged in SOR 1.i. is derived from Applicant's October 2000 sworn statement to DSS (GX 6)

I conclude from the above that, except for 1.f. and 1.g, the Government has established its case as to all SOR allegations, which in turn establishes a connection between Applicant's financial conduct and her eligibility to be granted access to the nation's secrets. The remaining question to be resolved is whether Applicant has demonstrated financial rehabilitation to the degree that she can be found to currently possess the degree of good judgment, reliability, and trustworthiness required by the Directive.

Careful consideration has been given Applicant's explanations about her marital problems; her loss of employment and difficulties locating a new job; and the problems of being a single parent raising small children. She claims she is just now getting to the point financially that she can rebuild her credit and regain her financial standing (Response to the SOR). She points to the number of debts that have "fallen off" her credit reports. She does not explain exactly what she means by that term, but language in the credit reports provides meaning and context. In the 2000 credit report (GX 3), several "paid/collection account[s]" contain the notation "This account is scheduled to continue on record until 8-2002," at which time it presumably will "fall off" and no longer be reported.

I accept Applicant's statements as meaning that the bulk of her admittedly unpaid debts will, at some point, no longer be reported on her credit histories because of the passage of time. While this may eventually be true, it does not reflect any change in how Applicant views her financial responsibilities, and it is not necessarily a positive factor in determining whether she is fiscally responsible. In fact, the conclusion most obvious from the record is that Applicant has taken advantage of the passage of time and the cessation of any serious efforts to obtain payment from her.

While this may be understandable in her private life as a means of surviving financially and taking care of her family, it nevertheless is incompatible with her obligations as an applicant for a security clearance. The language of the Directive's and DOHA Appeal Board precedent guidance are quite specific in requiring demonstrated conduct that falls within one or more of the Mitigating Conditions (MC) under Guideline F. Her financial problems are recent and are certainly not isolated (MC 1 and 2). The record shows a pattern of financial problems that has continued for up to eight years without resolution. While many of the original debts are traceable to circumstances substantially beyond her control, her failure to substantially resolve the debts, or to use the net remainder of her monthly income to reduce her delinquent debts over the past years, must be considered a negative factor (MC 3,4, and 6). The amount was \$254.00 in 2000, and from her more recent statements is likely to be somewhat higher at present. It clearly is not a positive factor demonstrating financial rehabilitation.

As to SOR 2.a., Applicant claims she misunderstood the time period covered by Question 26 in her SF 86. In her Response to the SOR, Applicant states that when she spoke with the DSS agent, she told him she had "misunderstood the time frame for this question. The initial time frame was four years back and I did not have any new debts in the past four years that were delinquent." Her response is puzzling and, ultimately, not credible. She does not explain where the "four years" limitation comes from. I note that all the financial questions in the SF 86, which are 33 - 38, and all other questions with a time period stated, Questions 15, 16, 19, 25, 26, 27, 29, 30, and 40, mention a seven year period, except for Question **20 - Your Employment Record**, which uses a 10-year period. In addition, even if the debts had been incurred beyond a four-year period, they were still "currently over 90 days delinquent," when asked for in Question 39 of her December 29, 1999 Security Clearance Application. In fact, a four-year period is not cited anywhere in the SF 86. So, even if she somehow believed that she was required only to report debts over 180 days delinquent within the past four years, the language of the SF 86 indicates she knew or should have known and understood that was not what Question 38 was asking for.

In summary, I conclude that the case record establishes the existence of the debts, but not their resolution. I have carefully considered all of Applicant's evidence showing the financial difficulties she has had over the past eight or more years. I conclude however, that she not yet demonstrated that the debts have been, or are being, resolved. Under these circumstances, the record does not support a conclusion favorable to Applicant. In addition, I am unable to accept her excuse for falsifying her response to Question 38 on her SF 86.

I have considered the evidence in light of the appropriate legal standards and factors, and have assessed Applicant's credibility based on the written record. I conclude the totality of the evidence establishes a case as to all SOR allegations (except for 1.f. and 1.g.), which in turn establishes a nexus or connection with Applicant's security clearance eligibility. The remaining issue is whether Applicant has provided explanation, mitigation and/or extenuation adequate to overcome the negative impact of the Government's case. As discussed above, I conclude Applicant has not yet demonstrated the financial rehabilitation, good judgment and reliability required of anyone seeking access to the nation's secrets.

FORMAL FINDINGS

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

Guideline F (Financial Considerations) 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. Against the Applicant

Subparagraph 1.f. For the Applicant

Subparagraph 1.g. For the Applicant

Subparagraph 1.h. Against the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. Against the Applicant

Guideline E (Personal Conduct) 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.

BARRY M. SAX

ADMINISTRATIVE JUDGE