

DATE: October 24, 2001

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-06141

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Matthew E. Malone, Department Counsel

FOR APPLICANT

Bruce Duane Duff

Personal Representative

SYNOPSIS

Applicant with history of delinquent debts, attributable in part to accumulated medical debts, made only a few scattered attempts to address her covered debt delinquencies before her post-SOR lay off and reduction to part time on-call status and fails to demonstrate either emergent financial stability sufficient to absorb security risks associated with pattern debt delinquency or surmount poor reliability trustworthiness implications attributable to her imputed deliberate omissions of her delinquent debts and judgment. Clearance is denied.

STATEMENT OF THE CASE

On April 16, 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, issued a Statement of Reasons (SOR) to 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 Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on May 25, 2001, and requested a hearing. The case was assigned to this Administrative Judge on August 7, 2001, and scheduled on August 14, 2001, for hearing. A hearing was convened on September 4, 2001, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of seven exhibits; Applicant relied on two witnesses (including herself) and two exhibits. The transcript (R.T.) of the proceedings was received on September 14, 2001.

PROCEDURAL ISSUES

Prior to the close of the hearing, Applicant requested leave to supplement the record with documentation of payments made on her debts. There being no objection, and good cause showing, Applicant was afforded an additional ten (10) days to supplement the record with documented payments. Within the time permitted Applicant provided documentary support for three payments made on her charged off car-repossession deficiency, which was not objected to by Department Counsel, and is accepted as Applicant's exhibit C.

STATEMENT OF FACTS

Applicant is a 41-year old maintenance specialist who worked for a defense contractor for over nineteen years (between 1982 and 2001) before her lay-off in April 2001 (following receipt of the SOR), followed by reduction to part time, on-call status. She seeks a security clearance at the level of secret, notwithstanding her layoff. Case will proceed on the assumption her changed status is not intended to be a permanent one.

Summary of Allegations and Responses

Applicant is alleged to have financial difficulties arising from accumulated debts over a nine- year period, which she reaffirmed to a DSS agent in March 1999 and committed to making arrangements to pay her overdue bills a little at a time: Specifically, her debts include numerous delinquent debts in excess of \$10,500.00, many hospital-related, including one judgment for \$489.00. Allegedly, Applicant's personal financial statement executed in April 2000 reflects a net monthly remainder of \$976.00.

Additionally, Applicant is alleged to have falsified her Security Clearance Application (SF-86) executed in October 1998 by answering (a) "no" to question 37 regarding unpaid judgments and (b) "no" to questions 38 and 39, respectively, regarding any financial delinquencies over 180 days within the past seven years and 90 days currently, omitting her unpaid judgment and delinquent debts.

For her answer to the SOR, Applicant admitted most of the allegations, denying delinquent accounts attributed to her by creditors holding debt balances of \$56.00 and \$50.00, respectively, as well as a medically-related unpaid judgment (allegedly taken against her in March 1994 for \$489.000). Applicant denied any owed 73.00 debt delinquency as well. Admitting falsifying her SF-86, she claimed, nonetheless, to have left the blocks in her hand-prepared SF-86 blank because of questions about how to appropriately answer them and to have signed the subsequent completed form without adequate review. She denied any intention to falsify material facts concerning her security clearance (claiming ignorance), and claimed cash awards for outstanding performance and enjoyment of her position.

Relevant and Material Factual Findings

Applicant experienced considerable financial problems beginning in 1992 as the result of incurred medical debts, for which she had no medical insurance at the time (*see* R.T., at 42-43). She made scattered payments on a deficiency related to her repossessed car before her receipt of the SOR in April 2001, but never enough to restore this or any of her other delinquent accounts to current status. These delinquent debts exceed \$10,000.00 in the aggregate and embrace charged-off accounts, as well as accounts referred to collections, save for one-medical-related debt of \$489.00, which was taken to a judgment in March 1994. Despite her claims that several of the covered debts were either not attributable to her or were previously paid (*viz.*, her \$73.00 consumer debt covered by sub-para. 1.i), she provides no documentation.

Since being administratively removed from her employer's premises in April 2001 (after receiving the SOR) and placed later on part time status subject to recall (*see* R.T., at 72-74), Applicant has made a few \$50.00 payments on the largest of her delinquent debts: a delinquency debt on a repossessed car costing around \$15,000.00 (R.T., at 55) that bears a charged off deficiency balance in excess of \$8,000.00 (*see* ex. C). Despite prior assurances made to DSS that she would make concerted efforts to take care of her old debts (even before her layoff), she failed to follow through in any verifiable way.

Both times Applicant was interviewed by DSS (in April 1999 and again in April 2000) she assured she possessed the means to pay on her old debts and attached personal financial statements supporting her claims. Each attached personal financial statement reflected net remainders: \$1,395.00 in March 1999 and \$976.00 in April 2000 (*see* exs. 3 and 4, respectively). Even according some flexibility in these net remainders to accommodate for unanticipated monthly

expenses (such as car repairs and schooling expenditures for her children, one of whom is in college) and the doubts Applicant harbors about the accuracy of the net remainders she claimed, Applicant does not credibly explain why she could not make more financial inroads on her old debts than the few scattered payments she is credited with, *i.e.*, with her car deficiency (*see* exs. B and C). The \$100.00 child support payments from her first spouse she reported in her first DSS interview were never maintained with any consistency and were later reduced to about \$23.00 a month (*see* R.T., at 67-69). So unreliable were her first husband's support payments that she omitted them entirely from the financial statement she attached to her later DSS statement (*see* ex. 4; R.T., at 58). Either way, child support contributions did not play a significant role in her income resource allocations. For she was still able to report a considerable net remainder even allowing for the reduction of support payments.

Applicant has made no tangible use of debt consolidating services or repayment plans designed to apportion scarce income sources among her many delinquent creditors. While she has considered Credit Counseling Services ("CCC") in the past (*see* R.T., at 65-66), she has never pursued financial counseling or debt consolidation.

Asked to complete an SF-86 in October 1998, Applicant left blank portions of question 27 of the draft SF-86 she turned in, including the space reserved for responding to the question pertaining to unpaid judgments taken against her within the previous seven years. In the same draft SF-86, she checked **no** to having any debts over 180 days delinquent in the space provided for answering question 28a, while leaving 28b blank. When asked to review the electronically generated SF-86 version prepared by her FSO a couple days later, she read and signed the form that included **no** answers to question 37 re: unpaid judgments within the previous seven years, question 38 re: debt delinquencies exceeding 180 days within the previous seven years and question 39 re: current delinquencies over 90 days. After reading this prepared SF-86, she signed and dated it (October 22, 1998).

Applicant attributes (a) understanding deficits to her failing to complete questions 27 and 28 in her initial SF-86 version (ex. 2) and (b) simple oversight and neglect in answering **no** to questions 37 through 39 in the later electronically generated version (*see* R.T., at 34, 37-38;). She is partially corroborated by her friend, cousin of her husband and colleague of over ten years (*see* R.T., at 91-92). Still, she had help from her sister in completing the first SF-86 and admits to knowing at the time that she was over 100 days late on some of her debts and 90 days late on some current debts (*see* R.T., at 36-37). While her confusion claims are entitled to some weight, they do not explain the inconsistencies in her explanations sufficiently to reconcile them with any degree of reliability. When afforded an opportunity to ask for explanations, either in connection with her initial draft submission or the electronic version later furnished her containing the **no** answers to questions 37 through 39, she deferred and signed both SF-86 versions as presented. Applicant had too many delinquent debts to mask the pertinent questions posed to her as too confusing to appropriately answer, as she claimed in her answer and reinforced at hearing. Without more corroboration of her claimed reading disabilities, she can not avert inferences that her denials to questions 37 through 39 of her October 22, 1998 SF-86 (ex. 1) were made knowingly and willfully.

When Applicant was interviewed by DSS (both in March 1999 and April 2000) she was asked about her delinquent bills and why she had not addressed them. While Applicant could not remember the exact sequence of questioning of her bills, she could recall being asked about her bills up-front. By her accounts of the questioning and the references to the credit bureau report in her March 1999 DSS statement (ex. 3), good reason exists to draw inferences that she was asked by DSS about her old debts listed in her credit report before she acknowledged them as her own.

Applicant has excellent performance evaluations to her credit and is considered reliable and trustworthy, with a good work ethic, by a longtime colleague who knows her well and vouchsafes for her reliability and trustworthiness.

POLICY

The Adjudicative Guidelines of the Directive (Change 4) list "binding" policy considerations to be made by Judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires the Judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the Judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into

account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

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

Disqualifying Conditions

DC 1. A history of not meeting financial obligations.

DC 3. Inability or unwillingness to satisfy debts.

Mitigating Conditions

MC 1. The behavior was not recent.

MC 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).

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

Personal Conduct

Basis: conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Disqualifying Conditions:

DC 2 The deliberate omission, concealment, falsification or misrepresentation 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.

Mitigating conditions: None.

Burden of Proof

By dint of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a nexus to the applicant's eligibility to obtain or maintain a security clearance. The required showing of nexus, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant comes to these proceedings with a history of security-significant problems: troubled finances and concealment of major debt delinquencies that create judgment and reliability issues germane to appraising her eligibility to access classified information.

Financial Issues

Over an extended period (beginning around 1992), Applicant became delinquent in a number of her debts: some medically related, and others involving utility and repossession debts. Making only scattered small payments on these debts even after she became financially able to address them and promised repeatedly to DSS to do so, she let most of the debts go to collection, and one (a hospital debt in the amount of \$489.00) to judgment against her. To date, she has rejected credit counseling or debt consolidation measures and has continued to make only a few small payments to one creditor, who happens to hold the largest debt: an \$8,000.00 plus deficiency on a repossession.

At issue in this proceeding is not only Applicant's reliability and trustworthiness in light of her accumulation of delinquent debts in excess of \$10,000.00, but also her unwillingness to seriously address them (either individually or through some form of debt consolidation program). Security determinations have never confined risk considerations to the elimination of debts that result from collection action, write offs and judgments, but rather it has looked to the applicant's overall financial history to shed light on her most recent conduct as an indicator of recurrence risks. This the Government has done in underscoring Applicant's still ongoing financial difficulties associated with her continuing repayment responsibilities. In other words, judgment/trust concerns are implied from past financial problems when considering the security significance of debt deficiencies.

Although Applicant cannot be faulted for incurring all of her debts at a time when she and her husband possessed the visible means of taking care of most of them, some judgement imprudence must be imputed to her for not making more concerted efforts to address them when she had the assured ability to do. Initial security concerns justifiably attach, accordingly, to Applicant's failure to make more earnest efforts to repay her old creditors, either through individual work-out efforts, or collective debt consolidation. Appraising the security significance of Applicant's financial deficiencies, several Disqualifying Conditions (DC) of the Adjudicative Guidelines (for financial) apply: DC 1 (history of not meeting financial obligations) and DC 3 (inability or unwillingness to satisfy debts).

While some of Applicant's medically related debts might be extenuated by exigent circumstances in place at the time of their incurrence, none warrant total extenuation and mitigation, given Applicant's emergent repayment capabilities over the last two years. Unfavorable conclusions warrant, accordingly, with respect to the allegations covered by subparagraphs 1.a through 1.j of Guideline F.

Falsification Issues

Potentially serious and difficult to reconcile with the trust and reliability requirements for holding a security clearance are the timing and circumstances of Applicant's respective SF-86 omissions of her delinquent debts and unpaid judgment re: on of her medical creditors. So much trust is imposed on persons cleared to see classified information that deviation tolerances for incidents of trust betrayal are calibrated narrowly.

Applicant fails to provide any credible explanation for omitting her delinquent debts in either the draft SF-86 she completed on October 20, 1998, or the electronically generated SF-86 she executed two days later. The questions posed were straightforward and sought no more than Applicant's respective recollection of any known unpaid judgments or delinquent debts (*viz.*, debts exceeding 180 and 90 days delinquent, respectively). While she may take credit for being confused over any unpaid judgments when she omitted the same in her initial SF-86, she cannot be excused for denying any debts over 180 days delinquent in the same draft, or for expressly denying any delinquent debts or unpaid

judgments in the SF-86 she executed on October 22, 2001.

Manifestly, Applicant answered question 37 and questions 38 and 39 of her completed SF-86 of October 22, 1998 with the intent to conceal her delinquent debts in the hope of averting any risks of jeopardizing both her clearance and job retention, which she subsequently lost in the wake of her receipt of the SOR. While her job loss is unfortunate, job retention can never be an acceptable reason for withholding adverse information from the Government. Government must be able to rely on those it entrusts with access to its secrets.. Applicant's omissions were knowing, deliberate and material to a determination about her clearance suitability. They invite application of DC 2 of the Adjudication Guidelines (for falsification).

Not until Applicant was confronted with her credit report in ensuing DSS interviews did she acknowledge her numerous debt delinquencies. Her disclosures while welcomed come too late (some six months later) to credit her with any prompt, good faith correction of prior falsification under the governing Adjudicative Guidelines for Personal Conduct.

Considering all of the evidence produced in this record and the available guidelines in the Directive (inclusive of the E.2.2 factors), unfavorable conclusions warrant with respect to sub-para. 2.a of Guideline E.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors set forth in the Procedures section (paragraph 6) of the Directive, as well as E.2.2 of the Adjudicative Process of Enclosure 2 of the same Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Sub-para. 1.a : AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: AGAINST APPLICANT

Sub-para. 1.g: AGAINST APPLICANT

Sub-para. 1.h: AGAINST APPLICANT

Sub-para. 1.i: AGAINST APPLICANT

Sub-para. 1.j: AGAINST APPLICANT

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-para. 2.a: AGAINST 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge