

DATE: March 20, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-06143

DECISION OF ADMINISTRATIVE JUDGE

JOHN R. ERCK

APPEARANCES

FOR GOVERNMENT

Mark Curry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

When Applicant completed her SF 86 (*Questionnaire for National Security Positions*) in March 1998, she failed to disclose more than \$10,000.00 in delinquent financial obligations because she was embarrassed and afraid she would not receive her security clearance. She provided assurances during three DSS interviews that she intended to pay off her delinquent debts. Her one-time payment of approximately \$3,000.00 on delinquent accounts in August 2001, after she received the SOR, and after she received a gift of \$1,250.00 from her stepfather is not found to constitute a good-faith effort to resolve her delinquent debts. She continues to be delinquent on financial obligations totaling more than \$8,000.00, of which more than \$6,700.00 have been converted to judgments. Clearance is denied.

STATEMENT OF THE CASE

On June 21, 2001, the Defense Office of Hearing and Appeals (DOHA), pursuant to Executive Order 10865, "*Safeguarding Classified Information Within Industry*," dated February 20, 1960, as amended, and modified, and Department of Defense Directive 5220.6, "*Defense Industrial Personal Security Clearance Review Program*" (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary finding under the Directive that it is clearly consistent with the national interest to grant a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether a security clearance should be granted, denied or continued.

Applicant's answer to the SOR was received by DOHA on September 5, 2001; In her answer, she requested a hearing before a DOHA Administrative Judge. The case was assigned to this Administrative Judge on December 14, 2001. On January 22, 2002, a hearing was convened for the purpose of considering whether it is clearly consistent with the national interest to grant Appellant's security clearance. The Government case consisted of six exhibits. Applicant relied on her own testimony, the testimony of one other witness, and 20 exhibits. She submitted two additional exhibits (admitted without Department Counsel objection) in the time allotted after the hearing was adjourned.

RULING ON

DEPARTMENT COUNSEL'S MOTION

Department Counsel proposed to amend the SOR by withdrawing subparagraphs 1.x., 1.y, and 1.z. There being no objection by Applicant, Department Counsel motion was granted and subparagraphs 1.x., 1.y. and 1.z were withdrawn.

FINDINGS OF FACT

The Statement of Reasons (SOR) alleged Applicant was delinquent in making payments on financial obligations totaling more than \$10,000.00 (to more than 20 different creditors), and further alleged Applicant had falsified material facts on a security questionnaire completed by her on March 6, 1998. In her answer to the SOR, Applicant admitted, with explanation, all allegations set forth in the SOR, except the allegation in subparagraph 1.k. Several of her admissions included statements that the alleged delinquent obligation had been satisfied. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 32 years old and has been an employee of the same DoD contractor (in State B) since September 1997. Previously, she had served in the United States military from July 1988 to September 1991. She is currently applying for a secret personal security clearance. She had held a security clearance while serving in the military, and testified she has had access to classified information in the time she has worked for her current employer (Tr. 6). Appellant was married to a fellow service member from September 1990 to December 1992.

Appellant's financial problems arose primarily in the years after she was discharged from military service. In that time period, she divorced, went back to the city in State A where her family (of origin) lived, and went through a series of low-paying jobs: bartending, working as waitress and as a secretary. She admits she lived irresponsibly during this time; she smoked marijuana once, she drank beer every night until "at least getting a 'buzz'," she was arrested for driving under the influence (later reduced to reckless operation of a motor vehicle), she was arrested for disorderly conduct and public intoxication, and she received several speeding tickets that she ignored. Appellant also accumulated considerable debt and ignored the bills sent to her by her creditors (Tr. 50). Three creditors obtained judgments against Applicant on delinquent debts. Two additional legal actions were filed against her for traffic related matters. One of these actions (SOR subparagraph 1.a.) resulted in a judgment of \$3,314.36 being obtained against Applicant. The other action (SOR subparagraph 1.k.) was dismissed (Appl. Exh. 21).

Also during this time, Appellant incurred medical bills for treatment and surgery to remove scar tissue from an ear drum replacement undertaken when she was much younger. Surgery performed while she was in the military did not succeed in removing all of the scar tissue, so an additional surgery was done by the Veterans Administration (VA) after she was discharged. While most of these medical expenses were covered by the VA, some of these bills appeared on her credit report until the VA made payment.

In approximately 1995, Applicant visited Ms. M, a friend in State B, whom she had become acquainted with during military service. After hearing all that had happened to Applicant since leaving military service, Ms. M invited Applicant to come and live with her and her family. Appellant accepted Ms. M's offer. As s. M recalled during her testimony, Appellant moved to State B "with nothing" (Tr. 83). She worked for an agency that placed temporary employees until September 1997 when she began working for her current employer. A perusal of her credit report and the SOR suggests Applicant moved to State B at a time when she was delinquent in making payments on financial obligations totaling more than \$9,000.00 to 15 different creditors. Applicant accumulated additional debt in State B in the time before the SOR was issued (June 2001).

When Applicant completed her *Questionnaire for National Security Position* (SF 86) in March 1998, she certified:

My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both.

Not all of Applicant's answers to the questions posed on the SF 86 were truthful. In response to question 23 which asked if she had been arrested for any offense involving drugs or alcohol, she answered "yes" and admitted a 1994 arrest for

reckless operation of a motor vehicle, but did not list a 1995 arrest for disorderly conduct and public intoxication. In response to question 24 which asked if she had ever used marijuana or other drugs, Appellant answered "no," and did not list her 1992 marijuana use. In response to question 27d which asked Applicant if she had any unpaid judgments in the past seven years, she answered "yes," and listed a 1996 judgment of "approx. \$3000.00;" but did not list the unpaid judgments alleged in subparagraph 1.b., 1.c., and 1.f. In response to questions 27a (which asked if she had been more than 180 delinquent on any debt in the past 7 years) and 27b (which asked if she was currently 90 days delinquent on any debt), Applicant answered "no;" she did not list any of the delinquent debts alleged in SOR.

Applicant was first questioned by a special agent of the Defense Security Service (DSS) in August 1998. She admitted in a signed, sworn statement she had not been completely honest in "filling out" the SF 86. She did not list her 1992 use of marijuana, her 1995 arrest for disorderly conduct and public intoxication, and her delinquent debts, because she was embarrassed and feared she would lose her security clearance. With respect to several of the creditors, Applicant provided assurances she would contact them and resolve the delinquent debt. The personal financial statement (PFS) prepared by Applicant and attached to her August 1998 signed, sworn statement indicates a monthly remainder of \$726.00.

Applicant was questioned by the DSS special agent again in October 1998. The focus of this interview was a law suit against Applicant and her former employer claiming damages of \$75,000.00. In a signed, sworn statement, she provided information about the incident which resulted in the law suit, and she admitted she had made several calls to one creditor, but had not "contacted any of the other creditors yet." (Govt. Exh. 3)

Applicant was questioned a third time by the DSS special agent in January 1999. The purpose of this interview was to obtain an update on Applicant's finances. In a signed, sworn statement (Govt. Exh 4), Applicant indicated her expenses had increased because her nephew was living with her and she had to rent a larger apartment. She explained her efforts to obtain a deferral on her education loans and she admitted she had not been able to pay off any of her debts. The PFS prepared by Applicant and attached to this signed, sworn statement indicates a monthly remainder of \$169.00.

At her administrative hearing, Applicant again testified about how embarrassed she was about her arrests, marijuana use, and delinquent debts. She testified she had not listed all the judgments in response to question 2--because she did not realize that creditors had obtained judgments against her (Tr 49-50). She did not list other delinquent debts, about which she was aware, because she was embarrassed and afraid she would not get her security clearance (Tr. 58-59).

At her administrative hearing and in subsequent submissions, Applicant has documented paying off more than \$2,900.00⁽¹⁾ of the delinquent debt alleged in the SOR during August 2001. She claimed, but failed to document, paying off an additional \$1,050.00⁽²⁾ of the delinquent debt alleged in the SOR. Earlier in answering the SOR, Applicant assumed debts totaling more than \$4,000.00 had been "written" off since the debts did not appear on her credit report.⁽³⁾ However, these debts remain valid and enforceable as the creditor in each instance had obtained a judgment against Applicant for the amount of the debt⁽⁴⁾. In addition to the unpaid judgments, Applicant owes an undisclosed amount in student loans for which repayment is deferred as long as she is enrolled in school (Tr. 54). Applicant testified she paid off a total of approximately \$5,000.00⁽⁵⁾ in debt in August 2001 with the help of a \$1,250.00 gift from her stepfather and by drawing \$3,800.00 from her personal savings (Tr. 65). She testified she had not made any payments on these debts between March 1998--when she first became embarrassed by her delinquent debts--because she did not have sufficient income to do so (Tr. 72-73). She also stated she did not realize the importance of a security clearance when she began working for her current employer (Tr. 70-71).

Although Applicant testified she did not have sufficient income to pay off delinquent debts, she had sufficient income to accumulate \$3,800.00 in savings and to make a discretionary expenditure of more than \$1,000.00 for dental braces (Tr. 79). And after paying off \$5,000.00 in debt in August 2001, Applicant purchased a house for \$79,000.00 in September 2001, using a \$5,000.00 interest free loan from her mother as a down payment. Prior to August 2001, Applicant testified she had not considered her mother and stepfather as a financial resource for addressing her delinquent debts (Tr. 66-67).

In the time Applicant has lived and worked in State B, she has established an excellent employment record in the 4 ½ years she has worked for her current employer. She has gone back to school and is currently working toward a degree.

She temporarily assumed responsibility for a nephew during a time when his mother was going through a "difficult time" and unable to properly supervise him.

A character witness who testified on Applicant's behalf described how she (Applicant) came to State B with nothing and has really done well for herself; she has gone to school, moved up in the company, and not been involved in any adverse incidents since moving from State A B (Tr. 83-84). Other character references have submitted written statements on Applicant's behalf. Her supervisor describes Applicant as "one of (his) most dedicated and hard working employees" (Appl. Exh. 6). Several fellow employees have also commented favorably about Applicant's attitude, dedication, and reliability (Appl. Exhs 7,8,9,10,11,12,13, and 14). Applicant has received numerous training certificates and was recently nominated for an employee award.

POLICIES

The Adjudicative Guidelines of the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case by case basis with an eye toward making decisions with reasonable consistency that are clearly consistent with the interests of national security. In making these overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but also in the context of the factors set forth in Section 6.3 of the Directive. In that vein, the Government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to Applicant's lack of security worthiness.

The following Adjudicative Guidelines are deemed applicable to the instant matter:

FINANCIAL CONSIDERATIONS

(Guideline F)

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the person may not properly safeguard classified information.

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;

Conditions that could mitigate security concerns include:

E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

PERSONAL CONDUCT

(Guideline E)

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the person may not properly safeguard classified information.

Conduct that could raise a security concern and may be disqualifying 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.

Conditions that could mitigate security concerns include:

E2.A5.1.3.1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;

Burden of Proof

The Government has the burden of proving any controverted facts alleged in the Statement of Reasons. If the Government established its case, the burden of persuasion shifts to Applicant to establish her security suitability through evidence which refutes, mitigates, or extenuates the disqualifying conduct and demonstrates it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters a fiduciary relationship with the Government predicated upon trust and confidence. When the facts proven by the Government raise doubt about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate he 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 security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against an Applicant.

CONCLUSION

Having considered the record evidence in accordance with appropriate legal precepts and factors, this Administrative Judge concludes the Government has established its case with regard to Guidelines F and E. In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section 6.3, as well as those referred to in Section E2.2 dealing with adjudicative process, both in the Directive.

A security concern is raised by Applicant's failure to satisfy more than twenty financial obligations according to the terms originally agreed upon. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant's only explanation for falling behind on financial obligations totaling more than \$10,000.00 is that she was "irresponsible" for a period of time. She was "irresponsible" for a time when she was in her mid to late 20's, after she had been married and served three years in the military. She does not claim that she was unemployed, that she was ill, or that she became indebted caring for a sick child or parent. While she did incur some medical bills which were not covered immediately by the VA, most of the outstanding debts alleged in the SOR were for expenditures unrelated to the medical problems for which the VA was responsible. Applicant testified that she lied on her SF 86 because was embarrassed about her irresponsible life style and financial problems. Yet for 3½ years after lying to avoid the embarrassing truth about her past, she did nothing to address the delinquent financial obligations. She credibly explains she did not begin paying off her debts immediately after falsifying her SF 86 because with her low salary, she did not have the resources to live and pay off debts. However, she does not satisfactorily explain why she did not make an effort to pay off her debts after her salary increased to the point where she had sufficient discretionary income to accumulate more than \$3,000 in savings and to pay more than \$1,000.00 for dental braces.

Although Applicant made significant payments on her delinquent debts in August 2001, the circumstances of her belated effort significantly undermine a claim these payments constitute a "good faith effort" to resolve her delinquent debts (MC 6). This one-time payment was made 3 years after she first provided assurances she intended to pay off her debts and two months after the SOR informed her (June 2001) DOHA was unable to find it was clearly consistent with the national interest to grant her access to classified information--because of her delinquent debts. Also, this payment was made shortly before Applicant purchased a home, at a time when it was necessary for her to clean up her credit report in order to qualify for a home mortgage. The circumstances suggest Applicant paid off only those debts which appeared on her credit report, and paid them only because she wanted a security clearance and wanted to clean up her credit report to the extent necessary to have her loan approved. Without a record of paying off debts through regularly imposed fiscal self-discipline, there is little reason for believing Applicant's one-time payment of financial obligations in August 2001 is an indication of her future intentions.

Applicant has given lip service to putting her irresponsible behavior in the past, but has failed to do the heavy lifting of actually addressing her delinquent debts through long-term, self-imposed fiscal discipline. In spite of receiving promotions and salary increases between March 1998 and June 2001, she did not establish a record of regularly allocating any of this increase toward debt repayment. And while Applicant believes certain debts have been written off (and she is no longer liable) because they do not appear on her current credit report, at least three creditors--and one other individual to whom she is liable because of an accident--have obtained judgments on debts totaling more than \$6,000.00. Applicant continues to be liable on these debts. Because Applicant has not demonstrated she is capable of exercising the necessary fiscal discipline to address her debts in the past, the Government is justifiably concerned about her ability or willingness to address the remaining obligations. Guideline F is decided against Applicant.

A security concern is also raised by Applicant's "deliberate omission....of relevant and material facts" from her SF 86. Facts are considered relevant and material when they are capable of influencing a federal agency's decision, e.g., a decision to grant or deny a security clearance. In this instance Applicant's "no" answers to questions on the SF 86 intended to elicit information about Applicant's financial well being (questions pertaining to judgments and past due accounts) falls well within the definition of materiality. Because she knew this information was relevant to her security clearance suitability, Applicant willfully withheld this information and falsified her SF 86 because she was embarrassed by her past and her financial irresponsibility. She withheld this information because she was afraid she would not be granted her security clearance if she told the truth. Applicant also failed to disclose her 1992 marijuana use, a 1995 arrest for disorderly conduct and public intoxication, and three judgments which had been entered against her.

Applicant's failure to list her one-time use of marijuana in 1992 on her SF 86 is not found to be pertinent to a determination of her judgment, trustworthiness and reliability. So to Applicant's 1995 arrest for disorderly conduct and public intoxication. This appears to have been an isolated incident and Applicant has not been involved in any similar misconduct since that event. Also, Applicant's testimony explaining she was not aware of the debts which had become judgments is found to be credible.

Applicant has repeatedly stated she withheld material information about her delinquent debts when she completed her SF 86 because she was embarrassed and concerned she would not receive her security clearance if she told the truth. Neither explanation justifies lying to the government and Applicant's behavior immediately after the falsification, or in the more than 3½ years that followed, fails to mitigate her serious lapse. The falsification was not an isolated incident (MC 2) and Applicant's full disclosure to the DSS special agent six months later does not qualify as a prompt good-faith effort to correct the falsification before being confronted with the facts (MC 3). There is no evidence Applicant withheld information about her financial problems because of improper or inadequate advice (MC 5).

Finally Applicant has not taken sufficient positive steps to reduce or eliminate her vulnerability to coercion, exploitation or duress because of her financial problems (MC 5). If Applicant was truly embarrassed about her wasted years of irresponsible living and the resulting delinquent debts, she could and would have done more to demonstrate her contrition and good faith. By methodically paying off her delinquent debts in the 3½ years after embarrassment over them caused her to lie to the United States Government, she would have demonstrated she truly was a more mature and responsible individual than the person who incurred and then ignored \$9,000.00 worth of debt in State A. Guideline E is concluded against Applicant.

FORMAL FINDINGS

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

Paragraph 1 (Guideline F) AGAINST THE APPLICANT

Paragraph 1.a. Against the Applicant

Paragraph 1.b. Against the Applicant

Paragraph 1.c. Against the Applicant

Paragraph 1.d. For the Applicant

Paragraph 1.e. Against the Applicant

Paragraph 1.f. Against the Applicant

Paragraph 1.g. For the Applicant

Paragraph 1.h. For the Applicant

Paragraph 1.i. For the Applicant

Paragraph 1.j. For the Applicant

Paragraph 1.k. For the Applicant

Paragraph 1.l. Against the Applicant

Paragraph 1.m. For the Applicant

Paragraph 1.n. For the Applicant

Paragraph 1.o. For the Applicant

Paragraph 1.p. For the Applicant

Paragraph 1.q. For the Applicant

Paragraph 1.r. For the Applicant

Paragraph 1.s. For the Applicant

Paragraph 1.t. For the Applicant

Paragraph 1.u. For the Applicant

Paragraph 1.v. For the Applicant

Paragraph 1.w. Against the Applicant

Paragraph 2 (Guideline E) AGAINST THE APPLICANT

Paragraph 2.a. For the Applicant

Paragraph 2.b. For the Applicant

Paragraph 2.c. For the Applicant

Paragraph 2.d 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 Applicant's security clearance.

John R. Erck

Administrative Judge

1. Payment of the debts alleged in subparagraphs 1.d., 1.g., 1.h., 1.i., 1.j., 1.m., 1.n., 1.o., 1.p., 1.q., 1.r., 1.s., 1.t., 1.u., and 1.v. is found to be documented by Applicant Exhibits 1, 2, 3, 4, 5, 22, and 23.
2. Applicant stated in her SOR answer she had settled the judgment alleged in subparagraph 1.b. with a payment of \$1,000.00 and paid off the \$50.00 obligation alleged in subparagraph 1.w. Neither of these payments have been documented and the judgment alleged in subparagraph 1.b. continues to be listed on Applicant's most recent credit report (Appl. Exh. 23).
3. Applicant assumed the debts alleged in subparagraphs 1.a., 1.c., and 1.f. had been written off.
4. Judgments remain enforceable in most jurisdictions for ten years; judgement were obtained against Applicant in April 1995 (1.k), June 1995 (1.c.) and May 1997 (1.f.).
5. A portion of this amount must have been applied to debts **not** listed in the SOR, since the total amount of SOR listed debt that has been paid off is approximately \$2,900.00.