

DATE: November 16, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-06518

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Michael H. Leonard, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On May 22, 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 June 21, 2001, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made after a hearing before a DOHA Administrative Judge. Attached to her response were five documents. At the hearing these documents were moved to the evidence portion of the case file and marked as Applicant's Exhibits (AX) A - E.

The case was assigned to me on August 9, 2001. A Notice of Hearing was issued on August 17, 2001 and the hearing was conducted on September 18, 2001. At the hearing, Department Counsel offered seven exhibits, which were marked as Government Exhibits (GX) 1 - 7. Applicant testified on her own behalf and offered a number of exhibits, which were marked for identification as AX F - W. Without objection by either party, all above exhibits were admitted into evidence as marked. Another exhibit, actually a collection of receipts and copies of checks, was timely received after the hearing, through Department Counsel, and admitted collectively as AX X, pp. 1 - 11. The transcript (Tr) was received at DOHA on October 22, 2001.

FINDINGS OF FACT

Applicant is a 41-year-old Technical Writer/Editor for a defense contractor. Her employer is seeking a Secret security clearance for Applicant in connection with her employment.

The delinquent debts and judgments reflected in the SOR are derived from data found in February 9, 2000 and March 15, 2001 Reports of Credit (GX 4 and 5), which actually consist of reports of credit data from the three major credit

reporting services. As discussed below, I find that many of the allegations in the SOR are based on data that was/is incorrect, either at the time the Reports of Credit were prepared, at the time the SOR was issued, or at the present time.

Based on the contents of the case file, including Applicant's testimony and all exhibits, I make the following findings of facts as to each SOR allegation.

GUIDELINE F (Financial Considerations)

Delinquent Debts owed to:

1.a. - Telephone Company A in the approximate amount of \$99.00, for an account that was turned over for collection in April 1994. Partial payment was made prior to Applicant's Response to the SOR. As of the hearing date, Applicant had paid about \$200.00 (Tr at 34) and the apparent balance remaining of \$99.83 was paid off on October 12, 2001 (AX X, p. 11).

1.b. - Bank B in the approximate amount of \$739.00, for an account that was charged off in July 1997. As of June 21, 2001, the debt had been reduced by \$400.00 (Response to the SOR) and it was paid off on October 12, 2001 (AX X)

1.c. - Company C in the approximate amount of \$52.00, for a delinquent account that was charged off in July 1995. This debt was satisfied several years ago. Applicant has contacted the creditor and was told no current record of the debt exists. However, to clear the record, she has paid the creditor the \$52.00 cited in the SOR (AX X, p. 11).

1.d. - Company D in the approximate amount of \$151.00, for a delinquent account that was 120 days past due in July 1997. This debt has been satisfied. Applicant previously contacted the creditor and was told no current record of the debt exists (Tr at 35). Since the hearing, she recontacted the creditor and was told she does not "have any balance with them (AX X, p. 2);

1.e. - Company E in the approximate amount of \$39.00 and \$51.00, for two delinquent accounts that were turned over for collection in March 1998. Applicant believes these are for medical bills and has been trying to find out the details. The listed creditor has not yet provided the needed information. She intends to pay the debt (Tr at 36); However, the cover letter accompanying AX X mentions this statement but the statement itself is not included;

1.f. - Company F in the approximate amount of \$76.00, for a delinquent account that was turned over for collection in October 1995. This is also a medical bill and Applicant has been seeking information from the listed creditor. On September 26, 2001, Applicant sent creditor a check for \$76.00, paying of the cited amount (AX X, p. 7);

1.g. - Company G in the approximate amount of \$112.00, for a delinquent account that was turned over for collection in May 1996. Applicant has contacted the listed creditor and was informed they had no current record of the debt (Tr at 35). After the hearing, Applicant contacted the creditor again and "was assured [she doesn't] have a balance there" (AX X, p. 10);

1.h. - Medical Company H in the approximate amount of \$283.00 for a delinquent account that was turned over for collection in September 1996. This is for a radiology bill from "years ago." Applicant has been making payments on this bill (Tr at 36). A check for \$133.99 was sent to the creditor on September 26, 2001. A balance of \$182.50 is to be paid in two more installments (AX X, p. 1);

1.i. - Dentist I in the approximate amount of \$98.00 for a delinquent account that had been turned over for collection in August 1996. This debt has been paid (Tr at 36 and AX X, p. 10);

1.j. - Company J in the approximate amount of \$58.00 and \$59.00 for two delinquent accounts that were turned over for collection in May 1999 and October 1999, respectively. Applicant does not know who the underlying creditor is and has been trying to get the information from the cited creditor, with no success to date (Tr at 36 and AX X, p. 10);

Judgments

1.k., 1.l., and 1.m. - In August 1997, judgments were entered against Applicant in the amounts of \$232.00 (K), \$224.00 (L), and \$197.00 (M), respectively, on behalf of three finance companies. The \$232.00 judgment to K was paid in part shortly after it was issued in 1997 (Tr at 37) and has since been reduced to about \$40.00; the \$224.00 judgment to L was paid, in part, years ago (Tr at 37 and AX X, at p. 3), and has now been reduced to about \$40.00 (Tr at 76); and the \$197.00 judgment to M has been paid off (AX X, at p.1);

1.n. - In July 1993, a judgment was entered against Applicant in the amount of \$123.00 on behalf of Finance Company N. This judgment has been satisfied (AX U);

1.o. - In May 1997, a judgment was entered against Applicant in the amount of \$3,984.00, on behalf of Finance Company O. This judgment debt was satisfied on December 17, 1999 (AX D);

Additional Delinquent Accounts

As of May 22, 2001, Applicant was indebted to:

1.p. - University P, for a delinquent account in the approximate amount of \$256.00. This debt was paid in full on June 6, 2001 (AX X, at p.2);

1.q. - Automobile Dealer Q in the amount of \$24.00 for the deficiency amount as a result of

an automobile repossession in April 1999. This debt was assumed by Applicant's son in 1999 (Response to SOR). Applicant did not understand that she remained responsible for the debt, which has not yet been satisfied. After the hearing, Applicant contacted her son, who promised to pay the debt. She also contacted the creditor and promised to pay the debt if the son did not do so (AX X, p. 2);

1.r. - Insurance Company R in the amount of \$117.00 for a delinquent account turned over for collection in December 1999. As of the hearing, this debt had not been satisfied, but Applicant was able to contact the creditor and pay off the debt a week after the hearing (Ax X .p. 10);

1.s. - Company S in the amount of \$255.00 for a delinquent account turned over for collection in October 1997. Applicant has been making payments on this debt (Response to SOR

and AX S), and was able to pay it off on September 25, 2001 (AX X, p. 10);

1.t. - Company T in the amount of \$224.00. Creditors S and T are actually the same company. Applicant was only recently able to identify them and has begun making payments on the debts (Response to the SOR), including payment of \$124.00 on July 9, 2001 and \$298.46 on August 30, 2001 (AX S, pages 1 and 2); Another check, for \$124.00, was sent to the creditor on September 25, 2001 (AX X, p. 6);

1.u. - Applicant filed for Chapter 13 bankruptcy protection in April 1988 (not 1998, as alleged in the SOR).

Applicant's financial problems began in 1981, when she was divorced (Tr at 32). Along with medical problems, she had to raise two small sons, with only her income and sporadic child support (*Id.*)

POLICIES

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 security concerns and may be disqualifying include:

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

Conditions that could mitigate security concerns include:

3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, business turndown, unexpected medical emergency, or a death, divorce, or separation);
6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

I have evaluated the totality of the evidence under both the specific additional guidance found in Enclosure 3 to the Directive and the general guidelines under Section E2.2.1. of Enclosure 2 to the Directive.

CONCLUSIONS

Applicant has had a history of financial problems, substantially resulting from conditions beyond her control and clearly not from extravagant and/or careless spending habits (Response to the SOR and AX F). She filed for Chapter 13 bankruptcy protection in 1988. Her current problems began in the early and mid 1990s, with the incurring of substantial delinquent debts, ranging from \$39.00 (SOR 1.e.) to \$3,984.00 (SOR 1.o.).

Applicant's explanations for the debts and the amounts claimed are varied. As some debts, she claims full payment. As to others, she claims she has made partial payments and plans to send the remainder, either in one payment or in installments. As to still others, she claims no knowledge and an inability to locate the creditor cited in the SOR.

It is a basic tenet of the security clearance adjudication process that the Government must first provide evidence establishing that a doubt exists as to an applicant's judgment, reliability, and trustworthiness. After the Government also establishes a connection between an applicant's conduct and his/her current security clearance eligibility, the burden then shifts to the applicant to demonstrate rehabilitation, mitigation, and/or extenuation.

In the present matter, the issuance of the SOR was based almost entirely on debts and debtors cited in credit reports obtained at two different times (GX 4, February 2, 2000, and GX 5, March 15, 2001). It is no secret that credit reports are only as reliable as the data added to them and the manner in which such data is updated, corrected, and/or removed, as appropriate. Accepting credit reports as reliable evidence is problematic unless supported by other sources, most commonly the applicants' admissions. Where unsupported, or where an applicant challenges or questions an entry or entries on a credit report, such reports should be viewed with at least scepticism, when being asked to rely on them as the basis for denying or revoking a security clearance.

In the present case, the credit reports are the basis for 20 SOR allegations, which cite delinquent debts and/or judgments. Before requiring Applicant to demonstrate financial rehabilitation, mitigation, and/or extenuation, I must first consider whether the Government has carried its burden. To a great degree, I conclude it has not done so. The state of the record makes it impossible to determine the precise figure (or even an approximation) of the delinquent debts, if any actually owed by Applicant at the time the SOR was issued. Even assuming the Government had made its case in the beginning, almost all of Applicant's delinquent debt has now been paid off or otherwise resolved. Whatever the actual remaining figure, it is likely to be less than \$1,000.00.

For example, as to the five judgments cited in the SOR, all of which are reflected in a credit report (GX 4), all were paid off and/or satisfied in September 1997 (Creditor K), February 13, 1998 (Creditor L), September 19, 1997 (Creditor M), August 16, 1993 (Creditor N), and December 2, 1999 (Creditor O). Applicant claims that Creditor N merged with another company and submitted a document showing "the judgment entered against [Applicant] on July 27, 1993 was satisfied on August 18, 1993" (AX B). The record evidence beyond the Credit Reports supports her claim that substantially all of the judgment debt cited in SOR 1.k., 1.l, 1.m., 1.n., and 1.o. has been satisfied.

Applicant's Exhibit C shows a zero balance on September 19, 1997 for an account on which \$195.00 was owed on April

4, 1997. Applicant's Exhibit D is a Release and Satisfaction of Judgment for debt owed to Creditor O, entered December 20, 1999. Applicant's Exhibit E shows that the judgment in favor of Creditor L was paid off on February 13, 1998. Applicant's Exhibit W shows that the judgment in favor of Creditor M was satisfied in September 1999.

Applicant's Exhibit H is a letter from Applicant's ex-spouse, acknowledging that he was/is responsible for the automobile loan debt owed to Creditor Q, for \$24.00. At least one, and possibly both, of her debts to Creditor S/T was paid off (\$286.51) as of July 10, 2001 (AX S). What is apparently the debt to Creditor E was paid off on July 5, 1994, per AX T. Applicant's Exhibit W, Page 2, establishes that the debt owed to Creditor P was paid off in July 2000.

The confusion caused by differences in reporting by the various credit reporting agencies,

as to identification of debtors, amounts due, debts paid off or being resolved, and actual present status, makes it impossible to accurately determine the number of delinquent debts still outstanding and the amounts still owed on such debts. Overall, I conclude that the Applicant's exhibits substantially support her claims. While it is impossible to fix a definite figure, but I conclude any balance is likely to be relatively small in absolute terms and as compared to her current earnings and ability to repay (GX 3).

Under Guidance F, the Government's concern is that a person who is "financially overextended [i.e., with excessive debt] is at risk to engage in illegal acts to generate funds." Given Applicant's successful efforts to repay substantial amounts of debt, whatever the actual amount still owed, that lower amount cannot logically be found to be excessive, as that term is used in the Directive. I also find that the debts were incurred as a result of family, personal, and medical problems that were beyond her control and that she has not lead an extravagant life style. In fact, her efforts to care for her family's needs, while making continuing efforts to pay off, reduce, or otherwise resolve the debt cited in the SOR is laudable and is a positive factor in a security clearance evaluation. As discussed above, she has documented that many of the SOR allegations are factually incorrect. I am therefore unable to give much credibility to other SOR allegations, which are likewise challenged by Applicant, but which she has been unable to document since neither she nor the creditors/collection agencies presently has a record of the specific debts.

This is a one of the rare cases in which the record evidence does not make a case as to the present accuracy and negative impact of any of the SOR allegations, except for SOR 1.u. which, as corrected at the hearing, does establish a 1988 (not 1998 as originally alleged) Chapter 13 bankruptcy filing by Applicant. I note that Applicant admitted the filing and provided the correct date. In any case, I also conclude that the 1988 bankruptcy has no current security clearance significance.

Applicant's longtime personal, family, and medical problems are documented (GX 3 and AX F, H, and I). She has presented a number of letters of reference and/or recommendation from people who think highly of her work ethic and her ability to protect classified information and material (AX J, K, L, M (a state district court judge who is also a member of Applicant's church and teaches her children in Sunday School), N (her children's Boy Scout leader), O (fellow church member who has known Applicant for more than 20 years), P (her Project Manager), and Q (the President of her company). She has received exemplary work evaluations since at least 1998 (AX R).

The concerns expressed by the SOR in this case are all cited under Guideline F. The expressed concern for this Guideline is that excessive debt raises the risk that someone might give in to the temptation to commit illegal acts to generate funds. A second concern, evident from the language of the disqualifying conditions in the Directive, is that the manner in which debts are incurred and/or subsequently handled, can show unacceptably poor judgment, unreliability, and/or untrustworthiness. The 20 debts/judgments cited in the SOR are certainly a troubling number. At the same time, however, the debts were mostly for relatively small and totaled, as close as I can determine, somewhat less than \$15,000.00, of which all but perhaps less than \$1,000.00 has been paid off or otherwise resolved. The debts remaining are those either being paid off in installments or where Applicant is still seeking information from the creditors listed in the credit reports, so that she can ascertain the validity and amount of the remaining claimed debts, with an eye to paying them off.

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." Considering Applicant's life, and her personal and work-related conduct, I conclude she has shown considerable integrity and determination to protect her family, her employer, and her country.

In summary, I conclude the Government's evidence does not substantively supports any of the SOR allegations, except of SOR 1.u., which I find to have no current security significance. In addition, Applicant has presented adequate evidence mitigating or extenuating substantially all of the allegations. The favorable comments of those who know her corroborate her personal integrity. From the totality of the evidence, I conclude Applicant possesses the requisite judgment, reliability, and trustworthiness 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) For the Applicant

Subparagraph 1.a. - 1.u. For the Applicant

DECISION

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

BARRY M. SAX

ADMINISTRATIVE JUDGE