

DATE: October 26, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-07211

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate security concerns over her finances, personal conduct, and criminal conduct. She disputes debts to three creditors, but has not made any effort to resolve debts to forty other creditors which total over \$24,000. She has a history of arrests for worthless checks and filed for Chapter 13 bankruptcy discharge four times in 1993, 1996, 1997, and 1998. As she failed to follow through and make scheduled payments according to these plans, each attempt was dismissed. While she claims an intent to pay her debts, she has offered no plan to do so and has not demonstrated that she has control of her finances. Nor has she sought financial counseling. Further, her personal and criminal conduct raises concerns as she failed to respond fully with required information in response to questions on the Personnel Security Questionnaire. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on April 9, 2001. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. ⁽¹⁾ (Item 1) The SOR alleges specific concerns in paragraph 1 over financial issues (Guideline F), in paragraph 2 over personal conduct (Guideline E), and in paragraph 3 over criminal conduct (Guideline J). Applicant responded to these SOR allegations in two Answers: one notarized on April 20, 2001, and one notarized on May 1, 2001. She denied allegations 1.bbb., 1.jjj., and 1.kkk. and requested a decision based on the information she supplied.

The case was assigned to Department Counsel who on June 22, 2001, prepared the File of Relevant Material (FORM) for the Applicant's review and advised Applicant that she had 30 days to submit objections and/or information before the FORM was submitted to an administrative judge and that she had the right to be represented by counsel. A Personnel Security Specialist (PSS) sent the FORM to Applicant on June 25, 2001, and again notified the Applicant that she had 30 days from receipt of the letter to submit objections and/or information before the FORM was submitted to an administrative judge. Applicant received the FORM on July 11, 2001. Although the response was due on August 11,

2001, no response was submitted. On September 12, 2001, the case was assigned to me.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is a 34 year old employee of a defense contractor (Employer #1 in State #1), where she has worked since September 1999; previously she worked there for four months in a temporary position. In March 2000 she completed a Security Clearance Application (Standard Form 86) and requested a Secret clearance. Because of delays in the processing of her security clearance, she reported that her position there was to be terminated in November 2000, but she was offered employment from another contracting organization. Previously, she had a series of other short term jobs and was fired by one employer in November 1998 for taking unplanned leave. From 1991 to 1998 she was unemployed. She has been divorced since July 1996, but now has another spouse-like relationship; she has three children born in 1988, 1990, and 1997. (Items 6, 10, 15)

Financial Considerations and Personal Conduct

Applicant admitted only one bankruptcy filing in 1997 and one wage garnishment in 1997 in her 2000 Standard Form 86. Even though she certified that her statements on the form were "true, complete and correct" and was advised that a knowing and willful false statement on the form could be punished under Section 1001 of Title 18, United States Code), she admitted no other financial problems. (Item 6) In January 1997 she had completed a Questionnaire for National Security Position (Standard Form 86) where she admitted only having issued one bad check in 1990 and having filed for Chapter 13 bankruptcy in 1995. (Item 10) Applicant failed to reveal a history of arrests for worthless checks (13 times between 1987-1997) and an arrest in 1987 for shoplifting. While she denies falsifying her security forms as she claims not to remember her many arrests and also claims that she decided that the older arrests were not relevant, these inconsistent reasons undermine her credibility. (Items 2, 4)

In December 2000 Applicant was interviewed by the Defense Security Service (DSS) and explained her finances further. On her Personal Financial Statement she reported to DSS her monthly net income was over \$5,000 and her monthly expenses were only \$1,836, as she paid no rent; she showed debts where she paid \$2,000 monthly with a \$1,000 monthly remainder. (Item 7) In February 2001 she reported to DSS that she had chosen a money management company to help her with managing all outstanding debts and planned to enter a contract with them within 30 days; however, she provided no subsequent evidence that she had done so. She explained to DSS that she had so many past arrests for insufficient funds checks that she could not possibly confirm, deny, or recall every such event or incident. (Item 8)

Her debts to 43 creditors total approximately \$24,300. Of the many debts listed in the SOR, she denies only 1.bbb, 1.jjj., and 1.kkk. She has filed for Chapter 13 bankruptcy four times: in April 1993 for debts of \$13,980 where she was scheduled to pay \$53.81 weekly; in April 1996 she had unsecured debts of \$19,170 and scheduled payments of \$48.50 weekly; February 1997 for unsecured debts of \$19,200 with scheduled payments of \$96.92; and in June 1998 she had unsecured debts of \$20,716 with scheduled payments of \$43.38. Her debts have never been discharged as she failed to make payments according to the plans and the cases were each dismissed. While she still claims an intent to pay these debts, she has offered no specific plan to do so. (Items 11, 12, 13, 14) Several of her debts are for luxuries, not just necessities for her children, such as video rentals (1.bb. and 1.ee); a judgment against her for \$400 for a car stereo system (1.aaa.), \$248 for cell phone service (1.ccc.), and a 1998 telephone debt of over \$1,000 (1.ggg.). Also, several of her non-sufficient funds checks were for luxuries such as a florist, cosmetics, car stereo and a necklace rental which were expenses she could have controlled.

Applicant admitted that in her "younger years" she lived "carelessly" as she had nothing to work towards. Now in mitigation she offers that she goes to work every day and is a good mother to her children; she is the president of her church choir and studies at night. Applicant claims both to be unable to pay her debts and to now be able to handle her current accounts very well, but she provided no updated budget nor did she document any of the debts she had paid (even though she says she has paid her student loan and that it is no longer in a default status). She claims her intent is to pay credit cards first and hospital bills last. (Items 2, 4)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

Guideline F - Financial Considerations

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.

Conditions that could raise a security concern and may be disqualifying include:

- (1) a history of not meeting financial obligations;
- (3) inability or unwillingness to satisfy debts;

Conditions that could mitigate security concerns include:

None

Guideline E - Personal Conduct

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.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

Refusal to complete required security forms, releases, or provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personnel security or trustworthiness determination.

Conditions that could raise a security concern and may be disqualifying also 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 employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;
- 3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trust-worthiness determination;

Conditions that could mitigate security concerns include:

None

Guideline J - Criminal Conduct

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions that could raise a security concern and may be disqualifying include:

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

None

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS**Financial Considerations**

Applicant has (1) a history of financial problems, including arrests for uttering worthless checks, and has shown (3) an inability or unwillingness to satisfy debts which is worsened by her filing for bankruptcy four times which were all dismissed as she did not make the scheduled payments. (SOR 1.a-1.iii.) Overall she has neglected for several years her responsibility to address and resolve her debts to a wide range of creditors.

While Applicant does assert that conditions largely beyond her control lead to her financial problems, Applicant's personal problems that contributed to her financial difficulties do not sufficiently meet the mitigating conditions (MC (2)). While security concerns may be mitigated if conditions were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), she has failed to address sufficiently her financial issues even after she was re-employed. After she filed for relief under the bankruptcy laws, she failed to make the scheduled payments four separate times. In short, she has not demonstrated that she initiated a good-faith effort to repay these overdue creditors or otherwise resolve these debts. (I accept her statement that she is not in debt to the creditors in SOR 1.bbb, 1.jjj., and 1.kkk.)

Further she failed to provide any updated budget or financial information beyond her income and expenses which she provided to DSS in December 2000 which suggested she had the means to resolve some of these debts. With this sparse record, one can only surmise that she put her personal financial needs and comforts ahead of her legal obligations to resolve her debts. While she now has a stable job and income, she has been in that position for two years without sufficiently acting on her promises to address her past financial debts. She has failed to sufficiently demonstrate she is now financially responsible. Neither has she demonstrated that she has met MC 4: 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. With no updated budget provided, there is no way to assess if her current debt to earnings ratio is within the acceptable range. Further, she provided no evidence she is currently meeting all of her obligations. After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on all subparagraphs under SOR Paragraph 1. except for the three debts she denies, 1.bbb, 1.jjj., and 1.kkk. where I rule for her.

Personal Conduct

Applicant had a duty in completing her SF 86 to disclose all adverse information in response to the questions asked: she failed to do so with respect to her employment record, her police record and the financial questions. Further, in her initial DSS interview she misrepresented facts about her bankruptcy plan which was dismissed in March 1998 due to her

failure to make regular payments. She denied any adverse contacts with law enforcement since April 1997 when in fact she was charged in June 1997 with Writing a Bad Check. Thus conditions that could raise a security concern and may be disqualifying include her deliberate omission, concealment, or falsification of relevant and material facts from her personnel security questionnaire and in her DSS interviews. While she listed one bankruptcy filing, she failed to give the required information completely. She had a duty to fully disclose all relevant and material information and failed to do so. Applicant has failed to demonstrated she meets the mitigating conditions. (3)

While she was cooperative in explaining some of her financial details to the DSS agent, her conduct is not sufficient to fall with MC 3 as she did not volunteer all the facts and misrepresented others in her initial interview. Indeed there was a second DSS interview to address and resolve additional adverse information.

Applicant never argued that her failure to provide complete responses fell within MC 4 (Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided.) After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 2.a. through 2.j. under SOR Paragraph 2.

Criminal Conduct

Applicant was advised of the penalties of not fully disclosing the required information on her security forms and in her security interviews. While she certified that her statements on the form were "true, complete and correct" and was advised that a knowing and willful false statement on the form could be punished under Section 1001 of Title 18, United States Code, her answers were not true, complete and correct. Thus conditions that could raise a security concern and may be disqualifying include: 1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged. She had a duty to fully disclose all relevant and material information and failed to do so. She failed to provide evidence of any of the mitigating conditions. After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 3.a. under SOR Paragraph 3.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n: Against Applicant

Subparagraph 1.o.: Against Applicant

Subparagraph 1.p.: Against Applicant

Subparagraph 1.q.: Against Applicant

Subparagraph 1.r.: Against Applicant

Subparagraph 1.s.: Against Applicant

Subparagraph 1.t.: Against Applicant

Subparagraph 1.u.: Against Applicant

Subparagraph 1.v.: Against Applicant

Subparagraph 1.w.: Against Applicant

Subparagraph 1.x: Against Applicant

Subparagraph 1.y.: Against Applicant

Subparagraph 1.z.: Against Applicant

Subparagraph 1.aa.: Against Applicant

Subparagraph 1.bb.: Against Applicant

Subparagraph 1.cc.: Against Applicant

Subparagraph 1.dd.: Against Applicant

Subparagraph 1.ee.: Against Applicant

Subparagraph 1.ff.: Against Applicant

Subparagraph 1.gg.: Against Applicant

Subparagraph 1.hh.: Against Applicant

Subparagraph 1.ii.: Against Applicant

Subparagraph 1.jj.: Against Applicant

Subparagraph 1.kk.: Against Applicant

Subparagraph 1.ll.: Against Applicant

Subparagraph 1.mm.: Against Applicant

Subparagraph 1.nn: Against Applicant

Subparagraph 1.oo.: Against Applicant

Subparagraph 1.pp.: Against Applicant

Subparagraph 1.qq.: Against Applicant

Subparagraph 1.rr.: Against Applicant

Subparagraph 1.ss.: Against Applicant

Subparagraph 1.tt.: Against Applicant

Subparagraph 1.uu.: Against Applicant

Subparagraph 1.vv.: Against Applicant

Subparagraph 1.ww.: Against Applicant

Subparagraph 1.xw: Against Applicant

Subparagraph 1.yy.: Against Applicant

Subparagraph 1.zz.: Against Applicant

Subparagraph 1.aaa.: Against Applicant

Subparagraph 1.bbb.: For Applicant

Subparagraph 1.ccc.: Against Applicant

Subparagraph 1.ddd.: Against Applicant

Subparagraph 1.eee.: Against Applicant

Subparagraph 1.fff.: Against Applicant

Subparagraph 1.ggg.: Against Applicant

Subparagraph 1.hhh.: Against Applicant

Subparagraph 1.iii.: Against Applicant

Subparagraph 1.jjj.: For Applicant

Subparagraph 1.kkk.: For Applicant

Subparagraph 1.lll.: Against Applicant

Paragraph 2. Guideline E AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

Subparagraph 2.f.: Against Applicant

Subparagraph 2.g.: Against Applicant

Subparagraph 2.h.: Against Applicant

Subparagraph 2.i.: Against Applicant

Subparagraph 2.j.: Against Applicant

Paragraph 3. Guideline J AGAINST APPLICANT

Subparagraph 3.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 a security clearance for the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.

2. Conditions that could mitigate security concerns include: 1. The behavior was not recent; 2. It was an isolated incident; 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); 4. 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; 5. The affluence resulted from a legal source; and 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

3. Conditions that could mitigate security concerns include:

1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability; 2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily; 3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts; 4. Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided; 5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress; 6. A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information; 7. Association with persons involved in criminal activities has ceased.