

DATE: November 20, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-07589

DECISION OF ADMINISTRATIVE JUDGE

JEROME H. SILBER

APPEARANCES

FOR GOVERNMENT

William S. Fields, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Refusal to deal with significant debts past due for over four years and SF-86 falsification of two financial questions were unmitigated. Clearance is denied.

STATEMENT OF THE CASE

On August 23, 2001, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), issued a Statement of Reasons (SOR) to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked. In a sworn written statement, dated August 29, 2001, the Applicant responded to the allegations set forth in the SOR elected to have her case decided on a written record, in lieu of a hearing.

The Applicant received a complete copy of the file of relevant material (FORM) on October 8, 2001, and received an opportunity to file objections and submit material in refutation, extenuation, or mitigation. The Applicant responded to the FORM on October 12, 2001. The Applicant's FORM response was admitted into evidence without objection on November 6, 2001. The record in this case closed on November 6, 2001. The undersigned Administrative Judge received the case assignment on November 6, 2001.

FINDINGS OF FACT

The Statement of Reasons (SOR) consisted of allegations predicated on the following two guidelines: paragraph 1, Guideline F (financial considerations), and paragraph 2, Guideline E (personal conduct). The undersigned Administrative Judge completely and thoroughly reviewed the evidence in the record, and upon due consideration of the same, makes the following Findings of Fact:

The Applicant is a 25-year-old word processor employed by a U.S. Government contractor and its predecessor company since October 1998. The Applicant seeks to obtain a personnel security clearance.

The Applicant graduated from high school in November 1994 and since then has obtained a bachelor's degree in business and is currently working on an MBA degree. She was married in July 1996 and separated in August 1997. She is currently living as a single parent of three children, ages 7, 6, and 3. She was unemployed for about three months at the end of 1995 and is working two jobs at the present time. FORM items 4 and 8.

The Applicant currently has a gross annual salary of more than \$32,000 and receives more than \$6,000 annually in child support. Her average monthly income (less paycheck deductions) from all sources is about \$2,600 and her monthly expenses equal \$1,642 on average. She pays five creditors about \$544 a month on average; none of these five creditors is listed in the SOR. She is current on all her recurring financial obligations, *e.g.*, credit card accounts. SOR answer and FORM response. On August 28, 2001, she paid off two past due debts (SOR ¶1.b and SOR ¶1.e) by paying a total of \$233.48 to the creditors. FORM response.

The Applicant owes one telephone company \$565 and another telephone company \$1,184 because the telephone was placed in her name--although a significant portion of the phone charges was incurred by her roommates. She did in the beginning make payments on the bills until she felt it became too much for her to bear. The last payments on these bills occurred in March 1997. She is now unwilling to pay off the \$1,749 outstanding balance unless ordered by a court to do so. FORM items 4, 5, and 8; SOR answer.

In May 1996 the Applicant co-signed a note to finance the purchase by her future husband of a 1992 automobile. The car was wrecked in September 1996, was voluntarily repossessed, and then was repaired and resold at auction. The balance due on the note after the resale receipts were credited is more than \$11,000. No payments have been received since November 1996. She believes that her husband is responsible for the payment. She is unwilling to make payment on this past due debt unless ordered by the courts. FORM items 4, 5, and 8; SOR answer.

In June 1998 the Applicant signed a security clearance application (SF-86) in which she denied having been over 180 days delinquent on any debts since June 1991 and denied being currently over 90 days delinquent on any debts. FORM item 4. She was interviewed by a Defense Security Service (DSS) agent in late 1998 and discussed her debts with him in a statement not in the record. *See* FORM item 4 at page 1 and FORM item 8 at page 13. In the spring of 1999 another SF-86 was electronically transmitted to the DSS Operations Center/Columbus by her facility security officer. ⁽¹⁾ The Applicant did not sign the second SF-86. FORM item 8.

POLICIES

Enclosure 2 of the Directive (32 C.F.R. part 154 appendix H) sets forth adjudicative guidelines which must be considered in evaluating an individual's security eligibility. The guidelines are divided into those that may be considered in determining whether to deny or revoke a clearance (Disqualifying Conditions or DC) and those that may be considered in determining whether to grant or continue an individual's access to classified information (Mitigating Conditions or MC). In evaluating this case, relevant adjudicative guidelines as set forth below have been carefully considered as the most pertinent to the facts of this particular case.

The guidelines, disqualifying conditions, and mitigating conditions most pertinent to an evaluation of the facts of this case are:

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:

[1st] A history of not meeting financial obligations;

[3rd] Inability or unwillingness to satisfy debts;

Conditions that could mitigate security concerns include:

[3rd] 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);

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

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.

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

[2nd] 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:

None applicable.

Enclosure 2 to the Directive provides that the adjudicator should consider the following factors:

The nature, extent, and seriousness of the conduct

The circumstances surrounding the conduct, to include knowledge-able participation

The frequency and recency of the conduct

The individual's age and maturity at the time of the conduct

The voluntariness of participation

The presence or absence of rehabilitation and other pertinent behavioral changes

The motivation for the conduct

The potential for pressure, coercion, exploitation, or duress

The likelihood of continuation or recurrence

The Directive also requires the undersigned to consider, as appropriate, the factors enumerated in Section 6.3:

a. Nature and seriousness of the conduct and surrounding circumstances.

b. Frequency and recency of the conduct.

c. Age of the applicant.

d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved.

e. Absence or presence of rehabilitation.

f. Probability that the circumstances or conduct will continue or recur in the future.

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 upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record. Determinations under the Directive include consideration of the risk that an applicant may deliberately or inadvertently fail to safeguard properly classified information as that term is defined and established under Executive Order 12958, effective on October 14, 1995.

Initially, the Government has the burden of proving controverted facts alleged in the Statement of Reasons. The United States Supreme Court has said:

"It is difficult to see how the Board would be able to review security-clearance determinations under a preponderance of the evidence standard without departing from the 'clearly consistent with the interests of the national security' test. The clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials. Placing the burden on the Government to support the denial [of a security clearance] by a preponderance of the evidence would inevitably shift the emphasis and involve the Board in second-guessing the agency's national security determinations."

Dept. of the Navy v. Egan, 484 U.S. 518, 531 (1988). This Administrative Judge understands that Supreme Court guidance in its context to go to the minimum *quantum* of the admissible evidence that must be adduced by the Government in these proceedings to make its case, that is, substantial evidence but something less than a preponderance of the evidence--rather than as an indication of the Court's tolerance for error below. [\(2\)](#)

The burden of going forward with the evidence then shifts to the applicant for the purpose of establishing his or her security eligibility through evidence of refutation, extenuation or mitigation of the Government's case or through evidence of affirmative defenses. Assuming the Government's case is not refuted, and further assuming it can reasonably be inferred from the facts proven that an applicant might deliberately or inadvertently fail to safeguard properly classified information, the applicant has a heavy burden of persuasion to demonstrate he or she is nonetheless eligible to hold a security clearance. [\(3\)](#)

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, the undersigned concludes that the Government established its case with regard to Guideline F.

The Applicant has a lengthy history of not meeting her financial obligations, at times due to her inability--and at present due to her unwillingness--to do so. This falls within the scope of DC #1 and DC #3 under Guideline F, which are identified on page 4 *supra*. She has recently paid off two small debts; SOR ¶1.b and SOR ¶1.e are therefore found in her favor. However, she has a net monthly remainder of over \$400 on average over and above her expenses and recurring financial obligations. Her outstanding past due debts date from November 1996 (automobile loan deficiency) and March 1997 (telephone charges). These debts became delinquent initially due to unemployment or underemployment combined with complications arising from the 1997 separation from her husband. *See* MC #3 identified on page 4 *supra*. These conditions do not justify her lack of good-faith effort now to repay or otherwise resolve them. There is no evidence in the record that she has sought a repayment plan or compromise from these creditors within the last four years. *See* MC #6 identified on page 4 *supra*. Therefore, SOR ¶1 (financial considerations) is concluded adversely to the Applicant.

Having considered the evidence of record in light of the appropriate legal precepts and factors, the undersigned concludes that the Government established its case with regard to Guideline E.

The Applicant knew when she signed her security clearance application (SF-86) in June 1998 that she had been over

180 days delinquent on some debts since June 1991 and was currently over 90 days delinquent on them. Nevertheless, she falsified her SF-86 by answering "no" to the respective questions on the SF-86. This falls within the scope of DC #2, which is also identified on page 4 *supra*.⁽⁴⁾ No acceptable justification, explanation, mitigation, or extenuation has been presented by the Applicant. Therefore, SOR ¶2 (personal conduct) is concluded adversely to the Applicant.

Each clearance decision is required to take into consideration pertinent factors set forth in Section 6.3 of the Directive and in the adjudicative process discussion at enclosure 2 to the Directive. These factors are identified on pages 4-5 *supra*. The Applicant's refusal to deal with significant long past due debts properly attributable to her is more serious than the falsification of her SF-86 form over three years ago. While her youth and family responsibilities can be considered extenuating considerations under Guideline F, there is a distinct probability that she will persist in the future to ignore her obligations under the automobile loan and the charges incurred on the telephone placed in her name.

FORMAL FINDINGS

Formal findings as required by Enclosure 1 of the Directive (see paragraph (7) of section 3 of Executive Order 10865, as amended) and the additional procedural guidance contained in item 25 of Enclosure 3 of the Directive are:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is the determination of the undersigned that it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Jerome H. Silber

Administrative Judge

1. The second SF-86 is not identical with the first SF-86. The second SF-86 also shows negative answers to the above-mentioned financial questions. The FORM response implies that she submitted the second SF-86. This is probably a mistake, because she did not sign the second SF-86, signed the first SF-86, and insists in her SOR answer and in her FORM response that she signed only one SF-86.

2. The rule has been restated as requiring "that security clearances should be revoked [*sic*] if doing so is consistent with the national interest;" *Doe v. Schachter*, 804 F. Supp. 53, 62 (N.D.Cal. 1992). *Cf.* with regard to the *quantum* of evidence the DOHA Appeal Board analysis in DISCR OSD Case No. 90-1054 (July 20, 1992) at pages 3-5, and DOHA

Case No. 94-0966 (July 21, 1995) at pages 3-4. The Directive establishes the following standard of review:

[Whether the] Administrative Judge's findings of fact are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record. In making this review, the [DOHA] Appeal Board shall give deference to the credibility determinations of the Administrative Judge.

Item 32.a. of the Additional Procedural Guidance (Enclosure 3 to the Directive). See also 5 U.S.C. §556(d).

3. While the Government has the burden of proving controverted facts, the Applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Items 14 and 15 of the Additional Procedural Guidance (Enclosure 3 to the Directive).

4. In light of the Applicant's denial in SOR ¶2.b, alleging that the Applicant "caused [a falsified SF-86] to be electronically submitted" in 1999, the Department Counsel is responsible for presenting witnesses and other evidence to establish this controverted fact in accordance with item 14 of the Additional Procedural Guidance (encl. 3 to the Directive). Due to the failure to meet this evidentiary burden, SOR ¶2.b is found in favor of the Applicant.