

DATE: February 25, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-08866

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On October 15, 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 November 10, 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.

The case was assigned to me on December 28, 2001. A Notice of Hearing was issued on January 10, 2002 and the hearing was conducted on January 31, 2002. At the hearing, Department Counsel offered three exhibits, which were marked as Government Exhibits (GX) 1 - 3. Without objection by Applicant, all three exhibits were admitted into evidence as marked. Applicant testified on her own behalf and called one other witness. Applicant submitted one post-hearing exhibit, to which Department Counsel did not object. This exhibit was marked and admitted as Applicant's Exhibit (AX) A. The transcript (Tr) was received at DOHA on February 8, 2002.

FINDINGS OF FACT

Applicant is a 44-year-old Industrial Security Specialist for a major defense contractor. Her employer is seeking a Secret security clearance for Applicant in connection with her employment.

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

GUIDELINE F (Financial Considerations)

As of November 10, 2001, Applicant owed delinquent debts to:

- 1.a. - Bank A in the approximate amount of \$4,120.00, for an account opened in August 1995;
- 1.b. - Company B in the approximate amount of \$1,235.00, for an account opened in April 2000;
- 1.c. - Financial Services Company C in the approximate amount of \$5,993.00, for an account opened in March 1994;
- 1.d. - Department Store D in the approximate amount of \$250.00, for an account opened in March 1995;
- 1.e. - Department Store E in the amount of approximately \$674.00, for an account opened in July 1995;
- 1.f. - Bank F in the amount of approximately \$5,120.00, for an account opened in July 1995;
- 1.g. - Department Store G in the amount of approximately \$1,992.00, for an account opened in March 1995;
- 1.h. - Telephone Company H in the amount of approximately \$272.00, for an account opened in January 2000.

In her Response to the SOR, without explanation, Applicant admitted allegations 1.a. - 1.e. and 1.g. and 1.h., and denied allegation 1.f. She also admits that the amounts are now probably somewhat higher because of accrued interest (Tr at 18).

Prior to her marriage to Mr. X in July 1997, Applicant did not have any delinquent debts (Tr at 14). Mr. X had been self employed prior to the marriage but serious health conditions have prevented his employment since the marriage. He has sought disability payments, but has not yet received any payments (GX 2 and Tr at 11, 12). Applicant's earnings are the only source of income for a family that includes two female children (GX 2 and Tr at 13). Mr. X has handled their finances since their marriage, and although she knew they were not keeping current with their debts, she was not aware of the number and size of the delinquent debts until informed by a Defense Security Service agent in February 2001 (GX 2 and 3). She was shocked to learn the financial reality of her situation. In her February 2, 2001 Personal Financial Statement, attached to her sworn statement to DSS (GX 2), she claims a net monthly remainder of \$543.00

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, going back five or more years. Much of the debt appears to have been accrued since her 1997 marriage to r. X. She denied allegation 1.f., to Bank F, because she believed that debt of \$5,120.00 was from a credit union issued credit card, that has subsequently been transferred over to a signature loan account at the same credit union (Tr at 18). She claims the signature loan has been paid off (*Id.*). However, her post hearing exhibit, a repayment schedule from a consumer credit counseling service (CCCS) (AX A) contains a reference to Bank F (by its new name) in which the "listed debt" is given as \$5,120.00, with a regular payment due of \$547.18 and a CCCS payment of \$50.00 per month. The same document cites existing debts to the credits cited in SOR 1.b. as \$1,235.00; 1.d. as \$250.00; 1.e. as \$650.00; and 1.g. as \$1,992.00. The bank cited in SOR 1.a. (\$4,122.00) has merged with the bank cited in SOR 1.f. (\$5,120.00), under the former's name.

I note that in her sworn statement to DSS, Applicant claims the account cited in SOR 1.a is "not one my husband and I recall ever having" (GX 2). However, regarding SOR 1.a and 1.f., Applicant appears to be admitting there was a total of about \$9,242.00 from the two debts, which have now been reduced to the \$5,120.00 cited in AX A, by the paying off of the first debt by automatic payments from Applicant's paychecks over time. The reason for the apparent difference is not clear. In addition, although Mr. X also claims the \$5,120 debt has been paid off (Tr at 43), the claim is not documented. Given Applicant's financial situation over the past few years, along with the Personal Financial Statement found in GX 2, it is difficult to accept that Applicant has been able to pay off so large a debt, while doing nothing to begin resolving the others (*See*, Tr at 20 - 22). In any case, it is not so much a question of Applicant's credibility, and that of her husband, as of demonstrated evidence. ⁽¹⁾ Applicant owns a house with fair market value of \$30,000 - \$40,000 (Tr at 35). She has discussed filing for bankruptcy protection with her husband (*Id.*). She has not used either avenue to resolve her delinquent debts (Tr at 35 - 37).

Applicant admits that 1998 was the last time she made any payments on the debts cited in the SOR (Tr at 23). Her first efforts at resolving the cited debts occurred only a few months prior to the hearing, when she first contacted the CCCS that furnished AX A. I note also that in her sworn statement to DSS, Applicant promised to begin contacting creditors (GX 2), but she did not do so for more than a year, until shortly before the hearing (Tr at 28, 29). Applicant admits she is making efforts now primarily because she is seeking to retain her job and needs the clearance (Tr at 31). While this is certainly understandable, her actions and thought processes do not inspire confidence in Applicant's judgment, reliability, and trustworthiness.

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 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.

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."

In the present case, the Government has carried its initial burden of supporting all SOR allegations. I conclude there is a nexus or connection between the Applicant's debt load and her security clearance eligibility. I also conclude that Applicant has not demonstrated financial rehabilitation to the extent that she possesses the good judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets. In summary, I conclude the Government's evidence substantively supports all of the SOR allegations, which I also find have current security significance. The problem with Applicant's case is a lack of a sustained efforts to resolve the cited delinquent debts. In the year that must pass before Applicant can reapply for a security clearance, she should take the opportunity to demonstrate that she has, completely or at least substantially, resolved all of the cited delinquent debts.

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) Against the Applicant

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. 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 or continue a security clearance for Applicant.

BARRY M. SAX

ADMINISTRATIVE JUDGE

1. Even accepting Applicant's claim as to the cited \$4,120, the ultimate outcome would not be changed.