

DATE: August 12, 2002

In Re:

SSN:-----

Applicant for Security Clearance

ISCR Case No. 01-13960

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jonathan A. Beyer, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 28-year-old applicant has 10 debts, totaling more than \$12,500, some of which have been delinquent since as long ago as 1998. No substantive efforts toward resolution of the debts have been taken. In addition, in February 1997, Applicant knowingly omitted material information about who would be living in a housing unit on a city housing agency form intended to establish eligibility. No mitigation was shown as to either situation. Clearance is denied.

STATEMENT OF THE CASE

On February 20, 2002, 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 March 13, 2002, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge based on the written record, without a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to Applicant on April 16, 2002. The FORM includes nine exhibits, which have been marked and admitted as Government Exhibits (GX) 1 - 9. The Applicant was instructed to submit information in response to the FORM within 30 days of receipt of the FORM. Applicant did not submit any response to the FORM. The matter was assigned to me for resolution on June 4, 2002.

FINDINGS OF FACT

Applicant is a 28-year-old Word Processor employed by a defense contractor that is seeking a security clearance for her (level not stated in file). After considering the totality of the evidence in the case file, including Applicant's response to the SOR, I make following FINDINGS OF FACT as to each allegation in the SOR:

1. Guideline F (Financial Considerations)

Applicant is indebted to the following creditors in the amounts indicated:

SOR 1.a. - Creditor A - \$368.00

SOR 1.b. - Creditor B - \$901.00

SOR 1.c. - Creditor C - \$1,999.00

SOR 1.d. - Creditor D - \$2,716.00

SOR 1.e. - Creditor E - \$3,547.00

SOR 1.f. - Creditor F - \$752.00

SOR 1.g. - Creditor G - \$318.00

SOR 1.h. - Creditor H - \$278.00

SOR 1.i. - Creditor I - \$163.00

Applicant admits the accuracy of all of the above debts, which total more than \$12,500 (GXs 1, 3, 4, 5, and 7).

2. Guideline E (Personal Conduct)

2.a. - In March 1999, Applicant knowing omitted material information about who would be living in a housing unit she wanted to rent, on a city housing agency form intended to establish eligibility for financial aid (GXs 3, 4, and 8).

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood or continuation or recurrence (Directive, E.2.2. 1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable financial judgment and conduct.

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 a security concern and may be disqualifying:

1. A history or pattern of not meeting financial obligations;
2. Inability or unwillingness to satisfy debts.

Conditions that could mitigate security concerns:

None that are applicable under the facts of this case.

GUIDELINE E (Personal Conduct)

The Concern: 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.

Condition that could raise a security concern and may be disqualifying:

2. The deliberate omission, concealment, or falsification of relevant and material facts from any . . . form used to . . . award benefits or status. . . .

Conditions that could mitigate security concerns:

None that are applicable under the facts of this case.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. In reaching the fair and impartial overall common sense determination based on the "whole person" concept required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

In the defense industry, the security of classified information is entrusted to civilian workers

who must be counted on to safeguard classified information and material twenty-four hours a day.

The Government is therefore appropriately concerned where available information indicates that an applicant for a security clearance, in his or her private life or connected to work, may be involved

in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential, as well as the actual, risk that an applicant may deliberately

or inadvertently fail to properly safeguard classified information.

An applicant's admission of the information in specific allegations relieves the Government

of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either

by the Applicant's admissions or by other evidence) and establishes conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

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."

CONCLUSIONS

In the present matter, Applicant admits all of the Financial Considerations and denies the Personal Conduct allegation, which relates to her alleged falsification of information on a Section 8 Rental Assistance agreement.

Financial Considerations - In her response to the SOR, dated January 30, 2002, Applicant stated that she had "been seeking verification of payments and the current status on delinquent/outstanding debts that I may owe," but that she had not yet received such verification. The Applicant did not respond to the April 16, 2002 FORM, and therefore still has not provided the verification she mentioned some months before. The record shows that Applicant has admitted the debts on three earlier occasions, in 2000 and 2002 (GX 2 (March 13, 2002 response to SOR); GX 4 (Sworn Statement to DSS, dated December 28, 2000); and GX 5 (Sworn Statement to DSS, dated July 1, 2000). Under these circumstances, I conclude Applicant still owes, and admits she owes, at least the amounts cited in the SOR, plus any accruing interest and penalties.

I have carefully considered Applicant's explanations (GX 2). While Applicant has clearly gone through some difficult times, financially and otherwise, the fact remains that she has not taken advantage over time of a number of processes that could help alleviate her debts, from bankruptcy to debt consolidation. Conceding her sincerity, she simply has not documented any positive changes, despite the passage of year and changing conditions in her financial and family situation. Her explanations notwithstanding, she has not demonstrated the financial rehabilitation that could overcome the negative impact of the disqualifying factors discussed above.

Personal Conduct - In GX 8, which is dated February 27, 1997, at Item E, Applicant lists only herself and her son as persons who will live in the rental unit. At Item G, Applicant cites only her income. However, in her sworn statement of September 28, 2000, Applicant admitted that in the period she lived there, which ended in March 2000, when her increased income made her ineligible to receive benefits, a male friend, Mr. G., the father of her son, lived there with her "for the most part."

Mr. G's name does not appear in any documents relating to the receipt of Section 8 benefits. Mr. G is a convicted felon. Applicant admits that "we were both aware that any time he stayed with me was in violation of the Section 8 Housing Agreement I had signed but that I was not aware this was considered fraud against the United States Government" (GX 4). This latter statement is the only explanation provided by Applicant on this issue and does not mitigate the fact that she lied about who would be living in the rental unit. No mitigation has been established.

The document in which the falsification appears (GX 8) appears to be a form from a city housing authority, and does not appear to be a federal agency. However, I conclude that Disqualifying Condition E2.A5.1.2.2. applies to falsifications on such non-Federal forms.

DOHA decisions are not an evaluation of a person's loyalty to the United States but of the risks that result from a person's conduct, if that conduct violates one or more of the Guidelines in the Directive. In the present case, the two cited Guidelines deal with financial problems and personal misconduct. The underlying concern of both Guidelines is that the Applicant's conduct and/or relationships *may* show questionable judgment, unreliability, and/or untrustworthiness.

I have considered the evidence in light of the appropriate legal standards and factors, and have assessed Applicant's credibility, based on the written record. Overall, I conclude that the evidence supports the accuracy of all SOR allegations. At the same time, Applicant has not demonstrated any mitigation or rehabilitation. In the year that must pass before Applicant can reapply for a security clearance, she will have the opportunity to pay off or otherwise resolve the debts cited in the SOR that are the basis for much of the Government's concerns.

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

Subparagraph 1.i. Against the Applicant

Guideline E (Personal Conduct)

Subparagraph 2.a 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