

DATE: March 26, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-14188

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant owes approximately \$29,000.00 on three accounts. She is paying two of the accounts by garnishment, which I find mitigated, but owes the IRS approximately \$20,600.00. In March 2000, she completed a Standard Form 86 and gave false answers when asked about delinquencies of more than 180 days and tax liens. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from the IRS debt and the falsifications. Clearance is denied.

STATEMENT OF THE CASE

On May 17, 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. In an October 11, 2002 response (Item 4) the Applicant answered the SOR and elected to have her case decided on the written record, in lieu of a hearing.

On November 20, 2002, the Applicant received a complete copy of the file of relevant material (FORM) dated October 31, 2002, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. The Applicant's response to the FORM was due on December 20, 2003. No response has been received. I was assigned the case on January 21, 2003. The Department Counsel presented nine exhibits (Items). The record in this case closed on December 20, 2002.

FINDINGS OF FACT

The SOR alleges financial considerations (Guideline F) and personal conduct (Guideline E). The Applicant admits three of the debts and denies the remaining allegations.

The Applicant is 51 years old, has worked for a defense contractor since August 1998, and is seeking a security

clearance. The Applicant has previously been issued a top secret clearance in September 1994.

In March 1994, a federal tax lien of \$20,660.36 (Item 8) was issued for tax years 1990, 1994, 1996, and 1997. Part of her tax obligation was incurred while the Applicant was married. She divorced in April 1994. The 1990 tax deficiency arose following the sale of a home. In April 2002, the Applicant contacted a tax attorney, but as of October 2002, had not yet engaged the attorney. In August 2002, the Applicant spoke with the Internal Revenue Service (IRS) to arrange payment of the debt. September 2002 correspondence from the IRS states a \$300.00 per month payment would be made, starting in October 2002. No evidence has been presented indicating payments have or are being made pursuant to the agreement.

In March 2002, a wage garnishment was commenced to collect a \$4,670.00 student loan (SOR subparagraph 1.b). In 1996, the Applicant fell behind in her \$40.00 monthly payments due to her caring for her mother ill with cancer. Also in March 2002, a second wage garnishment was commenced to collect \$4,206.00 in other student loans (SOR subparagraph 1.c). The Applicant had received the loan in 1991 and was required to pay \$40.00 per month on her loan. She became delinquent on the obligation because she was caring for her ill mother and assisting her mother with her mother's debts. In a sworn statement given to the Defense Security Service (DSS) in January 2001 (Item 6) the Applicant said she would resume payments on these debts in April 2001. As of March 2002, a monthly garnishment of \$90.17 goes to the student loans.

In January 2001, the Applicant completed a personal financial statement showing her net remainder to be \$2.80 monthly. (Item 6) As of January 2002, her monthly gross pay had increased from \$1,041.67 to \$1,170.29.

In March 2000, the Applicant completed a Questionnaire for National security Positions, Standard Form (SF) 86). She answered "no" to question 36 entitled "Your Financial Record-Tax Lien," which asked if she had a lien placed against her property for failing to pay taxes or other debts during the prior seven years. She also answered "no" to question 38, which asked if she had been more than 180 days delinquent on any debt during the prior seven years. The Applicant indicates her "no" response was in error. She says she did not include pertinent information on the SF 86 due to poor instruction and direction in properly completing the form. She indicates she did not intend to mislead or falsify her form.

The Applicant has been a contract employee for five years and was a federal civilian employee for 10 years. She is raising two children with little or no child support, following her 1994 divorce. She assisted her mother with her mother's household bills until her mother's death in April 2000. From September 1994 through May 1995, the Applicant was unemployed. When she returned to work, she had to accept a position at a decreased amount of income. In addition to her full time job, the Applicant has a part-time job at a discount store earning approximately \$300.00 per month.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Financial Considerations (Guideline F) The Concern: 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. E2.A6.1.1.

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

1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

Conditions that could mitigate security concerns include:

6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)

Personal Conduct (Guideline E) 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. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

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

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 trustworthiness determination. (E2.A5.1.2.3.)

Conditions that could mitigate security concerns include:

None Apply.

BURDEN OF PROOF

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the Applicant who must remove that doubt and establish her security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue her security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, Financial Consideration. A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk that is inconsistent with the holding of a security clearance. Under Guideline F, an Appellant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. The Applicant's overall history of financial difficulties, which started in the mid 1990s, and continues to the present, provides concern. The Appellant owes approximately \$29,500.00 on three accounts. Disqualifying conditions (DC) 1. [\(2\)](#) and 3. [\(3\)](#) apply.

The Appellant acknowledged the debts are hers and, since March 2002, two of the debts are being paid by garnishment.

I find the garnishment to be a good-faith effort to repay these creditors. Mitigating Condition (MC) 6⁽⁴⁾ applies and I find for the Applicant as to SOR subparagraphs 1. b. and 1.c.

As of January 2001, the Applicant's net remainder of her monthly income less monthly expenses was \$2.80. Since that time her gross salary has increased \$128.62, but her monthly expenses have also increased in that she is paying the \$90.17 garnishment. With her salary increase, her net remainder is now approximately \$40.00 per month, which gives her little ability to meet the \$300.00 per month payment to the IRS. The Applicant's net income, although small, is positive. I will not find against the Applicant because her net remainder is small. I find for the Applicant as to SOR subparagraph 1.d.

The Applicant owes the IRS \$20,660.36 for tax years 1990, 1994, 1996, and 1997. None of the mitigating factors apply in the Appellant's favor. For Mitigating Factor (MC) 6⁽⁵⁾ to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good faith effort to repay. Although the Applicant has a desire to repay her debts, and entered into an agreement with the IRS to pay \$300.00 per month starting in October 2002, she has produced no evidence indicating she is making her payments. The mere desire to pay past due debts is insufficient. A systematic, concrete method of handling past due liabilities is needed, which is not present here. The Applicant has provided no cancelled checks, money order receipts, other receipts, letters from the creditors, or other evidence showing payment has been made.

None of the other mitigating factors apply in the Applicant's favor. The conduct is recent (MC 1)⁽⁶⁾ in that the debts are still owed. It is not an isolated incident (MC 2)⁽⁷⁾ because there are three debts and the IRS debt relates to four separate tax years. There is no indication the Applicant has received financial counseling, nor is there an indication the Applicant's financial problems are under control. (MC 4)⁽⁸⁾ Affluence was not alleged. (MC5)⁽⁹⁾ The Applicant's 1994 divorce, being a single mother raising two children, her unemployment from September 1994 through April 1995, and caring for her ill mother are factors beyond her control. However, sufficient time has passed since these events occurred to allow some type of repayment plan to be established. I find MC 3⁽¹⁰⁾ does not apply. Because the Applicant has failed to present sufficient mitigation to overcome her financial irresponsibility concerning the IRS debt, I find against the Applicant as to SOR subparagraph 1.a.

The Government has satisfied its initial burden of proof under guideline E, (Personal Conduct). Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. In March 2000, the Applicant completed an SF 86 in which she answered "no" when questioned about delinquencies more than 180 days delinquent and tax liens. Because of these false answers, DC 3⁽¹¹⁾ applies.

The Applicant indicates her responses were in error due to poor instructions and directions in completing the form. She states she did not intend to mislead anyone or falsify her form. The Applicant's explanations of innocent intent have been considered, but are not persuasive. Even if the Applicant's claim of poor instructions and directions is accepted, it would not have met the terms of the mitigating condition which requires that the improper or inadequate advice come from authorized personnel, which has not been established. MC 2⁽¹²⁾ does not apply because even though this falsification may have been related to two questions on a single questionnaire, it occurred in March 2000, and, as such, is considered recent. Because DC 2 applies, and no mitigating conditions apply, I find against the Applicant as to SOR subparagraph 2.a. and 2.b.

The awarding of a security clearance is not a one time occurrence, but is based on current disqualifying and mitigating conditions. Under the Applicant's current circumstances a clearance is not recommended, but this decision should not be construed as a determination that the Applicant's conduct could never justify the award of a DoD security clearance. Should the Applicant be afforded an opportunity to reapply for a security clearance, in the future, she may well demonstrate persuasive evidence of her security worthiness. A clearance at this time is not warranted.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F (Financial Considerations): AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Paragraph 2 Guideline E (Personal Conduct): AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: 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 the Applicant.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. DC 1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
3. DC 3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)
4. MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)
5. MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.
6. MC 1. The behavior was not recent.
7. MC 2. It was an isolated incident.
8. 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.
9. MC 5. The affluence resulted from a legal source. (E2.A6.1.3.5.)

10. MC 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). (E2.A6.1.3.3.)
11. DC 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 trustworthiness determination. (E2.A5.1.2.3.)
12. MC 2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. (E2.A5.1.3.2.)