

DATE: September 30, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-15864

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes approximately \$9,866.00 in delinquent financial obligations. With her present income insufficient to pay all of her current expenses, she is not in a position to make payments on these bad debts. Financial considerations remain unresolved. Personal conduct concerns persist as Applicant deliberately falsified her November 1999 security clearance application by denying that she had any financial delinquencies. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated April 30, 2002, to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on financial considerations (guideline F) because of unpaid delinquencies totaling approximately \$9,866.00 in the aggregate, and on personal conduct (guideline E) due to her failure to report her delinquent accounts on a November 1999 security clearance application.

On May 22, 2002, Applicant submitted a response to the SOR in which she admitted all the allegations set forth under guideline F while denying any intentional falsification of her security clearance application, and she requested a decision without a hearing. The Government submitted its File of Relevant Material (FORM) on June 24, 2002, ⁽¹⁾ a copy of which was forwarded to Applicant with instructions to submit material in explanation, extenuation or mitigation within thirty days of receipt. Applicant filed a response dated July 24, 2002, to which Department Counsel had no objection. On August 6, 2002, the case was assigned to me for a decision based on the written record.

FINDINGS OF FACT

In her answer to the SOR, Applicant admitted all the allegations under guideline F. Her admissions to the debts are accepted as proof of the outstanding indebtedness alleged by the Government. ⁽²⁾

After a thorough review of the evidence, and on due consideration of the same, I render the following findings of fact:

Applicant is a 43-year-old high school graduate who has been employed as a mail clerk for a defense contractor since November 1999. She seeks a security clearance for her duties at a mail facility located on a military installation.

A couple of months after she graduated from high school, Applicant was married in August 1977. Her spouse assumed responsibility for payment of their finances. Daughters were subsequently born to Applicant and her husband in July 1979 and April 1987. In January 1997, Applicant and her husband separated, and they were divorced that March. At the time of their separation, Applicant had little understanding of the family's financial condition. Applicant, who thereafter had responsibility for her own finances, was occasionally late on paying some of her bills.

In February 1998, Applicant married her second husband. They began to experience financial difficulties related, at least in part, to her spouse paying out-of-pocket for prescription pain pills. During the first ten months of their marriage, nine of Applicant's financial accounts were charged off, placed for collection and/or closed due to their delinquent status, including a credit card account held by Applicant with the retailer who employed her as a supervisor at a local outlet.

In November 1999, Applicant went to work as a mail clerk for her present employer. Required to obtain a security clearance for her duties, Applicant executed on November 19, 1999, a Questionnaire for National Security Positions (SF 86). Applicant did not report any financial delinquencies in response to question 28, responding negatively to 28a ["In the last 7 years, have you been over 180 days delinquent on any debt(s)?"] and 28b ["Are you currently over 90 days delinquent on any debt(s)?"].

In January 2000, Applicant separated from her spouse because of his abuse of prescription medications. Applicant remained in the mobile home where she had lived with her second husband during their marriage. She assumed sole responsibility for the \$334.82 monthly payment on the mobile home, \$250.00 in the mobile home lot rental fees and \$37.05 in homeowner fees, and utility costs.

During the course of its investigation into Applicant's background for a security clearance, the Defense Security Service (DSS) discovered Applicant had unpaid delinquent balances totaling about \$9,578.00 on at least nine accounts which had been charged off and/or placed for collection since 1998, and she owed \$72.00 on a utility account more than 120 days past due.

On March 9, 2001, Applicant was interviewed by a special agent of the DSS regarding her marital and financial situations. Confronted with the delinquencies reported on her credit report, Applicant admitted she had been aware she has had financial delinquencies "over the last couple of years." She indicated most of her financial problems started after she left her second husband, and that the bills they had incurred jointly have been past due. She expressed an intent to pay these overdue accounts as she became able, but she was presently paying only those bills necessary for her and her thirteen-year-old daughter to survive.

Circa March 2002, Applicant was asked to respond to interrogatories from the Department of Defense concerning the current status of the ten delinquent accounts and her failure to list any of those debts on her security form. On March 7, 2002, Applicant filed a response in which she attributed the omission of the delinquencies from her security clearance application to her lack of knowledge of four of the debts (a \$72.00 debt for utility services, a \$678.00 bank credit card debt, a \$335.00 telephone services debt, and a \$62.00 balance owed a mobile home company). With regard to the remaining debts, Applicant responded, "I know [sic] longer had those credit cards. That would be the only reason I did not list them." With her response to the interrogatories, she furnished a personal financial statement in which she listed a net monthly income of \$1,285.72, monthly expenses of \$876.70 and monthly payments of \$1,443.33, ⁽³⁾ leaving her with a negative monthly balance of \$157.61. Applicant related what she could not pay out of one check, she paid out of her next check. Applicant also provided copies of letters which she had written on March 6, 2002, to nine of the ten creditors to whom she owed delinquent balances. ⁽⁴⁾ In each of the nine letters, Applicant stated, "I am unable to make payments on this debt at the present time. Financially I am not able to set up any kind of repayment schedule. However I

do intend to repay this."

On April 30, 2002, DOHA issued an SOR to the Applicant alleging financial considerations because of unpaid delinquencies totaling in the aggregate \$9,866.00, ⁽⁵⁾ and her operating at a monthly deficit of \$157.61, and personal conduct concerns because of her failure to list any financial delinquencies on her November 1999 security clearance application.

In response to the SOR, Applicant admitted her indebtedness as alleged, but she denied any intentional falsification of her security clearance application, stating as follows:

A) When filling out the (Standard Form 86) in November 1999, I did not knowingly falsify information. The bills I failed to mention were bills I have forgotten about. I should have requested a copy of my credit prior to completing the standard form 86.

B) In response to: Are you currently delinquent over 90 days, I misunderstood the wording. I thought the question asked if I were 90 days or more delinquent on my current accounts, such as my house payment car payment, insurance, and utilities that I am able to pay and keep current.

In no way did I intentionally or deliberately intend to withhold any information. Without a credit report in front of me, I listed the debts that I could remember, to the best of my knowledge.

With the issuance of the Government's FORM, Applicant was provided a copy of her security clearance application on which she had disclosed no financial delinquencies. In her response to the FORM, Applicant on July 24, 2002, again denied any intentional falsification of her security clearance application, and she attributed her failure to list her delinquencies to some of the questions being "confusing in their verbiage," to oversight on her part, to lack of knowledge of her and her ex-spouse's financial situation. ⁽⁶⁾ Applicant's denial of any intentional falsification is not substantiated by the evidence of record. When Applicant was interviewed by the DSS agent in March 2001, Applicant indicated that she had no clear understanding of the family's financial situation when she separated from her first husband-which would have been in January 1997. The debts which remain unsatisfied fell delinquent in 1998, long after Applicant had taken responsibility for her accounts, and during her second marriage. Applicant did not deny any knowledge of these debts when she was questioned by the DSS agent ("I am fully aware that I do have financial difficulties and have had them for the last couple of years."). Asked prior to the issuance of the SOR why she did not report her debts on her SF 86, Applicant indicated she was unaware of only four of the debts. The sole reason given for not listing her credit card delinquencies was that she no longer had the credit cards. Applicant did not express any confusion in March 2002 about the questions or claim that the debts were incurred by her former or current spouse. The lack of a consistent, credible explanation for the omissions leads me to conclude that Applicant did not disclose her financial indebtedness on her SF 86 as she feared loss of her job and/or the clearance requested.

On July 22, 2002, Applicant wrote letters to her creditors in which she indicated she was currently seeking credit counseling and she expressed an intent to settle her debt "in the very near future." As of July 24, 2002, Applicant had made no payments toward her financial delinquencies. She was actively seeking a part-time job. Applicant had an appointment scheduled for July 31, 2002, with a consumer credit counseling organization.

Applicant has proven to be a diligent and professional worker for her employer.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary

or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors 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 judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

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

Financial Considerations

E2.A6.1.1. 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.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations

E2.A6.1.2.3. Inability or unwillingness to satisfy debts

E2.A6.1.3. Conditions that could mitigate security concerns include:

E2.A6.1.3.3. 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).

Personal Conduct

E2.A5.1.1. 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.

E2.A5.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A5.1.2.2. 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.

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's 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 can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

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 its burden and establishes conduct cognizable as a security concern 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 criterion 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." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to guidelines F and E:

Applicant owes approximately \$9,866.00 in delinquent debt. All but \$72.00 of her indebtedness is owed on accounts written off and/or placed for collection in 1998, after she had divorced her first husband and had taken over responsibility for her own finances. Applicant does not dispute her financial difficulties, but attributes them to her second husband's draining of their cash resources to support his addiction to prescription pain medications. The debts at issue became seriously delinquent during their first year of marriage, so his abuse of prescription painkillers may well have negatively impacted her ability to make payments on her credit cards and/or consumer loans. Yet, Applicant remains legally responsible for these legitimate financial obligations, and since her separation from her spouse in June 2000, she has made no payment toward any of her ten delinquent debts cited in the SOR. As of March 2001, Applicant indicated she lacked the income to pay other than those bills which were necessary for her and her daughter's survival. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Under guideline F, financial considerations, disqualifying conditions E2.A6.1.2.1., a history of not meeting financial obligations, and E2.A6.1.2.3., inability or unwillingness to satisfy debts, are pertinent to an evaluation of Applicant's security suitability.

By March 2002, Applicant had been aware for about a year that her finances were under Government scrutiny. Provided the opportunity to document any payment of her longstanding delinquencies and to explain her intentions as to how and when she planned to satisfy the debts, Applicant informed the Department of Defense in March 2002 she was operating at a monthly deficit of \$157.61 and she notified her creditors she was not in financial position to make any payments on her delinquencies or establish any kind of repayment schedule. While Applicant subsequently sought consumer credit counseling to assist her in resolving her indebtedness, and she has informed her creditors that she intends to settle her debt in the "very near future," there is no evidence that she has the financial means to make any payments either directly to her creditors or through the consumer credit counseling service. With her income insufficient to meet her current monthly obligations, her financial situation remains tenuous. As of July 24, 2002, Applicant indicated she was actively seeking a part-time job. At some future date, Applicant may be able to repay her creditors, but at this juncture there are no clear indications that her financial problems are being resolved or are under control. Subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j. and 1.k. are resolved against her.

Personal conduct (guideline E) concerns are raised by Applicant's failure to disclose her financial delinquencies on her November 1999 security clearance application (See E2.A5.1.2.2.). Applicant did not deny her financial indebtedness when initially contacted by the DSS special agent. She not only agreed with the bad debt information reflected on her credit report, but she acknowledged knowing she had financial difficulties over the couple of years preceding her DSS interview. When given the opportunity to explain her failure to list the outstanding debts on her security clearance application, Applicant in March 2002 responded she had been unaware of four of the debts and had not listed the consumer credit card debt because she no longer had the cards. Assuming Applicant had been unaware of the four debts named, she knew she had not satisfied her consumer credit card delinquencies. In her response to the SOR, Applicant for the first time claimed she understood question 28b on the SF 86 to apply only to accounts which she was able to pay

and keep current, such as her house and car payments. Question 28a ["In the last 7 years, have you been over 180 days delinquent on any debt(s)?"] is not reasonably subject to a similar misinterpretation, and Applicant did not indicate any confusion with regard to that inquiry. Applicant maintained that she listed the debts she could remember. On being confronted in the FORM with the evidence that she had disclosed no debts on her security clearance application, Applicant attributed the omission of the delinquencies to "oversight" on her part. The most reasonable conclusion to be drawn from her many and varied explanations is that Applicant deliberately omitted any reference to financial delinquencies from her security clearance questionnaire as she feared loss of her employment and/or denial of the clearance.

The concerns for Applicant's judgment, reliability and trustworthiness engendered by intentional false statement may be overcome if the falsification was isolated, not recent and corrected voluntarily (E2.A5.1.3.2.); the individual made prompt, good faith efforts to correct the falsification before being confronted (E2.A5.1.3.3.); or 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 (E2.A5.1.3.4.). To Applicant's credit, she acknowledged the adverse credit information when it was presented to her during her subject interview of March 2001. Yet, this correction of a November 1999 falsification was neither prompt nor before confrontation. There is no indication Applicant relied on the advice of an authorized person. To the contrary, Applicant in response to the FORM stated she should have asked for assistance and guidance when filling out her personnel security questionnaire.

Applicant's candor with respect to her indebtedness extends to admitting a negative monthly cash flow. Yet, she has not exhibited the same frankness with respect to her omission of the debts from her security clearance application. The variety and inconsistency in her explanations for the omission of relevant and material delinquencies reflect a lack of appreciation for her obligation to be completely candid with the Government, regardless of personal inconvenience or cost. Doubts persist as to whether Applicant's representations can be relied on. An adverse finding is thus warranted with respect to Subparagraph 2.a. of the SOR.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: 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

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

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.

Elizabeth M. Matchinski

Administrative Judge

1. The Government's FORM bears a typewritten date of June 21, 2002, and a signature date of June 24, 2002.
2. The Government presented no documentation from the creditors or even a credit report confirming the delinquencies. Applicant was apparently shown a copy of her credit report, which she did not dispute, during her subject interview of March 9, 2001 ("I agree with the information in my credit report regarding the bad debts." *See* Item 5). With scant information of record regarding the specific debts, it cannot be determined how long the accounts had been delinquent or even whether the accounts were individual or joint debts with her spouse. Department Counsel indicated in the FORM that "[a]lmost all of these debts were charged off as of late 1998." There is no documentary evidence confirming charge off dates, but Applicant admitted to the debts, all but one of which were alleged to have been charged off and/or placed for collection by late 1998.
3. With regard to her debt payments, Applicant listed monthly payments of \$334.82 on her mobile home loan and \$231.81 for her automobile.
4. There is no evidence that Applicant wrote to the creditor to whom she owed a delinquent credit card obligation of approximately \$3,950.00.
5. The outstanding balances in the SOR are consistent with the information provided by Applicant in her personal financial statement, with the exception of two accounts. In her personal financial statement, Applicant indicated she owed \$77.00 to an oil/gasoline company. In SOR subparagraph 1.e., the debt is alleged as \$403.00. In SOR subparagraph 1.c., the Government alleged an outstanding balance of approximately \$681.00 to another creditor. Applicant had indicated the amount of that debt to be \$791.00.
6. "I have never had any dealings with government forms and many of the questions were confusing in their verbiage. I realize now I should have asked for assistance and guidance on filling out these forms . . . The debts that I failed to include on my questionnaire were completely an oversight on my part. One of the debts was incurred by my ex-husband, which I had no way of knowing that he was not taking care of this debt. My current husband, whom I am separated from at this time, incurred several of the debts⁽⁷⁾
7. Applicant did not elaborate which debts were incurred by her former or current spouse. ' "