

DATE: December 6, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-17051

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Jonathan A. Beyer, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant owed five creditors approximately \$11,000.00, which had been written off as bad debts. She has paid one creditor, is paying another through garnishment, has made a satisfactory arrangement with the creditor owed the largest amount, and creditably asserts she will pay the other two creditors. Her criminal conduct is related to domestic disputes, which are not likely to recur. Clearance is granted.

STATEMENT OF THE CASE

On May 21, 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 a June 2002 response the Applicant answered the SOR and elected to have her case decided on the written record, in lieu of a hearing.

On September 6, 2002, the Applicant received a complete copy of the file of relevant material (FORM) dated August 8, 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 October 6, 2002. No response has been received. I was assigned the case on October 25, 2002. The Department Counsel presented 11 exhibits (Items). The record in this case closed on October 6, 2002.

FINDINGS OF FACT

The Applicant admits most of the debts, but denies one \$306.00 debt because she has paid that debt. She denies being arrested in 1998. The Applicant is 32 years old, has worked for a defense contractor since November 2000, and is seeking a security clearance.

The Applicant owes a department store \$641.00 (SOR subparagraph 1a) which was charged off as a bad debt. In

response to the SOR, she indicated she had sent correspondence to the store to clear up the debt and anticipates it will be paid by the end of the year. She is indebted to a credit card company (SOR subparagraph 1b) in the amount of \$2,343.00, which was charged off. She has sent correspondence to the creditor to clear up the debt. In March 2002, the company offered to settle this matter for \$1,640.60, however, the deadline set forth in the offer had expired because the offer had been mailed to a prior address of the Applicant. She intends to pay off this debt within one year.

The Applicant is indebted to another credit card company (SOR subparagraph 1c) in the amount of \$6,178.00, which was charged off. In March 2002, the company offered to settle this matter for \$4,633.58. The company also agreed to accept \$40.00 per month on this account. The Applicant was indebted to a bank (SOR subparagraph 1d) in the amount of \$306.00, which she paid off in May 2002.

In February 2000, a \$1,448.07 judgment was entered against the Applicant, which resulted in a \$25.00 per week garnishment of the Applicant's wages. In arch 2002, this debt was \$875.84 and by mid-June 2002, the amount owing was \$536.95. She intends to pay this bill by the end of the year. As of April 2002, the Applicant's salary is \$44,304.94.

In June 1996, the Applicant was arrested and charged with battery. The Applicant admits she was arrested, but denies being charged with battery. She indicates the charge was domestic violence. The police report (Ex 7) indicates in the narrative, block 25, the Applicant was arrested for "domestic assault," although the charge is listed in block 15 of the report as "battery." The Applicant alleges a former boyfriend had been drinking when he hit, choked, and restrained her, so she bite him to get him off her. When the police arrived, her then a boyfriend had a bit mark on his cheek. Each pressed charges against the other. The Applicant later dropped her charge, and the charge against her was placed on the "stet" docket. She fully complied with all the requirements related to her case being placed on the "stet" docket. The Applicant last saw her former boyfriend in January 1997.

The Applicant denies being arrested in November 1998 and being charged with battery. When the Applicant's daughter was returned from a visit by the child's father, the father attempted to push his way into the Applicant's home, she pushed the door closed. He filed a complaint with the police alleging she had hit him in the eye. Later, the sheriff's office called and asked her to come by and pick up the complaint, which she did. When everything was explained, the charges against her were dropped.

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 Consideration (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.)

Criminal Conduct (Guideline J) The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

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

a. Allegations or admission of criminal conduct, regardless of whether the person was formally charged.

b. A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

a. The criminal behavior was not recent.

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 Considerations). Under Guideline F, the security eligibility of an applicant is placed into question when the applicant is shown to have a history of excessive indebtedness, recurring financial difficulties, or a history of not meeting her financial obligations. The United States must consider whether individuals granted access to classified information are because of financial irresponsibility in a position where they may be more susceptible to mishandling or compromising classified information or material for financial gain.

The SOR alleged the Applicant owed five creditors approximately \$11,000.00. Because of these proven debts, Disqualifying Conditions (DC) 1 [\(2\)](#) and 3 [\(3\)](#) apply.

The Applicant and the credit card company (SOR subparagraph 1.c) have reached an agreement in the largest of the five debts whereby the company agreed to accept \$40.00 per month on this debt. This constitutes a good-faith effort to repay this creditor. MC 6 [\(4\)](#) applies and I find for the Applicant as to SOR subparagraph 1.c.

The Applicant has paid the \$306.00 debt owed the bank. (SOR subparagraph 1.d) I find for the Applicant as to this debt. The \$1448.07 judgment (SOR subparagraph 1.e) is being paid by a \$25.00 per week garnishment. Between March 2002 and June 2002, the garnishment reduced the balance on this judgment from \$875.84 to \$536.95. Even though the debt is

being met by garnishment, which has resulted in payment of more than \$300.00 in a three month period, this is still considered to be a good faith effort by the Applicant to pay this judgment. MC 6 applies. I find for the Applicant as to SOR subparagraph 1e.

Although the Applicant has contacted the remaining two debtors, there is no evidence an agreement exists between the Applicant and these creditors to repay these debts. However, one creditor offered to settle their debt (SOR subparagraph 1b) for \$1,640.60. The department store debt (SOR subparagraph 1a) is only \$641.00. Of the approximate \$11,000.00 the Applicant owed when the SOR was issued she has paid, is paying through garnishment, or has made a satisfactory arrangement concerning \$7,932.07 of her total debt. If the Applicant has paid or has reached a satisfactory understanding concerning the majority of her debts it lends credence to her claim she will pay the other two debts totaling \$2,281.60. I find for the Applicant as to SOR subparagraph 1a and 1b.

The Government has satisfied its initial burden of proof under Guideline J, (Criminal Conduct). Under Guideline J, the security eligibility of an applicant is placed into question when that applicant is shown to have a history or pattern of criminal activity creating doubt about her judgment, reliability, and trustworthiness. The Applicant was involved in two domestic violence incidents, one in 1996 (SOR subparagraph 2a) and the second in 1998 (SOR subparagraph 2b). The first was placed on the "stet" docket and the charges in the 1998 incident were dropped. Because of these two arrests, DC a (5) and b (6) apply.

The incidents were both domestic disturbances in which the Applicant got into an altercation with her then boyfriend in 1996 and with her daughter's father in 1998. The Applicant has not seen her former boyfriend since January 1997. The most recent charges in 1998 were dropped. The most recent of the two incidents occurred approximately four years ago and is therefore not considered to be recent. MC a (7) applies to both incidents. I find for the Applicant as to SOR subparagraph 2a and 2b.

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 Financial Consideration (Guideline F): FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Paragraph 2 Criminal Conduct (Guideline J): FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is 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. DC a. Allegations or admission of criminal conduct, regardless of whether the person was formally charged.
6. DC b. A single serious crime or multiple lesser offenses.
7. MC a. The criminal behavior was not recent.