

DATE: February 3, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-17153

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Kathryn MacKinnon, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant owes seven debts totaling approximately \$5,000, which have been included in a repayment plan that is part of a Chapter 13 wage earner's bankruptcy. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from the debts. Clearance is granted.

STATEMENT OF THE CASE

On April 21, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating DOHA could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(U\)](#) On June 23, 2003, the Applicant answered the SOR and requested a hearing. The case was assigned to me on November 19, 2003. A Notice of Hearing was issued on November 19, 2003, scheduling the hearing, which was held on December 5, 2003.

The Government's case consisted of six exhibits (Gov Ex). The Applicant relied on her own testimony and five exhibits (App Ex). Following the hearing, numerous additional documents were received, provisions having been made for their submission following the hearing. Department Counsel (DC) having no objection to their admission, the submissions were admitted as App Ex. F

The transcript (Tr.) of the hearing was received on December 17, 2003.

FINDINGS OF FACT

The SOR alleges Financial Considerations (Guideline F). The Applicant admits some of the indebtedness and denies the remainder. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact.

The Applicant is 40 years old, has worked for a defense contractor since April 1988, and maintained a secret security

clearance from 1988 until it went inactive in 1997, when she took a leave of absence. The Applicant is regarded by those who know her as a very trustworthy, a very loving, giving person, and a good friend who lives modestly. (Tr. 71-72) The Applicant has received numerous awards for outstanding performance and dedication.

In August 1994, the Applicant filed for bankruptcy protection under Chapter 13 of the United States Bankruptcy Code. Prior to filing bankruptcy, she had separated from her husband in 1993 and was in the midst of a divorce, which became final in March 1997. The bankruptcy occurred because she went from a two-income household to a single income household with a reduction of household income to \$25,000 annually. She got a part-time job to supplement her income, but even with the part-time job, her debts eventually overwhelmed her. (Tr.28) In December 1999, the plan was fully administered and closed after the Applicant had paid \$31,462.08 under the plan. The Applicant's case was concluded to the satisfaction of the court.

Between March 1997 and July 1997, the Applicant took a leave of absence to help her sister who was undergoing major surgery and recovery from that surgery. Part of her absence was covered by sick leave and vacation time, with the remainder leave without pay.

In April 2001, the Applicant spoke with a special agent of the Defense Security Service (DSS). During the interview, she received a copy of her credit report listing several delinquent debts. Following the interview, she called her creditors, however, not all of them were willing to work with her in establishing a repayment plan.

In September 2002, the Applicant contacted a credit counseling service. The Applicant provided the service with a list of her creditors and the amounts owed. On October 1, 2002, the Applicant enrolled in a debt management program with payments to be made through automatic deductions from her saving account. Due to a mix up, payments did not start until December 2002. In March or April 2003, the Applicant ended her arrangement with the service due to fact that not all of her creditors would agree to the monthly payment amounts being offered by the service. (Tr. 38) Between August 2002 and July 2003, the Applicant made approximately \$4,000 in payments on the unpaid installments on her automobile debt (SOR 1.d.) by direct Western Union money transfers. The balance on her automobile loan was included in her 2003 Chapter 13.

In July 2003, the Applicant filed for bankruptcy protection under Chapter 13 of the Bankruptcy Code. She listed \$21,500.00 in assets and \$14,441.00 in liabilities, including approximately \$5,000.00 that is owed to the creditors listed in the SOR. The \$134.00 monthly payment to the bankruptcy plan is by direct payroll deduction.

The Applicant's current salary is \$49,000 per year. Her take home pay is approximately \$1,187.00 every two weeks. She maintains no credit cards. The Applicant is currently attending classes and provides for her son born in May 1998. Her employer pays her tuition and reimburses her the cost of her books. The Applicant has \$8,103.64 in her 401(k) retirement plan. She contributes 8% of her base pay every pay period and her company matches 50% of her contribution.

Of the \$6,149.92 in total debt listed in the SOR, \$5,080.00 is included in the Chapter 13 bankruptcy petition filed by the Applicant in 2003. The status of the specific debts alleged in the SOR follows.

SOR Paragraph	Amount	Type of Debt	As listed in the SOR	Current Status
1.b.	\$1,180.00	automobile loan	90 days past due as of Oct 2000	Brought current. Balance included in 2003 Ch. 13
1.c.	\$1,048.00	credit card	charged off Oct 1998	Included in 2003 Ch. 13
1.d.	\$342.00	credit card	charged off Aug 1998	Included in 2003 Ch. 13
1.e.	\$542.00	credit card	charged off Aug 1998	Included in 2003 Ch. 13
1.f.	\$58.00	credit card	turned over for collection Feb 2000	Paid
1.g.	\$507.00	credit card	charged off Oct 2000	Included in 2003 Ch. 13
1.h.	\$1,198.00		turned over for collection May	Included in 2003 Ch. 13

			1997	
1.i.	\$15.00	doctor bill	turned over for collection June 2000	Paid
1.j.	\$263.00	Applicant disputes this debt	turned over for collection Aug 1999	Included in 2003 Ch. 13
1.k.	\$27.00	Medical bill		Paid
1.l.	\$969.92	State tax lien	Garnishment issued Aug 2000	Paid

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. The Government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts proven must 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. 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.)

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified

information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant then has the burden of establishing 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.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See Executive Orders 10865 § 2 and 12968 § 3.1(b)*. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. 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, an applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. 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 substantial evidence of 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. Here, the Applicant's history of sporadic payment on her debts provides concern. The Applicant owed 11 creditors approximately \$6,000.00. Disqualifying Conditions (DC) 1-(2) and 3-(3) apply.

In 1994, even though she had secured an additional part time job, she needed to seek the protection of Chapter 13 of the Bankruptcy Code because she had separated from her husband, and had gone from a double income household to a single income household with an annual salary of \$25,000. The Applicant paid her creditors \$31,462.08 under the plan and her case was satisfactorily concluded.

New debt following a bankruptcy discharge raises questions about the Applicant's handling of her finances. Yet Applicant has taken sufficient steps of late to mitigate the security concerns. She has paid approximately \$1,000.00, satisfying four of her debts in full. Favorable findings are returned as to SOR 1.f., 1.i., 1.k., and 1.l. In September 2002, she began working with a credit counseling service. While she had to again seek bankruptcy protection in 2003, it was because some of her creditors would not accept the payment schedule proposed by the debt management service in which she had enrolled. Without the consent of each of the creditors she could not use the debt management program and was forced into Chapter 13. Her currently liabilities total approximately \$14,000.00 and her assets approximately \$21,500. The Applicant has shown she can be counted on to comply with the wage earner's plan, as her earlier bankruptcy demonstrates. In her past Chapter 13 she was able to repay her creditor more than \$30,000 when her annual income was only \$25,000. Her current liability is much less than in her previous bankruptcy --\$14,000--and her income is now \$49,000--almost double her income during the prior plan. If she was able to pay more creditors with less income under her previous plan, there is nothing to believe she will not be able to pay her creditors under her current plan. In this particular case, the Chapter 13 wage earners' plan is a good faith method by which her creditors will be paid what they are owed. Also in Applicant's favor, she does not have any credit cards, is attending school and providing for her young son, and has \$8,103.64 in her 401(k) retirement plan. The Applicant is not incurring any new delinquent debt. Mitigating Condition 6-(4) applies. I find for the Applicant as to SOR 1.a., 1.b., 1.c., 1.d., 1.e., 1.g., 1.h., and 1.j. as well.

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: 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

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: For the Applicant

Subparagraph 1.k.: For the Applicant

Subparagraph 1.l.: 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. Clearance is granted.

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.)