

DATE: January 31, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-17947

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Katherine A. Trowbridge, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, with her husband who she had historically relied on for the family's income, accumulated numerous debts (mostly medical) between 1980 and 1997, most of which she and her husband discharged through succeeding Chapter 7 bankruptcies in 1980 and 1992. Because of a workman's compensation settlement shortfall following a job-related accident in 1997, Applicant accrued medical bills which she could not keep up with the minimum income sources of her self and her disabled husband. She has since made good faith efforts to address her three remaining listed debts (one of which could not be identified and addressed by the collection agency), and is credited with both extenuation and mitigation. Applicant is highly regarded by her employer and absolves herself of risks associated with financial problems. Clearance is granted.

STATEMENT OF THE CASE

On August 26, 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, issued a Statement of Reasons (SOR) to 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 Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on August 26, 2002, and requested a hearing. The case was assigned to this Administrative Judge on November 26, 2002. Pursuant to notice, a hearing was convened on December 18, 2002, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of four exhibits; Applicant relied on one witness (herself) and eight exhibits. The transcript (R.T.) of the proceedings was received on January 2, 2003.

STATEMENT OF FACTS

Applicant is a 47-year old referral mail clerk for a defense contractor who seeks a security clearance.

Summary of Allegations and Responses

Applicant is alleged to have a history of financial difficulties: Three debts totaling in excess of \$24,000.00, which are either delinquent, referred for collection, or charged off, which followed two prior bankruptcies under Chapter 7 of the federal bankruptcy laws (one discharged in June 1980 and the other in November 1992).

For her answer to the SOR, Applicant admitted her delinquent debts and bankruptcy discharges in 1980 and 1992, respectively.

Relevant and Material Factual Findings

The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference adopted as relevant and material findings. Additional findings follow.

Before 1997 Applicant was a homemaker (much younger than her husband) who raised their six children and relied essentially on her husband to provide enough income to pay their bills and expenses. Applicant and her husband both experienced rough financial periods in the past when the combination of her husband's experiencing medical problems and their becoming overextended on credit card debts forced them to seek federal bankruptcy protection under Chapter 7. Both in June 1980 and November 1992 (covered by sub-paragraphs 1.d and 1.e of the SOR), Applicant and her husband obtained bankruptcy discharges that wiped clean their records of debt, primarily medical and credit-card related.

Since Applicant's husband was injured in a job-related accident in 1995, he has been disabled and unable to earn income, except for the workers compensation settlement he was awarded in connection with his accident. The monthly income Applicant's spouse received from his workers compensation settlement was only \$501.00 a month and insufficient to meet the family's pressing medical bills and other debts. Applicant's husband became eligible for Medicare in July 1997, and the benefits he received were of considerable help in paying his own medical expenses. But they were of limited benefit to Applicant, who had no means of income or insurance at the time.

To augment her husband's meager income, Applicant went to work in August 1997 with a temporary service. With the additional income, Applicant and her husband were able to resume regular payment of their debts and meet their family expenses, but without anything left over to address their old debts (*see* R.T., at 39-40). Applicant soon became enmeshed in personality clashes with her supervisor. Contemporaneously with this discord she was experiencing with her supervisor, the supervisor's son dropped a crate of documents on the back of her head in March 1998 (*see* ex. 3; R.T., at 40-41). Believing at the time she was not seriously injured, she continued to work on her job. When she developed complications a couple of days later and was hospitalized, the assigned workman's compensation physician attributed only a portion of her medical problems to her job-related injury. Her resulting workman's compensation settlement did not cover the bulk of her medical bills and job losses.

Applicant's listed debts are medically related and cover medications, hospitalization and consulting fees associated with her 1998 job-related injuries and other complications. With the very limited income she and her husband have had at their disposal, she has not been able to address these debts as she would have liked to.

Since joining her current employer in October 1999, Applicant has continued to make regular payments on her three listed medical debts while staying current on her new debts. Combined with the \$862.00 monthly disability payment her husband receives (ex. C), the current monthly take home pay she receives (about \$1,400.00 a month) has enabled her to make her agreed payments on both her creditor 1.a medical account and one of the included accounts covered by 1.b of the SOR. Documented payment records reflect Applicant's reducing the creditor 1.a account to approximately \$6,682.00 (*see* ex. A; R.T., at 59) and a segment of the creditor 1.b account to a current balance of \$4,402.22 (ex. A). She believes the remaining \$12,000.00 in debt owed to creditor 1.b was assigned to the collection agency identified in the SOR. Efforts to elicit any information from this collection agency have been unsuccessful (*see* R.T., at 60-63). Applicant assures she is ready to make reasonable payments towards the satisfaction of this \$12,000.00 balance if she can just enlist the collection agency's help in identifying the account and setting up a payment plan with her.

The only other delinquent account listed in the SOR is a \$887.00 debt (creditor 1.c) shown to be owed to a physicians group. Applicant documents to have satisfied this debt with a \$802.46 payment in December 2002 (ex. B).

Applicant exhibits honest, hard working character qualities and demonstrates to be committed to paying off all of her old debts. She is highly regarded by her supervisor and coworkers as an employee who is very punctual in her attendance, outstanding in her performance, and very customer oriented (*see ex. G*). Applicant is reputed to be very dependable and trustworthy in her work, as well as a model parent and grandparent .

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list "binding" policy considerations to be made by Judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires the Judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the Judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

Concern: An individual who is financially overextended is at risk at having to engage in illegal acts to generate funds. Unexplained influence is often linked to proceeds from financially profitable criminal acts.

Disqualifying Conditions

DC 1. A history of not meeting financial obligations.

DC 3. Inability or unwillingness to satisfy debts.

Mitigating Conditions

MC 1: The behavior was not recent.

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).

MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Burden of Proof

By reason of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a nexus to the applicant's eligibility to obtain or maintain a security clearance. The required showing of nexus, however, does not require the Government to affirmatively

demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of accessible risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSION

Applicant accrued considerable debt over the past twenty plus years of her marriage, some credit-card related, but much of it related to medical bills she and her husband accrued. Before joining the work force in 1997, Applicant was devoted to raising her six children and relying on her husband to earn income necessary to meet their family bills and expenses. Income limitations and over-extended in medical and consumer debts, Applicant and her husband completed two Chapter 7 bankruptcies: one in 1980 and another in 1992. Disabled as the result of a work-related accident in 1995, Applicant's husband could no longer work and looked to a very limited workman's compensation settlement (just over \$500.00 a month) to take care of Applicant and his family. This considerable loss forced Applicant to enter the work force to supplement her family's income. Her jobs have netted her modest returns but steady salary increases between 1997 and the present.

Because of her own medical problems associated with a work-related accident and other complications uncovered by her workman's compensation settlement, Applicant incurred heavy medical bills which she could not completely pay for with the income resources she and her husband had at their disposal. Altogether, she accumulated in excess of \$24,000.00 in medically-related bills which she could not keep up with. They are reflected in the debts covered by creditors 1.a through 1.c. On the strength of the evidence presented, Government may invoke two of the Disqualifying Conditions (DC) of the Adjudicative Guidelines for financial considerations: DC 1 (history of not meeting financial obligations) and DC 3 (inability or unwillingness to satisfy debts).

Of the debts covered in the SOR, one (creditor 1.c) is credited to Applicant as paid in full. Applicant demonstrates that she made earnest good faith attempts to pay off the remaining two debts (creditors 1.a and 1.b) with the monthly surplus she has available. While an estimated \$12,000.00 of the listed creditor 1.b debt cannot be identified and addressed by Applicant with the collection agency who has written off the debt, she is credited with making persistent good faith attempts (*see exs. E and F*), but could not obtain proper identification of the debts with the individual creditors. So, Applicant cannot be faulted for not trying to address her remaining.

Based on her testimony and admitted documents, Applicant's covered debts are both extenuated and mitigated by circumstances and time (her bankruptcy actions) and earnest repayment efforts. Applicant may take advantage of several mitigating conditions of the Adjudicative Guidelines to extenuate and mitigate her actions: MC 1 (behavior not recent), MC 3 (conditions largely beyond the person's control) and MC 6 (initiated good-faith effort to repay overdue creditors). Favorable conclusions warrant, accordingly, with respect to sub-paragraphs 1.a through 1.e of the Adjudicative Guidelines governing financial considerations.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the E 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE F (FINANCIAL): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 1.d: FOR APPLICANT

Sub-para. 1.e: FOR 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge