

DATE: August 7, 2003

In Re:

SSN:-----

Applicant for Security Clearance

ISCR Case No. 01-18215

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has had a history of financial difficulties, including a bankruptcy. A significant cause of Applicant's past financial difficulties was her former marriage to her ex-husband, who did not pay the family bills. Applicant did not discover the extent of her past financial difficulties until after her divorce. Most of her past overdue debts have now been paid, and she is working to resolve the rest. Applicant has consulted with a financial advisor and has a more stable and mature outlook about her finances. Mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On January 9, 2003, 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 denied or revoked.

In a signed and sworn statement, dated February 21, 2003, Applicant responded in writing to the SOR allegations. She requested a clearance decision based on a hearing record.

On April 23, 2003, this case was assigned to another Administrative Judge, but on May 6, 2003, because of caseload consideration, the case was reassigned to me to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on May 6, 2003, and the hearing was held on May 20, 2003.

At the hearing, Department Counsel offered six documentary exhibits (Government Exhibits 1 through 6), and no witnesses were called. Applicant offered five documentary exhibits (Applicant Exhibits A through E) and offered her own testimony. After the hearing, the record was left open, and Applicant offered additional documentary exhibits, none of which were objected to by Department Counsel. Four letters of reference were marked as Exhibits F. An updated financial statement was marked as Exhibits G. A letter regarding creditor 1 was marked as Exhibits H. A letter regarding

creditor 3 was marked as Exhibits I. A letter regarding creditor 4 was marked as Exhibits J. A Moneygram regarding creditor 5 was marked as Exhibits K. Applicant Exhibits F through K have been entered into evidence. The transcript (TR) was received on June 2, 2003.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial Considerations) of the Directive. The SOR contains 10 allegations, 1.a. through 1.j., under Guideline F. There are seven debts in the SOR that Applicant owed as of June 5, 2002, 1.a. to 1.g. In her response to the SOR, Applicant admits that these debts were owed, but responded that some of them have now been paid. These debts are incorporated as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony, and upon due consideration of that evidence, I make the additional Findings of Fact:

Applicant is a 41 year old employee of a defense contractor who seeks access to classified information. She is divorced and has no children.

Paragraph 1 (Guideline F - Financial Considerations).

The evidence establishes that Applicant (1) was indebted in the amounts alleged, and (2) all of the debts were delinquent as of June 2002. The total of these seven debts owed by Applicant was approximately \$8,620. The debts will be discussed in the order that they were listed in the SOR: This debt to Creditor 1 is in the amount of \$485. Applicant testified that she has arranged a payment plan, and she will pay \$100 a month. At the time of the hearing Applicant had paid \$100 in April 2003, and was planning to continue making payments every month until the debt is paid in full. (TR at 40-42.)

This debt to Creditor 2 is in the amount of \$204. Applicant testified that she has paid this debt in full as of February 2003. (TR at 30) Exhibits A and H establish that Applicant has paid this debt in full.

This debt to Creditor 3 is in the amount of \$292. Applicant testified that she has paid this debt in full as of February 2003. (TR at 30-32.) Exhibits B and I establish that Applicant has paid this debt in full.

This debt to Creditor 4 is in the amount of \$160. Applicant testified that she has paid this debt in full as of February 2003. (TR at 33-35.) Exhibit C establishes that Applicant has paid this debt in full.

This debt to Creditor 5 is in the amount of \$2,468. Applicant testified that she has reached a compromise to resolve this debt by paying \$1,085, and she has arranged a payment plan where she will pay two monthly payments of \$542.50. (TR at 36-37, Exhibit D.) Applicant made the first payment of this debt on May 2003, and she was scheduled to resolve this debt completely in June 2003. (Exhibit K.)

This debt to Creditor 6 is in the amount of \$4,906. Applicant has made several telephone calls to this creditor, but she has been informed that the creditor has been unable to locate the records of this debt. Therefore, Applicant has not been able to resolve this debt, despite making a good faith effort.

This debt to Creditor 7 is in the amount of \$105. Applicant paid this debt in July 2002. (TR at 46, Attachment to Applicant's answer to the SOR.)

Applicant wrote a check to a convenience store in the amount of \$15, which was returned for insufficient funds. When Applicant wrote the check in question, she was unaware that her bank had not yet credited her account with a check that she had deposited into that account. Ultimately Applicant paid \$50 to the court, and the charge of writing a check with insufficient funds was dismissed. (TR at 37-40, Exhibit E.)

Applicant submitted an updated financial statement, which showed that her financial situation has improved significantly. As a result of greater earnings and fewer expenses her current monthly net remainder is approximately

\$670. (Exhibit G.)

Applicant's finances became problematic largely as a result of her marriage from 1986 to 1991, during which time her husband did not pay a number of the family bills, including the mortgage for the family home. Applicant was not aware of the seriousness of her financial difficulties until after she was divorced. When she initially filed for bankruptcy she attempted to keep her home by filing a Chapter 13, but she was advised that, based on her financial situation, it was necessary to convert the bankruptcy to Chapter 7. The bankruptcy was finalized, and her debts were discharged on April, 1995. (TR at 47-51, Exhibit 3.)

In an attempt to resolve her finances, she has also consulted with a financial advisor. Finally, Applicant introduced four very positive letters of reference on her behalf. (Exhibit F.)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. 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, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

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.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (See Directive, Section E2.2.1. of Enclosure 2).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline F - 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).

E2.A6.1.3.4. 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.

BURDEN OF PROOF

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to Applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of Applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the 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."

CONCLUSIONS

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

The Government has established that Applicant has a history of financial difficulties, including a bankruptcy. Under Guideline F, a security concern typically exists for two different types of situations--significant unpaid debts and unexplained affluence; this case involves the former. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, individuals who are financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in their obligation to protect classified information. However, the majority of Applicant's past overdue debts have been resolved, and she has been making a concerted effort to resolve her remaining overdue debts. I, therefore, resolve Guideline F for Applicant.

Regarding Disqualifying Conditions (DC), I conclude both DC E2.A6.1.2.1., and DC E2.A6.1.2.3 apply, because of Applicant's history of not meeting financial obligations and her inability to satisfy her debts. However, I find Mitigating Condition (MC) E2.A6.1.3.3 applies because a significant amount of Appellant's past financial difficulties occurred because her ex-husband failed to make the required payments for their home and other family expenses. This was unknown to Applicant until after her divorce from her husband and largely beyond Applicant's control. Additionally, MC E2.A6.1.3.4 applies because Applicant has consulted with a financial advisor and has a more stable and mature outlook about her finances, and is now making a consistent effort to be current on all of her debts.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1, Financial Considerations, 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

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

DECISION

In light of all the circumstances and facts presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Martin H. Mogul

Administrative Judge