

DATE: July 9, 2002

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-19841

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant with a history of delinquent debts, some attributable to a period of unemployment by her husband, addressed only a few of her covered delinquent debts before receipt of the SOR, and still fails to provide a viable repayment plan, either individually or through a credit counseling service, that will enable her to discharge her old debts in an orderly way, and she fails to demonstrate emergent financial stability sufficient to absorb security risks associated with her pattern debt delinquencies. Clearance is denied.

STATEMENT OF THE CASE

On February 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 March 23, 2002, and requested a hearing. The case was assigned to this Administrative Judge on April 26, 2002, and scheduled on April 29, 2002, for hearing. A hearing was convened on May 29, 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 six exhibits; Applicant relied on one witness (herself) and six exhibits. The transcript (R.T.) of the proceedings was received on June 6, 2002.

PROCEDURAL ISSUES

Prior to the close of the hearing, Applicant requested leave to supplement the record with documentation of her payment of her VISA account. There being no objection, and good cause showing, Applicant was afforded an additional seven

(7) days to supplement the record with a documented collection notice from her covered utility company and documented work out plan with a credit counseling service. Government was afforded three (3) days to respond. Within the time permitted Applicant provided documentary support of her satisfaction of her VISA debt. Applicant's submission is accepted as Applicant's exhibit G.

STATEMENT OF FACTS

Applicant is a 27-year old functional application analyst for a defense contractor (Company A) who seeks a security clearance at the level of secret.

Summary of Allegations and Responses

Applicant is alleged to have incurred a number of consumer-related debts over a five-year period, which have become delinquent: eight in all totaling in excess of \$12,000.00.

For her response to the SOR, Applicant to incurring the delinquent accounts listed in the SOR. In explanation, she claims one of the debts has since been discharged (her \$548.00 department store debt) and has made efforts to contact her remaining creditors to set up repayment arrangements.

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.

Over a five-year period beginning in 1996, Applicant accumulated a number of consumer-related debts, a number of which became delinquent during a period of her husband's unemployment (*see ex. 5*). She has earned an AA degree and is currently working on her bachelors degree; she has had to defer some of her education pursuits while she is expecting birth. Applicant manages all of her family's finances and has made some efforts to contact her old creditors to set up repayment arrangements. She is able to document repayment of two of her smaller consumer accounts (*i.e.*, her \$482.00 VISA debt and her \$548.00 department store debt) and has made several payments towards the discharging of her other two smaller debts: her listed \$593.00 consumer debt and her \$280.00 utility account (*see exs. A, C and D; R.T.*, at 32, 36-37, 42, 49).

At one point (in April 2001), Applicant and her husband claimed a \$2,501.00 net monthly remainder. But since purchasing three vehicles (at a total monthly cost of \$900.00), her monthly net remainder was reduced to around \$1,400.00 a month (*see R.T.*, at 89), despite the raises she has received that have brought her current income to over \$53,000.00 a year and the income contributions she receives from her husband (*R.T.*, at 40). This is still enough to address several of her remaining creditors with work out arrangements, but clearly not enough to repay all of them. She has been unable to develop any kind of a debt consolidation arrangement with CCC to date for lack of sufficient income and reported unwillingness of any of her remaining creditors to accept anything but lump sum settlements (*see R.T.*, at 44).

Of Applicant's remaining four unresolved debts, two of them involve deficiencies from vehicle repossessions: one on a repossessed vehicle, in which the lender eventually obtained a deficiency judgment approximating \$2,571.00, and the other on a repossessed vehicle that left a deficiency of \$4,564.00. Instead of using some of her net monthly remainder that exceeded \$2,500.00 in April 2001 (*see ex. 5*) to develop a viable consolidation plan with Credit Counseling Services (CCC), she and her husband purchased additional replacement vehicles (in part made necessary by the maintenance problems they encountered with their other vehicles), which reduced their net monthly remainder to around \$1,400.00 (*see ex. F*). Her husband, in turn, didn't generate as much income from his work as he had expected, much of this due to the seasonal nature of his work (*see R.T.*, at 83-86). So, the pool of assets they anticipated to have available to address their old debts did not materialize as they had expected when Applicant assured the interviewing DSS agent in April 2001 she would begin addressing her old debts (*see ex. 5*). With the added expense attributable to addressing her old debts and paying on the three vehicles she and her husband own and are obligated on (around \$24,000.00 in aggregate car loans -*see R.T.*, at 64-65, 87-88), she claims a current average net monthly remainder of no more than \$700.00 (*see R.T.*, at 91).

Still, Applicant and her husband continued to enjoy a net monthly remainder benefit even after they purchased their new vehicles, albeit, at a reduced amount. While it is understandable that Applicant has not heard back from her old creditors on her attempted repayment proposals, it remains less than clear how she could not develop a viable consolidation plan with CCC with the creditors she identified and her available remainder (*viz.*, either of the two she alternatively claimed). With just four creditors left to work out repayment with, reason and common sense suggest that at least some of these creditors would be open to working with Applicant on any repayment plan developed jointly with CCC. Applicant's explanation for being rejected by CCC for lack of any net available income is inconsistent with the net-remainder summaries she reported in April 2001, and at the hearing, and cannot be reconciled with any of the documented exhibits.

Besides her brief consideration of CCC as a means for addressing her old debts, Applicant and her husband explored the bankruptcy option. She talked with an attorney in October 2000 about petitioning for bankruptcy, but changed her mind after her husband did not get his expected bonus. With the bonus, they intended to retain the attorney to complete the necessary petition and other court requirements necessary to obtain a bankruptcy discharge.

Determined to address their remaining four debt delinquencies individually, Applicant and her husband have had little success working out individual repayment plans. Two of her major debts (*i.e.*, her \$1,418.00 credit card debt and the \$4,564.00 deficiency left after the lender's repossession of her husband's truck) are covered by the same collection agency, who offered to take a lump sum \$2,500.00 lump sum payment in settlement of the two debts (*see* R.T., at 33-34). To date, Applicant has been unable to enlist any kind of a monthly payment plan from this collection agency. Just as she continues to make efforts to develop viable repayment plans with her remaining creditors, she is unable to provide any predictable estimates of when she can resolve these remaining debts (*see* R.T., at 78-82). How much success she achieves in these repayment efforts is very difficult to assess with the available data she has provided.

Applicant provided no character references, and little is known about her work habits and trustworthiness at work. To her credit she has received salary increases with her current employer, a generally reliable indicator of how well she has executed her assigned duties and met her employer's expectations.

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 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 virtue 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 cognizable 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 persuasion 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 comes to these proceedings with a history of security-significant delinquent debts that trace, in part, to her husband's unemployment for a period and their later unfulfilled expectations of generating additional income to fund the repayment of their debts.

Over a six-year period spanning 1996 and 2002, Applicant became delinquent in a number of consumer-related debts she and her husband incurred. Except for four of the smaller debts which she has since paid or is paying on, she has been unable to address these remaining debts (all of which have gone to collection status). One of her debt delinquencies was ultimately reduced to a deficiency judgment, following a vehicle repossession and proper crediting of the bid proceeds. While Applicant has sought out credit counseling, she has so far failed to follow through any CCC-sponsored debt consolidation, either due to her own financial limitations or reluctance of the creditors to work out monthly repayment plans with she and her husband.

At issue in this proceeding is not only Applicant's reliability and trustworthiness in light of her accumulation of delinquent debts and one outstanding judgment, which currently stand in excess of \$11,000.00, after credit for the debts she has resolved, but also her unwillingness to seriously address them (either individually or through some form of debt consolidation program, or even bankruptcy), before initiation of her security application and issuance of an SOR. Security concerns are not abated by her apparent inability to fashion any realistic means to discharge her old debts. Security determinations have never confined risk considerations to the elimination of debts that result from collection action, write offs and judgments, but rather they have looked to the applicant's overall financial history to shed light on her most recent conduct as an indicator of repeat potential. This the Government has done in underscoring Applicant's still ongoing financial difficulties associated with her continuing repayment responsibilities. In other words, judgment/trust concerns are implied from past financial problems when considering the security significance of delinquent debts.

Here, some judgment lapses must be imputed to Applicant for taking on new car purchases and diverting remainder income away from a potential repayment pool attributable to Applicant's accumulations of surpluses linked to her salary

increases (based on her DSS assurances in April 2001). Security concerns justifiably attach to Applicant's failure to make more earnest efforts to repay her old creditors, either through individual repayment efforts, debt consolidation, or even bankruptcy. Appraising the security significance of Applicant's financial deficiencies, several Disqualifying Conditions (DC) of the Adjudicative Guidelines (for financial) apply: DC 1 (history of not meeting financial obligations) and DC 3 (inability or unwillingness to satisfy debts).

While most of Applicant's consumer-related debt assigned for collection, or taken to judgment, might be extenuated by exigent circumstances (*viz.*, the unemployment periods of her husband), none warrant total extenuation and mitigation, given Applicant's emergent repayment capabilities and reluctance to take more aggressive measures with resolving her debts back in 2001 and the time since. Without a viable plan to resolve her delinquent debts and/or deficiency judgment without considerable increase in her income, she leaves too much to chance and risk. At this time her efforts leave simply too much to speculation: much of her debt repayment prospects remain untested and uncertain.

Applicant is to be encouraged in her ongoing efforts to better herself through advanced education and promotional opportunities, contemporaneous with achieving financial stability. Nothing in the record indicates any work-related trust problems associated with Applicant, and with her awarded salary increases, she would appear to have a promising career with her current employer. It is still too soon, however, to make safe predictions about how she will discharge her old debts and mitigate her still unresolved financial problems. Unfavorable conclusions warrant, accordingly, with respect to the allegations covered by sub-paragraphs 1.b, 1.c, 1.e and 1.g. of Guideline F. Only sub-paragraphs 1.a, 1.d, 1.f, and 1.h, which cover debts already shown to have been discharged, are resolved favorable to Applicant.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors set forth in the Procedures section (paragraph 6) of the Directive, as well as E.2.2 of the Adjudicative Process of Enclosure 2 of the same 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 CONSIDERATIONS): AGAINST APPLICANT

Sub-para. 1.a : FOR APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: FOR APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: FOR APPLICANT

Sub-para. 1.g: AGAINST APPLICANT

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

Roger C. Wesley

Administrative Judge