

DATE: March 5, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-20760

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Fifty-two year old Applicant's financial problems, including some that predate a Chapter 13 bankruptcy filing in 1996, were partially impacted and mitigated by being laid off from work for 8 months in 1995. However, the bankruptcy court's dismissal of her case in 1997 for her failure to make payments to creditors and Applicant's unsubstantiated efforts to resolve debts until confronted with the prospect of being denied a security clearance raise serious doubt that it is consistent with national interest to grant Applicant access to classified information. Applicant also failed to reveal delinquent indebtedness in completing her security clearance application. Clearance is denied.

STATEMENT OF THE CASE

On May 31, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement Reasons (SOR) to Applicant. The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant her access to any classified information and recommends that her case be submitted to an Administrative Judge. On June 25, 2002, the Applicant provided a response to the SOR and requested a decision on the written record, in lieu of a hearing. The Applicant received the File of Relevant Material (FORM), containing six documents, on September 18, 2002 and has not submitted any additional information or objections to the material contained therein. This case was assigned to the undersigned Administrative Judge on November 25, 2002.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 52 year-old female employed by a defense contractor and is seeking to obtain a security clearance.

Applicant filed for Chapter 13 bankruptcy on January 18, 1996. ⁽¹⁾ This was precipitated by Applicant being laid off by her employer for approximately eight months in 1995. During this period, Applicant obtained other employment but her income was substantially reduced. At this time, Applicant was a single parent supporting two children. Applicant began to make the monthly payments to creditors required by the bankruptcy court. At some point, she was only able to make partial payments. This caused the bankruptcy court to dismiss her action on December 16, 1997 (Item 3).

Applicant has several delinquent debts that she has not resolved. This includes debts that predate her bankruptcy filing in 1996. ⁽²⁾

Applicant is indebted to a collection agency for a bad debt in collection (Item 3). The amount of the indebtedness was \$9571.00 in November 2000 (Item 6 at 7). ⁽³⁾ Applicant's debt to a collection agency was reported to the credit bureau in July 2000 (Item 6 at 7). The debt resulted from an account with a national credit card company that Applicant jointly held with her mother, who was the primary debtor on the account (Item 3 at 1).

Applicant is indebted to a national credit card company. The amount of the indebtedness was \$2087.00 in November 2000. Applicant has owed this debt since November 1995 (Item 6 at 5).

Applicant is indebted to a bank for an account opened in July 1998 (Item 3 at 1). The amount of the indebtedness was \$821.00 in November 2000. Applicant's debt to a bank was 120 days past due as of November 17, 2000 (Item 6 at 5).

Applicant has unresolved indebtedness to a satellite television company (Item 3 at 1). ⁽⁴⁾

Applicant has unresolved indebtedness to an automobile financing company for a charged off account on her involuntary repossession (Item 3 at 1). The repossession occurred in July 1995 (Item 4).

When Applicant completed a security clearance application on July 25, 2000, she denied she had any debts that were over 180 days delinquent in the past seven years or that were currently over 90 days delinquent (Item 4 at 6).

POLICIES

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (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.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

Guideline F - Financial Considerations: the concern is that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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

E2.A6.1.2.1 A history of not meeting financial considerations;

E2.A6.1.2.3 Inability or unwillingness to satisfy debts.

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.A6.1.3.6 The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Guideline E - Personal Conduct: The concern is conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

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

E2.A5.1.2.2 The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Section E2.2.2 of the Directive requires that "any doubt as to whether access to classified information is clearly consistent with national interest will be resolved in favor of national security." The burden of producing evidence initially falls on the Government to present evidence, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government meets its burden, the burden then shifts to the applicant to present evidence to refute or mitigate the Government's evidence and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

CONCLUSIONS

Financial Considerations

The facts in the record that are discussed below establish conditions that not only raise security concerns, a history of not meeting financial obligations as well as an inability or unwillingness to satisfy debts, but are of such gravity as to be disqualifying in this case. Applicant has bad debts that total more than \$12,000.00. They include bad debts that preceded her unsuccessful bankruptcy filing in 1996 that she has still not resolved. Furthermore, Applicant has acquired additional bad debts since the dismissal of her bankruptcy case in 1997 that also remain unresolved. Applicant demonstrated no interest in attempting to resolve several of them until she was faced with the prospect of being denied a security clearance for having failed to do so. There is also no evidence the Applicant has ever sought counseling in an effort to resolve her financial problems. The length of time that Applicant has had financial difficulties as well as her inability or unwillingness to resolve them exposes her as a national security risk.

Applicant's assertion that since September 2000, she has made \$250.00 payments on the debt to a collection agency has limited support in the record. Applicant's credit report does indicate that there was a \$250.00 reduction of the debt to \$9571.00 in September 2000 (Item 6 at 7). However, Applicant has failed to provide proof of further payments.

Applicant's credit report indicates that her debt to a national credit card company had not been reduced from the balance of \$2087.00 that existed since November 1995 (Item 6 at 5). In February 2001, Applicant admitted she had not made any further payments on this account since the dismissal of her bankruptcy action in 1997 (Item 5 at 3). Although Applicant alleges she had reduced the balance to \$827.34 by June 2002, she has not provided proof to support such payments. The same is true with respect to her assertion that she would commence \$89.00 per month payments on the balance starting the last week of June 2002.

Although admitting, "I haven't made a payment this year," Applicant contended that she had paid an unspecified portion of the debt to a bank and that she would contact the bank to set up a payment plan for the unpaid balance (Item 3 at 1). As of the closing of the record, however, Applicant has not provided proof of any payments or of having set up a payment plan.

With regard to her indebtedness to a satellite television company, Applicant alleges she does not owe anything because

she "sent the items back" (Item 3 at 1). She further states that she had talked with a representative of the company and was advised to write a letter of dispute. Applicant said that she would do so but she has not provided a copy of such a letter or any other evidence of her basis for disputing the account with the company.

Applicant's indebtedness to an automobile financing company is another debt that existed prior to her bankruptcy filing in 1996. In February 2001, Applicant contended that she had been making \$100.00 per month payments on the account up until three or four months before her statement but was forced to stop when she began helping her daughter financially (Item 5 at 2). In her response to the SOR, Applicant argued she stopped paying this account because she has a lawsuit against the creditor for being overcharged interest. However, Applicant has not submitted any proof of having been overcharged or of having filed a lawsuit.

Applicant's Chapter 13 bankruptcy filing in 1996 appears to have been precipitated by her lay off from a defense contractor in 1995. This is indicative of a mitigation condition (MC) E2.A6.1.3.3 (the conditions that resulted in the behavior were largely beyond the person's control). Moreover, filing for Chapter 13 bankruptcy could be evidence of MC E2.A6.1.3.6 (the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts) since the procedure is not intended to relieve the petitioner of the debts but merely to enable the petitioner to pay them over an extended period of time. In this case, however, those mitigation conditions are superseded by Applicant's subsequent actions. The bankruptcy court dismissed Applicant's case the year after her filing for her failure to pay creditors. Moreover, Applicant has still not been able to resolve all of the debts covered by her bankruptcy filing more than six years after her employment with the defense contractor was reestablished.

Personal Conduct

The Government fails to establish that Applicant should have reported the debt to a bank. Applicant's credit report indicates that the debt to a bank was 120 days past due on November 17, 2000 (Item 6 at 5). However, this is nearly four months after she executed the security clearance application. Therefore, the evidence fails to establish that this debt was delinquent at the time Applicant completed the security clearance application.

Applicant's credit report indicates that the debt to a collection agency was reported in July 2000, the same month in which Applicant executed the security clearance application (Item 6 at 7). The fact a collection agency was reporting the debt would infer that the underlying debt had been delinquent for a significant period of time. However, there is no evidence of when the underlying debt became delinquent. In addition, the Government has not refuted Applicant's contention that the underlying debt resulted from an joint account that her mother opened. This suggests that Applicant may not have been notified when the underlying debt became delinquent. The evidence is not sufficient for me to conclude that Applicant should have reported the debt to a collection agency when she completed the security clearance application.

Applicant's debt to a national credit card company is an entirely different matter. Applicant's credit report reveals the debt was covered by her unsuccessful bankruptcy filing (Item 6 at 5). Applicant should have identified this debt in response to both questions 38 and 39 on the security clearance application since it has been delinquent since at least 1995 and still has not been satisfied. Applicant argues, "debts that were delinquent were included in the bankruptcy," and, "I didn't know I should report them again." Apparently, Applicant is referring to her response to question 33, in which she revealed her bankruptcy filing. However, her response failed to identify any of the underlying debts or even the fact that her filing was unsuccessful and she was unable to resolve all of the underlying debts. Moreover, an answer to question 33 fails to address question 39, whether Applicant is currently delinquent on any debts. At the time that Applicant executed the security clearance application, she knew her debt to a national credit card company was still delinquent and that it had been delinquent for more than 180 days within the past seven years. By responding, "no," to both questions, she provided answers that she knew to be false.

For the reasons stated, I conclude that Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline F:Against Applicant

Subparagraph 1.a.:Against Applicant

Subparagraph 1.b.:Against Applicant

Subparagraph 1.c.:Against Applicant

Subparagraph 1.d.:Against Applicant

Subparagraph 1.e.:Against Applicant

Subparagraph 1.f.:Against Applicant

Paragraph 2. Guideline E:Against Applicant

Subparagraph 2.a.:Against Applicant

Subparagraph 2.b.:Against Applicant

DECISION

In light of all the evidence in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Roger E. Willmeth

Administrative Judge

1. I note that Applicant stated in her Security Clearance Application, Standard Form 86, dated July 25, 2000, that the date of her bankruptcy filing was October 12, 1995. However, she admitted in her response to the SOR that she filed for bankruptcy in January 1996.
2. The record does not explain Applicant's need or purpose for incurring the debts other than can be gleaned from the identity of certain creditors, such as an automobile financing company.
3. The most current evidence in the record as to the amount of Applicant's debts is a credit report on Applicant, date November 17, 2000 (Item 6).
4. In both the case of Applicant's indebtedness to a satellite television company and her indebtedness to an automobile financing company, the Government has alleged the amount of the indebtedness as \$787.00 and \$1873.00, respectively. However, the Government has not provided proof of those amounts or the date each debt was incurred by Applicant.