

DATE: January 30, 2002

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-21343

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Rita O'Brien, Department Counsel

Erin C. Hogan, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant with history of delinquent debts, attributable in part to accumulated consumer and mortgage debts incurred as an adolescent and young adult family member forced to help her mother and brother meet their living and housing needs following the death of her father, made only a few scattered attempts to address her covered delinquent debts before receipt of the SOR and still fails to provide a viable plan with her credit counseling service that will enable her to discharge her old debts in an orderly way without jeopardizing the repayment of her college loan, scheduled for maturity following her scheduled completion of her post-graduate degree work early this year, and fails to demonstrate emergent financial stability sufficient to absorb security risks associated with pattern debt delinquency. Clearance is denied.

STATEMENT OF THE CASE

On October 26, 2001, 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 October 30, 2001, and requested a hearing. The case was assigned to this Administrative Judge on November 25, 2001, and scheduled on November 28, 2001, for hearing. A hearing was convened on December 14, 2001, 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 three witnesses (including herself) and five exhibits. The transcript (R.T.) of the proceedings was received on December 26, 2001.

PROCEDURAL ISSUES

Prior to the close of the hearing, Applicant requested leave to supplement the record with documentation of her latest collection notice from (a) a utility company (sub-para. 1.g) she claims no debt to (*see*, R.T. at 61) and (b) a credit counseling service about a payment plan to address her listed delinquent debts. 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. Within the time permitted Applicant provided documentary support of deletion of her loan and utility debts (sub-paras. 1.d and 1.g) from her latest credit report and documented counseling with a credit counseling service about a strategy for addressing her old debts. Both of these exhibits were objected to by Department Counsel (renewing earlier objections to permitting Applicant to seek post-hearing credit counseling). Given Applicant's prior unsuccessful efforts to enlist counseling assistance and her own failed efforts in obtaining creditor responses to her ensuing inquiries, good cause and justice are served by affording Applicant one more opportunity to attempt to work out a viable repayment plan. Applicant's submissions are accepted as Applicant's exhibits F and G, respectively.

STATEMENT OF FACTS

Applicant is a 25-year old project financial assistant 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 financial difficulties with debts accumulated over a six-year period, stemming from assumed financial responsibilities to her mother following the unexpected expiration of her father in December 1991. Applicant was only sixteen years old when her father passed away, and soon found herself having to work to help her mother keep up with their mortgage and living expenses. Because her father had no life or health insurance, her mother soon became delinquent in the mortgage on their condo and lost the home through bank foreclosure.

For her response to the SOR, Applicant admitted most of the covered allegations. She denied just two of the alleged debts: She claimed these accounts do not belong to her.

Relevant and Material Factual Findings

Following the death of her father in 1991, Applicant (just 16 years old at the time) and her mother encountered difficulties meeting their mortgage and basic living expense expenses with the meager income they had at their disposal: This included both her mother's income and her own income from her work efforts. Their townhouse was ultimately foreclosed by the lender: the first of two foreclosures that would confront Applicant.

With the help of a third party who co-signed the note, Applicant was able to finance the purchase of a new home for herself and her family in 1994: a condominium, which carried home owners' monthly dues. At the time, Applicant was certain she could take care of the mortgage payments (R.T., at 35). She had assumed full time work as a bank teller with a local bank in June 1994, a position she would hold to September 1998, while she attended college. After graduating with a bachelors degree in January 1999, she worked several temporary positions before obtaining a full time position with her current employer in July 1999.

Having taken out credit cards in 1994 and 1995 to help finance her family's monthly necessities and a car for use in her traveling to community college and back, Applicant soon fell behind in her debt servicing payments. Neither Applicant nor her mother were able to keep up with the credit card, mortgage obligations, and condominium association dues, as they had hoped, and once again they faced both foreclosure of their condominium and delinquency in their mounting association dues and credit card debts. Her condominium association filed suit in June 1996 to recover \$4,637.00 in delinquent association dues and obtained a judgment for the same in September 1996 (*see ex. 3*), which has continued to accrue interest.

By 1998, with Applicant still in college and her mother unable to handle the accumulated debt load, Applicant's mortgage and credit card debts became badly delinquent. All told, Applicant had amassed in excess of \$22,000.00 in

delinquent consumer credit card debts and was facing sure foreclosure by early 1998, having already experienced earlier foreclosure of their townhouse following her father's death.

After gaining employment with Company A in July 1999, Applicant continued with her initiated masters program at her same university. She financed her graduate studies in part with the aid of a federally guaranteed college loan, which she assures is deferred until six months after completing her studies. With her expected graduation early this year with a masters degree, she becomes obligated to begin making payments by June 2002 on the \$13,000.00 federally guaranteed student loan she received (R.T., at 77-78). Applicant expects to work out monthly payments on this loan from her current income, which she hopes will increase through expected promotions.

Once investigation of her security clearance application was initiated in December 1999, Applicant considered credit counseling. However, she didn't contact a consumer credit counseling service about working out a payment plan with her creditors until September 2000 (*see* R.T., at 70). She was counseled that because most of her debts were so old, they were probably written off. This being likely, she was urged to contact the creditors herself to ascertain creditor willingness to work with her (*see* R.T., at 74-75). Applicant followed this advice without any apparent success (*see* ex. 5; R.T., at 75), leaving her uncertain as to what corrective steps she might take to resolve her debts..

Afforded an opportunity to document two of the listed debts she claims are not hers, Applicant documented her registered disputes of two of her covered debts (one for \$1,673.00 and another for \$107.00) with credit reporting services (*see* ex. G). As the result of her steps, these debts were removed from her credit file (*see* ex. F). Applicant may rightfully deny these claims as hers. Nonetheless, her post-hearing submissions still leave over \$26,000.00 in assorted bad debts and unsatisfied judgments (two in number: one for \$4,637.00 taken in September 1986 by her old condominium association, and the other a more recent one, taken by one of her credit card creditors in July 2001 for \$3,237.00), according to her latest credit report (ex. F).

Following the hearing, Applicant took advantage of an afforded opportunity to consult a credit counseling service to try and work out repayment arrangements on he delinquent debts and judgments. The client action plan she has produced provides for a \$644.00 monthly payment over a sixty-month period to discharge a calculated debt load approximating \$32,000.00 (inclusive of an estimated \$5,000.00 in interested accruals). Her payment plan leaves her \$379.00 short at present, subject to her assurances she can find the resources to make up her monthly shortfall within a couple of months, following her graduation in her masters program (ex. G). She counts on an expected promotion, once she graduates and obtains her security clearance, to help her make up the shortfall, but provides no clues as to how she will be able to combine her monthly repayment allocation with the specified payment obligations she can expect with the maturity of her student loan in June 2002. Without more, Applicant cannot avert inferences that her realistically available financial resources will not be enough to enable her to take care of her current living and rental payments, make a \$644.00 monthly payment to pay down her old creditors, and still expect to meet her school loan obligation when it matures. Further, her plan does not address her old condominium judgment, entered in September 1996 for \$4,637.00 (*see* ex. G).

Applicant receives high praise as a reliable and trustworthy team member by her supervisor and colleagues with her defense employer.

POLICY

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 dint 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 and judgments that trace, in part, to her early adult years, when she assumed major responsibility for filling the financial void created by the unexpected death of her father.

Over an extended period (beginning around 1994), Applicant became delinquent in a number of debts she was responsible for: some related to the mortgage and condominium association dues she became liable for, and others related to consumer credit card debts she had compiled in connection with the personal and family responsibilities she assumed as a young adult. Making only scattered small payments on these debts as she focused her resources on her family and college commitments, she let most of the debts go to collection, and eventually to bad debt status. Two of her debts were reduced to personal judgments by the creditors involved: one with her condominium association before the related property was foreclosed on in 1998, and the other just recently by one of her old consumer creditors. While Applicant has sought out credit counseling, she has so far been too financially strapped to make either the initial monthly payment called for or otherwise seasonably establish a viable repayment effort: this despite several opportunities afforded her to do so.

At issue in this proceeding is not only Applicant's reliability and trustworthiness in light of her accumulation of delinquent debts and outstanding judgments in excess of \$27,000.00, but also her unwillingness before initiation of her security clearance application to seriously address them (either individually or through some form of debt consolidation program, or even bankruptcy), and more recently her apparent inability to fashion 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 it has looked to the applicant's overall financial history to shed light on her most recent conduct as an indicator of recurrency 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.

True, Applicant cannot be faulted for incurring all of her debts at a time when she and her family were hard pressed to take care of their living and mortgage expenses in the aftermath of her father's passing. Extenuating are the circumstances in which she was forced to assume a significant amount of the financial load at a very young age. The predicament she found herself in as an adolescent and young adult was a difficult one for sure, and one in which she deserves considerable credit in becoming a principal earnings source for her family. In recognition of these exigent circumstances in which she found herself, she may claim the extenuation benefits of MC 3 (conditions out of the person's control, such as a death in family)

Just the same, some judgment imprudence must be imputed to Applicant for taking on a new mortgage in 1994 at a time when her family's income sources were already being drained to make ends meet, and for not making more concerted efforts to address her creditors with payment plans when she assumed full time employment with her current employer in July 1999. Security concerns justifiably attach to Applicant's failure to make more earnest efforts to repay her old creditors, either through individual repayment efforts, or debt consolidation. 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 mortgage-related and consumer debt written off or taken to judgment might be extenuated by exigent circumstances in place at the time of their incurrence, 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 1999 when she first joined her current employer. Without a viable plan to resolve her delinquent debts and judgments without considerable increase in her income, she leaves too much to chance and risk to consider her current plan more than a work in progress. This is not to say that with time and cooperation with her old creditors (two of whom hold outstanding judgments) she can't achieve a workable payoff program. But at this time her efforts leave too much to chance and speculation: much of her debt repayment prospects remain untested and uncertain, given her current income sources, considerable debt load to discharge, and student loan maturity expectancy.

Applicant is to be encouraged in her ongoing efforts to better herself through advanced education and promotional opportunities, contemporaneous with achieving financial stability. By all accounts, she is well regarded by her superiors and has a bright future with her chosen profession. 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.a through 1.c, 1.e and 1.f, and 1.h and 1.i of Guideline F. Only sub-paragraphs 1.d and 1.g, which cover debts shown not to belong to her, are concluded favorable to her.

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 : AGAINST 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: AGAINST APPLICANT

Sub-para. 1.g: FOR APPLICANT

Sub-para. 1.h: AGAINST APPLICANT

Sub-para. 1.i: AGAINST 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