

DATE: February 13, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-21517

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Jonathan A. Beyer, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant owed nine creditors \$6,500.00 and has now paid six of them in full and is paying another. If the other two bills have not been paid, she will pay them. She has assets of approximately \$100,000.00. Her inability to pay the debts in a timely manner resulted from conditions beyond her control including medical emergencies and loss of employment. On a security clearance questionnaire (SF 86), she did not list judgments and delinquent accounts because she was unaware of their existence. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from the debts and her inaccurate SF 86. Clearance is granted.

STATEMENT OF THE CASE

On July 23, 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On August 19, 2002, the Applicant answered the SOR and requested a hearing. The case was assigned to me on September 30, 2002. A Notice of Hearing was issued on November 7, 2002, scheduling the hearing, which was held on November 26, 2002.

The Government's case consisted of four exhibits (Gov Ex). The Applicant relied on her own testimony and two exhibits (App Ex). The transcript (tr.) of the hearing was received on December 6, 2002.

The SOR alleges financial considerations (Guideline F) and personal conduct (Guideline E). The Applicant denies some of the debts are still owed and denies she provided false answers on her Questionnaire for National Security Positions, Standard Form (SF) 86.

FINDINGS OF FACT

The Applicant is 41 years old, has worked for a defense contractor since February 1997, and is seeking a security

clearance.

Since age 16, the Applicant has suffered with high blood sugar related to her kidneys. Since age 18 she has had high blood pressure and an underactive thyroid. In 1997 or 1998, she thought she suffered a stroke because her blood pressure was so high and was off work for a month. It was not a stroke, but Bell's palsy. From August 1999 to November 1999, the Applicant was on short-term disability due to a high risk pregnancy which resulted in hospitalization several times during this period. In November 1999, at six and one half months of pregnancy she discovered the baby had died and she required surgery to remove the fetus. Her short-term disability became long-term disability, resulting in the loss of her job, for her job was guaranteed for only 12 weeks. (tr. 67) She was unemployed from December 1999 through February 2000, at which time she returned to her company taking a different job at a lower salary.

In February 2000, shortly after her return to work, she was involved in a serious automobile accident causing headaches, neck, and shoulder pain. (tr. 69) Medical bills of \$13,800.00 were incurred, however, her attorney advised her not to pay the medical bills until a settlement was reached. Settlement occurred a year after the accident and her attorney paid the medical bills. (tr. 52) Some of the medical providers would not wait for payment and commenced garnishment actions to collect their money. She twice presented her insurance card to one medical provider, but the provider chose not to bill her insurance. (tr. 63) Doctors, hospitals, and other medical providers receive less if their services are paid by medical insurance rather than by going directly against an individual. (tr. 63) All garnishments have been satisfied. Since these debts were being paid by garnishment, the Applicant considered them current. (tr. 53)

In February 2001, the Applicant required three days of intensive care and five or six days of hospitalization for food poisoning resulting in major medical bills. The food poisoning adversely affected her kidneys and, in the Fall of 2001, she was diagnosed with failing kidneys, and required dialysis because her kidneys were functioning at 20% or less. In May 2002, the Applicant's kidneys failed completely, which resulted in several days of hospitalization. She is seeking a kidney transplant. She currently has dialysis treatments three times a week for four hours per period. The cost of dialysis is substantial with her medical insurance paying 90% of the fees and Medicare covers some of the costs.

In October 2001, the Applicant's husband had surgery (heart catheterization). In December 2001, her husband again had surgery to repair a torn arm muscle, resulting in his being out of work for three months. The two surgeries resulted in high medical bills. The Applicant's husband suffers from exceptionally high cholesterol levels and the medication for it not only affects his joints and muscles, but makes him dizzy. The stiffness of his joints, arms and elbows adversely impacted his ability to work as a carpenter in the construction business. He has missed a good deal of work because of the stiffness in his elbows. (tr. 66)

The Applicant's husband is self-employed and much of his income is used to buy equipment, material, and tools he uses in his construction business. His income is dependent on the weather and economic factors. The Applicant and her husband have been married 23 years and divide paying their mutual and joint obligations. The Applicant pays certain monthly bills such as medical insurance, automobile insurance, electricity, telephone, gas, food, medications, repairs for her automobile, and miscellaneous bills. Her husband paid the mortgage and pay medical bills, and repairs for his automobile. The Applicant owed a mortgage payment of \$906.24, (SOR subparagraph 1.a.) which now has been paid. Her husband had been responsible for this debt until July 2002, when after 22 years the final mortgage payment was made. Their house, worth approximately \$90,000.00, is now paid off. (tr. 50, 58)

In January 2002, the Applicant's company was sold, changing her insurance coverage, and increased her premiums two and one half fold. Her prior premiums were \$62.00 per month. With the change, her cost for prescriptions increased, in some cases, seven fold. She currently has ten prescriptions and her husband has another ten. The last week of October 2002 and the first week of November 2002, the Applicant was hospitalized with a staph infection caused by the catheter used in her dialysis. (tr. 36) Because she no longer had paid leave for this hospitalization, she took two weeks leave without pay.

Since May 2001, when the Applicant first talking to the DSS, she has made payments of \$2,500.00 on her debts. (tr. 25) The Applicant has satisfied a \$262.00 debt (SOR subparagraph 1.c.) for medical treatment. (tr. 39) She has paid a doctor (SOR subparagraph 1.f) \$121.00 (tr. 42) and a radiological association (SOR subparagraph 1.g.) \$372.00. (tr. 28, 29, 43)

In February 2002, she satisfied an \$83.00 debt (SOR subparagraph 1.h) (tr. 44) and in November 2002 paid a \$286.00 debt (SOR subparagraph 1.i.) (tr. 45)

The Applicant still owes a credit card company (SOR subparagraph 1.b.) \$3,293.00. She denies she knew this account was delinquent. Her husband had been responsible for paying this debt. In June 2002, she made a \$250.00 payment, being the account current, and has arranged with the creditor to pay \$90.00 per month. The company also agreed to drop late fees and interest. The Applicant is unsure of the \$804.00 hospital debt (SOR subparagraph 1.d) and the \$309.00 orthopaedic association debt (SOR subparagraph 1.e). When she had her car accident, numerous medical bills were incurred. (tr. 39) The Applicant believes the hospital debt has been paid because this hospital was paid through garnishment. One credit report (Gov 3, page 8) does list as paid, a \$1,456.00 judgment by this hospital. (tr. 40)

As previously stated, the Applicant and her husband divided the responsibility for paying their bills. She was unaware her husband was not current on some of his bills. During the last four or five years, her husband has failed to tell her when he was late with payments. (tr. 25) Because of her medical conditions, her husband has tried to shelter her from the stress caused by the financial problems. A couple of times, when notice of judgment was received in the mail, the Applicant's husband would take the notice and keep them in his truck. (tr. 62) Her husband did not realize the importance of keeping his bills current. The Applicant has explained to him he is doing her no favor by withholding the information concerning unpaid obligations.

In January 2001, the Applicant completed a Questionnaire for National Security Positions, SF-86. She answered "no" to question 37 concerning unpaid judgments. She also answered "no" to question 38, concerning delinquencies of more than 180 days and answered "no" to question 39, concerning delinquencies of more than 90 days. The Applicant was unaware any of delinquent accounts or unpaid judgments. (tr. 53) Had she known of the delinquent accounts or judgments, she would have listed them on her SF 86.

The Applicant's husband's 1993 truck and her 1990 automobile have been paid for, as has their house. She intends to pay all of her bills. (tr. 49) The Applicant had \$7,000.00 in her 401(k) retirement plan before taking out \$3,200.00, which she used to pay bills. (tr. 59) She currently has a \$5,000.00 certificate of deposit, which was part of her recovery from the February 2000 automobile accident. (tr. 71)

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to an Applicant's lack of security worthiness.

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. 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.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Financial Considerations (Guideline F) 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.

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

1. A history of not meeting financial obligations. (E2.A6.1.2.1.)

3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

Conditions that could mitigate security concerns include:

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.A6.1.3.3.)

6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)

Personal Conduct (Guideline E) The Concern: 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. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

Conditions that could raise a security concern and may be disqualifying also include: E2.A5.1.2.

None apply.

BURDEN OF PROOF

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the Applicant who must remove that doubt and establish her security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue her security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of 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." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, (Financial Considerations). Under Guideline F, the security eligibility of an applicant is placed into question when the applicant is shown to have a history of excessive indebtedness, recurring financial difficulties, or a history of not meeting his financial obligations. The United States must consider whether individuals granted access to classified information are because of financial irresponsibility in a position where they may be more susceptible to mishandling or compromising classified information or material for financial gain. The Applicant owed nine creditors approximately \$6,500.00. Because of these proven debts, which were incurred between June 1998 and March 2002, Disqualifying Conditions (DC) 1⁽²⁾ and 3⁽³⁾ apply.

The Applicant and her husband have incurred numerous and frequent medical bills for a wide variety of medical conditions including: high blood sugar, high blood pressure, kidney failure, kidney dialysis, underactive thyroid, Bell's palsy, a high risk pregnancy, death of the baby at 6 ½ months of pregnancy, auto accident, food poisoning, staph infection, heart catheterization surgery, and additional surgery to repair a torn arm muscle. Not only have these conditions resulted in large medical bills, they also caused both the Applicant and her husband to be out of work for periods of time. From December 1999 through February 2000, she was unemployed before returning returned to her company at a lower paying job. In the Fall of 2002, a staph infection caused her two additional time off without pay. Her husband has missed a good deal of work as a carpenter due to his medical condition. The medical problems and loss of work are conditions beyond the Applicant's control and Mitigating Condition 3⁽⁴⁾

applies.

The Applicant is working to pay her debts and has paid approximately \$2,000.00. The Applicant and her husband have paid their entire mortgage, including the listed \$906.24 debt. She paid the \$262.00 medical imaging bill, the \$121.00 doctor's bill, the \$372.00 radiological association bill, a \$83.00 debt, and a \$286.00 medical bill. She took a \$3,200.00 loan from her 401(k) plan to pay these debts and other debts not listed in the SOR. Because these bills have been paid, I find for the Applicant as to SOR subparagraphs 1.a, 1.c, 1.f, 1.g, 1.h, and 1.i.

The largest of the Applicant's unpaid debts is a \$3,300.00 credit card debt. She has established a repayment plan with this creditor and has started making monthly payments. I find Mitigating Condition 6⁽⁵⁾ applies and find for the Applicant as to SOR subparagraph 1.b.

The SOR lists two additional bills: a \$804.00 hospital bill and a \$309.00 orthopaedic association bill. The Applicant believes both of these bills have been paid, but if they have not been paid, she will pay them. Based on the Applicant's demeanor, deportment, and her response to questions coupled with the fact she has already paid six of the listed debts, it is my impression she will keep this promise. Additionally, the Applicant and her husband have assets (home, 401(k), and CD) totaling approximately \$100,000.00, which greatly exceeds the approximate \$1,100.00, which may be owed on these two debts. I find for the Applicant as to SOR subparagraph 1.d and 1.e.

The allegations under Guideline E, (Personal Conduct) are unfounded. The Government has shown Applicant's answer to questions 37, 38, and 39 were incorrect, but this does not prove the Applicant deliberately failed to disclose information about her finances. The Applicant has denied intentional falsification. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. An omission concerning unpaid judgments and delinquencies is not deliberate if the person did not know of their existence. The Applicant did not know any of her accounts were delinquent nor did she know of any unpaid judgments.

The Applicant's husband had kept this information from her to shelter her from stress. She and her husband have divided the responsibility for paying their bills. She was unaware her husband was not current on some of his bills for at times, he kept notices of judgment in his truck and did not show them to her. Additionally, during the last four or five years, he has failed to tell her when he was late with payments. The Applicant has explained to him he is doing her no favor by withholding the information concerning unpaid obligations. Although three judgments and delinquent accounts were not listed on the SF 86, the failure to reveal this information was not a deliberate omission or concealment. I find for the Applicant as to SOR subparagraphs 2.a and 2.b.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F (Financial): 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

Paragraph 2 Guideline E (Personal Conduct): FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the 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 a security clearance for the Applicant.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.
2. DC 1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
3. DC 3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)
4. 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). (E2.A6.1.3.3.)
5. MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)