

DATE: August 26, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-22016

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

A 29-year-old Applicant, employed by a defense contractor as a key data operator, has failed to mitigate five of 10 delinquent debts established by the record. Her arrest for assault and battery of her husband is mitigated as an act of self-defense, as well as an isolated incident of criminal conduct. However, Applicant's failure to report the arrest appears to have been intentional and has not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On August 29, 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 classified information and recommends that her case be submitted to an Administrative Judge. On September 25, 2002, DOHA received Applicant's initial response to the SOR, in which she requested a hearing. Her further response to the SOR was received by DOHA on November 26, 2002. This case was assigned to the undersigned Administrative Judge on January 2, 2003. A notice of hearing was issued on January 14, 2003, and the hearing was held on February 12, 2003. During the hearing, nine Government (Govt) exhibits, five Applicant (Ap) exhibits, and the testimony of Applicant were received. The transcript (Tr) was received on February 20, 2003.

FINDINGS OF FACT

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

Applicant is a 29-year-old key data operator employed by a defense contractor and is seeking a security clearance.

In 1998, the county in which applicant resides obtained a judgment against her and her husband for unpaid car taxes in

the amount of \$556.00 [SOR ¶ 1.a.(1)]. This liability was paid off through a garnishment of either Applicant's pay or that of her husband. [\(1\)](#)

Applicant incurred a delinquent debt in the amount of \$140.00 to an oral surgeon for the removal of two teeth [SOR ¶ 1.a.(2)]. In February 1998, the oral surgeon turned the debt over to a collection agency. To date, Applicant has not paid off the debt. [\(2\)](#) Currently, she has a monthly payment on the debt scheduled but is not making it. [\(3\)](#)

Applicant incurred a delinquent debt in the amount of \$51.00 to a cable television company [SOR ¶ 1.a.(3)] In June 1996, the company turned the debt over to a collection agency. Applicant paid off the debt with a personal check on May 31, 2002. [\(4\)](#)

Applicant incurred a debt to a discount store in the amount of \$79.00 for a personal check she wrote that was returned for insufficient funds [SOR ¶ 1.a.(4)]. In November 1997, the store turned the debt over to a collection agency. Applicant paid off the debt from her personal checking account on May 31, 2002. [\(5\)](#)

Applicant incurred a delinquent debt in the amount of \$180.00 to a jeweler [SOR ¶ 1.a.(5)]. In May 1998, the jeweler charged it off as a bad debt. To date, Applicant has not paid off the debt. [\(6\)](#) Currently, she lists the debt but does not list a scheduled monthly payment for it on her personal financial statement. [\(7\)](#)

Applicant incurred a debt to a bank in the amount of \$464.00 for bank fees and interest for two personal checks she wrote that were returned for insufficient funds [SOR ¶ 1.a.(6)]. In August 2001, the bank turned the debt over to a collection agency. Applicant has not paid off the debt but is seeking a settlement of the bank's claim, since she has learned of litigation brought against the bank for fee overcharging of its customers. [\(8\)](#)

Applicant incurred a delinquent debt in the amount of \$5,198.00 to another bank for a student loan for college [SOR ¶ 1.a.(7)] In December 1999, the bank turned the debt over to a collection agency. Applicant paid off the debt through the garnishment of her pay. [\(9\)](#)

In October 2000, her homeowners association obtained a judgment against Applicant for delinquent home owners dues in the amount of \$1,062.00 [SOR ¶ 1.a.(8)]. She is currently making \$150.00 per month payments on the debt and has reduced it to approximately \$511.00. [\(10\)](#)

In 2000, Applicant's mortgagee initiated foreclosure action for nonpayment of mortgage payments in the amount of \$4,170.00 [SOR ¶ 1.a.(9)]. Her husband failed to make the payments when she was away for four months, caring for a nephew who had received a liver transplant. Applicant has satisfied the obligation through an adjustment of the mortgage she agreed to with the mortgagee. [\(11\)](#)

An automobile financing company repossessed the vehicle purchased by Applicant and her husband and charged off their account in the amount of \$10,103.00 as a bad debt in January 1998 [SOR ¶ 1.a.(10)]. She was denied a new loan in an effort to pay it off and keep the vehicle. [\(12\)](#)

On November 28, 1999, Applicant was arrested for Assault and Battery of a Family Member (SOR ¶ 2.a). [\(13\)](#) When he shoved her, she scratched her husband and caused welts on his shoulder. [\(14\)](#) Applicant left the scene but later reported to the police station, as requested. She was interviewed, fingerprinted, and released. Applicant was never convicted but her husband pleaded guilty to one count of assault and battery. [\(15\)](#)

When she executed a security clearance application (Standard Form 86, September 1995) on April 17, 2000, Applicant answered, "no," to question 26, deliberately omitting her arrest in 1999 (SOR ¶ 3.a). [\(16\)](#) Question 26 asks: "In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in modules 21, 22, 23, 24, or 25?"

On April 2, 2001, Applicant provided a sworn statement to a contract investigator for the Defense Security Service

(DSS). She said she had made arrangements with all of her creditors to pay off everything. [\(17\)](#)

Applicant and her husband, who have one child, separated after the assault and battery incident in November 1999. Her divorce is pending. [\(18\)](#) Applicant's salary has increased and she has a part-time job in addition to her regular position. [\(19\)](#) She lives with her boyfriend, who significantly contributes to their household expenses. [\(20\)](#) Applicant has purchased a new vehicle and made a down payment on a timeshare. [\(21\)](#)

POLICIES

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. Directive E3.1.14. 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. Directive E3.1.15.

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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

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:

A history of not meeting financial obligations (Disqualifying Condition 1);

Inability or unwillingness to satisfy debts (Disqualifying Condition 3).

Conditions that could mitigate security concerns include:

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) (Mitigating Condition 3);

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

Guideline J - Criminal Conduct

The concern under Guideline J is a history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

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

Allegations or admissions of criminal conduct, regardless of whether the person was formally charged (Disqualifying Condition a).

Conditions that could mitigate security concerns include:

The crime was an isolated incident (Mitigating Condition b).

Guideline E - Personal Conduct

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 include:

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 (Disqualifying Condition 2).

Conditions that could mitigate security concerns include:

The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily (Mitigating Condition 2).

CONCLUSIONS

Guideline F

The evidence of record shows 10 of Applicant's debts to have become delinquent. This establishes (Disqualifying Conditions 1 and 3.

Applicant has mitigated five of these debts in accordance with Mitigating Condition 6. The evidence of record shows that Applicant has paid off her debts to the cable television company and the discount store (SOR ¶ 1.a.(3) and (4), respectively). It also reveals that she is making monthly payments of \$150.00 to pay it off the debt to her homeowners association, having reduced it in half [SOR ¶ 1.a.(8)]. She has also resolved delinquent payments to her mortgagee, which appear to have resulted from her husband's actions, by agreeing to the adjustment of the mortgage [SOR ¶ 1.a.(9)]. I also find that her debt to a bank for the fees in connection with checks returned for insufficient funds is mitigated [SOR ¶ 1.a.(6)]. Applicant appears to be making a good-faith effort at settlement, in light of the litigation against the bank for overcharging its customers. Moreover, the charges appear excessive on their face for the return of two checks.

Applicant has not mitigated the remaining five delinquent debts. Although her delinquent

student loan and car taxes have also been paid off, this was done through garnishments. Such compulsory forms of repayment do not reflect good-faith efforts to repay. She has failed to pay off small debts to her dentist and a jeweler, even though she has been able to acquire a new vehicle and make a down payment for a time share. Applicant has also failed to resolve her account with the automobile financing company that repossessed the vehicle she purchased with her husband. Given her improved financial situation, as discussed below, it would appear that Applicant could resolve all of her delinquent debts.

With regard to SOR ¶ 1.b, Applicant does appear to have improved her financial position with her increase in salary and the addition of a part-time job. Admittedly, her financial position is significantly dependent on her boyfriend continuing to pay expenses. With the addition of that support, however, Applicant no longer appears to be financially overextended. Given the exhibits that he helped to provide in this case, it appears that he intends to continue that support.

Guideline J

Applicant's arrest for assault and battery on a family member is sufficient to raise Disqualifying Condition a. However, the offense is mitigated pursuant to mitigating Condition b. Because it is an isolated incident in Applicant's life. Based on the evidence of record, moreover, Applicant acted in self-defense in response to an assault from her husband and he was actually convicted for the incident.

Guideline E

Applicant's response to question 26 on her security clearance application fails to report her 1999 arrest for assault and battery on a family member. This establishes Disqualifying Condition 2.

Applicant's various attempts to excuse or mitigate this failure call into question her veracity. In her first response to the SOR, she initially said she answered, "no," to question 26 because she misread it. But in her second response to the SOR, Applicant stated, "I was told that [the arrest] would not be on my adult record and not to worry about it." This is indicative of an excuse for intentionally omitting her arrest from the security clearance application. In her testimony, however, Applicant maintained that she did not list her arrest on the security clearance application because she did not realize she had been arrested.

This is not the only instance in the record that raises the issue of Applicant's credibility. In April 2001, Applicant told the DSS contract investigator, "I've made arrangements with all my creditors to pay off everything...." The record does not support her assertion. Even without the other evidence that calls into question Applicant's credibility, it is difficult to accept that a person would not realize that she is being arrested, especially when she admits to being fingerprinted by the police.

Moreover, if Applicant did not realize that she was being arrested at the time of her arrest, it is clear from her own statement that she soon learned that she had been arrested. Applicant admitted in her first response to the SOR: "I also had to pull all my old paperwork from the Assault and Battery Charge....I didn't even know that I was arrested until this paper work was released to me....I did go to court, and everything was dropped against me." This indicates that Applicant must have known of her arrest when she completed her security clearance application and she must bear the consequences of not reporting it.

Unlike criminal conduct, an isolated incident alone is not sufficient to mitigate a falsification. In addition, the falsification must not be recent and the individual must subsequently supply the correct information voluntarily. Neither of those conditions are met in this case, since the falsification is on a pending application and Applicant never acted to correct her response prior to being confronted with it. Applicant has not excused her failure to report her arrest on the security clearance application under this or any other mitigating condition.

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.(1): Against Applicant

Subparagraph 1.a.(2): Against Applicant

Subparagraph 1.a.(3): For Applicant

Subparagraph 1.a.(4): For Applicant

Subparagraph 1.a.(5): Against Applicant

Subparagraph 1.a.(6): For Applicant

Subparagraph 1.a.(7): Against Applicant

Subparagraph 1.a.(8): For Applicant

Subparagraph 1.a.(9): For Applicant

Subparagraph 1.a.(10): Against Applicant

Subparagraph 1.b: For Applicant

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a: For Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a: 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.

Signed

Roger E. Willmeth

Administrative Judge

1. Govt Ex 8 at 9; Tr 36; Govt Ex 3 at 3. Applicant testified the liability was paid off through a garnishment against her pay. She told the Defense Security Service contract investigator that the garnishment was against her husband's pay.
2. Tr 37; Govt Ex 8 at 9.
3. Ap Ex C; Tr 40.
4. Govt Ex 9 at 2; Tr 44.
5. Govt Ex 8 at 7; Govt Ex 9 at 2; Tr 45-46.
6. Govt Ex 8 at 10; Tr 47.
7. Ap Ex C; Tr 48.
8. Tr 48-51; Ap Ex C.
9. Govt Ex 8 at 10; Tr 51-52.
10. Govt Ex 8 at 6; Ap Ex C; Tr 53-54.
11. Tr 55-56; Govt Ex 3 at 2.
12. Govt Ex 8 at 2; Tr 56-58.
13. Govt Ex 7.

14. Tr 59.

15. Tr 59-60, 62.

16. Govt Ex 1 at 6. I note that the actual date of Applicant's security clearance application is not the July 14, 2000 date alleged in SOR ¶ 3.a.

17. Govt Ex 3 at 3.

18. Tr 61-62.

19. Tr 71, 75.

20. Ap Ex A; Ap Ex B; Ap Ex E.

21. Tr 65, 82-83.