

DATE: May 7, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-22199

DECISION OF ADMINISTRATIVE JUDGE

JOHN R. ERCK

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant attributes the \$13,000.00 in delinquent financial obligations to her naively agreeing to have all family assets and credit accounts held in her name while ceding financial management of the household finances to the husband whom she divorced in May 1999. Since divorcing, she has paid off an \$8,191.00 obligation to the IRS. However, because she failed to disclose any of her delinquent obligations on a *Security Clearance Application* she completed in April 2000, her clearance is denied.

STATEMENT OF THE CASE

On January 3, 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 modified, 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 of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary finding under the Directive that it is clearly consistent with the national interest to grant Applicant's security clearance and recommended referral to an Administrative Judge to determine whether she should be granted a security clearance.

Applicant answered the SOR in writing and requested a hearing on January 21, 2002. The case was assigned to this Administrative Judge on March 8, 2002. On April 4, a hearing was convened for the purpose of considering whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government's case consisted of five exhibits (Gov. Exh.). Applicant testified on her own behalf and submitted 4 exhibits (Appl. Exh). She submitted one additional exhibit in the time allotted after the hearing adjourned. A transcript (Tr.) of the proceeding was received on April 15, 2002.

FINDINGS OF FACT

The SOR alleges Applicant is delinquent in making payments on financial obligations totaling more than \$13,000.00,

and that she omitted information about her delinquent financial obligations when she completed her *Security Clearance Application* (SF 86) in April 2000. In her answer to the SOR, Applicant admitted, with explanation, all allegations set forth in the SOR. I accept Applicant's admissions, and after a complete and thorough review of the evidence of record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 36-years-old and the divorced mother of three children, two of whom reside with her ex-husband. She is not employed by a DoD contractor, but by a personnel agency for temporary employees that regularly places her with a DoD contractor in a position where a security clearance is necessary. Applicant has not previously held a security clearance.

Applicant attributes the delinquent debts that currently cloud her credit report and are the gravamen of the SOR allegations to an unfaithful and irresponsible ex-husband whom she married in August 1986 and did not divorce until May 1999. When she married him, she complied with his request to have "everything" put in her name so that his ex-wife could not attach it. All of the credit accounts were also in Applicant's name. However, her ex-husband had the checkbook and was responsible for making payments on all accounts--a responsibility he failed to fulfill. They filed Chapter 13 bankruptcy in 1991. Applicant testified their house was ultimately foreclosed on (Gov. Exh. 2), even though retaining this house was the principal reason for filing the Chapter 13 bankruptcy (Tr. 34, 47). Applicant indicated the other debts included in this bankruptcy were forgiven "at some point"(Tr. 47) but she did not know when, and the bankruptcy records have not been submitted.

The bankruptcy experience did not cause Applicant to more carefully monitor her ex-husband's management of their finances (Tr. 35). The previous arrangement continued: the property and credit accounts were in her name, and her ex-husband controlled the checkbook and decided which bills to pay and which bills not to pay (Tr. 43). During this time, Applicant's ex-husband stayed home (Tr. 43) or only worked "on and off" (Tr. 44). In 1998, Applicant withdrew money from a 401k account--that was in her name (Tr. 46)--and gave it to her ex-husband to pay debts. He did not pay the bills as was intended, but used the money to buy drugs (Tr. 46). As a consequence of this withdrawal, the debts in Applicant's name remained unpaid, and Applicant incurred an \$8,191.00 indebtedness to the Internal Revenue Service (IRS).

Other financial obligations that became delinquent during this time included: a \$213.00 bill to a medical center, a \$1,670.00 bill to another medical facility, a bank account for \$632.00, another bank account for \$6,632.50, an \$377.00 account with a furniture store, a \$602.00 hospital bill, a \$1,670.00 bill with an electronics store, a \$619.00 education bill and another account in the amount of \$263.00.

Applicant and her husband separated later in 1998 and divorced in May 1999. Applicant accepted responsibility for the debts in her name, and her ex-husband accepted responsibility for the debts in his name. Of course, as Applicant testified: "everything was in (her) name" (Tr. 40). Applicant was initially awarded possession of the house but later quit-claimed her interest in this property to her ex-husband because he continued to harass her and the children after he moved out. She explained that she moved out and gave up her property interest to protect the children (Tr. 52). Although she initially had custody of all three children and was awarded child support of \$494.00 monthly, her ex-husband never paid the child support (Gov. Exh 2), and two of her children now reside with him (Tr. 52). She explained that the custody arrangement was changed two years ago after her ex-husband went through drug rehabilitation (Tr. 52-53).

When Applicant completed her *Security Clearance Application* (SF 86) ⁽¹⁾ in April 2000, she answered "no" to questions 38 and 39 which asked if she had been over 180 days delinquent on any financial obligation in the last 7 years, or if she was currently over 90 days delinquent on any debt. These "no" answers were not the truth and when she was questioned by the Defense Security Service (DSS) in August 2001, she admitted she was behind on several financial obligations. She further admitted she was unable to make any payments on her delinquent debts at that time. With her then current salary and with help from her parents, she was able to care for herself and her son, and to pay off the IRS. She has attributed her false answers to questions 38 and 39 to "haste," (Gov. Exh. 2, Tr. 33) even though she was given a week to complete the questionnaire (Tr. 34).

At her administrative hearing, Applicant presented evidence she had paid in full the indebtedness to the IRS (Appl. Exh. D). She testified and presented evidence she had consulted with Consumer Counseling Credit Service (CCCS) and entered into a plan that provided for a monthly payment of \$250.00 for further distribution to her creditors (Appl. Exh. B). She had not made any payments to CCCS as of the date of the hearing.

No evidence of Applicant's duty performance has been presented.

POLICIES

The Adjudicative Guidelines of 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 decision with reasonable consistency that are clearly consistent with the national interest. In making these 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 also in the context of the factors, set forth in Section 6.3 of the Directive. 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 Applicant's lack of security worthiness.

The following Adjudicative Guidelines are deemed applicable to the instant matter:

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:

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

E2.A6.1.2.1. 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.

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.

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;

Conditions that could mitigate security concerns include:

None applicable

Burden of Proof

The Government has the burden of proving any controverted facts alleged in the Statement of Reasons. If the Government established its case, the burden of persuasion shifts to Applicant to establish her suitability through evidence which refutes, mitigates, or extenuates the disqualifying conduct and demonstrates it is clearly consistent with the national interest to grant or continue her security clearance.

A person who seeks access to classified information enters a fiduciary relationship with the Government predicated upon trust and confidence. When the facts proven by the Government raise doubt Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate 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 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 an Applicant.

CONCLUSION

Having considered the record evidence in accordance with appropriate legal precepts and factors, this Administrative Judge concludes the Government has established its case with regard to Guidelines F and E. In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section 6.3, as well as those referred to in Section E2.2. dealing with adjudicative process, both in the Directive.

A security concern is raised by Applicant's failure to satisfy more than \$13,000.00 in financial obligations according to the terms originally agreed upon. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant attributes all of her financial problems to her own naivete and to an unscrupulous and criminally corrupt ex-husband. She went to work and earned the household income while he stayed home, used drugs, was unfaithful, and mismanaged the income she earned. For reasons she has not, and probably cannot explain, Applicant accepted this arrangement for 13 years. The consequence of her inaction is the \$13,000.00 of delinquent debts alleged in the SOR in addition to an \$8,191.00 IRS obligation--most of which had been satisfied before the SOR was issued.

Except for the IRS obligation, Applicant has not made any progress paying off the delinquent debts alleged in the SOR. It is evident from her most recent personal financial statement (PFS) she has not had the resources to make payments beyond those she has made to the IRS. However, with the IRS obligation satisfied, her plan to pay off the remaining indebtedness through the repayment plan devised by CCCS is credible. Because she has payed off more than \$8,000.00 in delinquent obligations in the past three years, Applicant is credited with initiating a good faith effort to repay her delinquent obligations (see mitigating condition E2.A6.1.3.6.). Also mitigating Applicant's financial problems is evidence more than \$2,500.00 of her current indebtedness is attributable to medical bills (E2.A6.1.3.3.). Guideline F is concluded for Applicant.

A security concern is also raised by Applicant's "deliberate omission....of relevant and material facts" from her SF 86. Facts are considered relevant and material when they are capable of influencing a federal agency's decision, e.g., a decision to grant or deny a security clearance. In this instance, Applicant's "no" answers to questions on the SF 86 intended to elicit information about her financial well being falls well within the definition of materiality.

Applicant's explanation for answering "no" to questions 38 and 39 is not credible. She attributes her "no" answers to "haste;" she did not have or take the time to read the questionnaire carefully and provide the correct answers. Yet by her own account, she had one week to complete the SF 86. She completed the questionnaire in April 2000, less than one year after the final decree of divorce was entered. It is not credible she would have forgotten all of the financial problems that figured so prominently in the dissolution of her marriage--problems she was coping with in 1998, in 2000, and problems that continue to be a daily concern. At the time she completed the SF 86, Applicant was making regular payments to the IRS because she had withdrawn money from her 401k to apply to financial obligations that were not satisfied. She discovered when she separated from her ex-husband that bills she thought had been paid remained unpaid. Even a cursory reading of the questions on the SF 86 would have reminded Applicant of her distressed financial situation and of the inequitable financial arrangement she had tolerated during her marriage. Her disclosure of her financial problems to the DSS during an August 2001 interview was not sufficiently prompt to mitigate the falsification on the questionnaire (see E2.A5.1.3.3.). Guideline E is concluded against Applicant.

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) FOR THE APPLICANT

Paragraph 1.a. For the Applicant

Paragraph 1.b. For the Applicant

Paragraph 1.c. For the Applicant

Paragraph 1.d. For the Applicant

Paragraph 1.e. For the Applicant

Paragraph 1.f. For the Applicant

Paragraph 1.g. For the Applicant

Paragraph 1.h. For the Applicant

Paragraph 1.i. For the Applicant

Paragraph 1.j. For the Applicant

Paragraph 1.k. For the Applicant

Paragraph 1.l. For the Applicant

Paragraph 2 (Guideline E) AGAINST THE APPLICANT

Paragraph 2.a. Against the 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 Applicant's security clearance.

John R. Erck

Administrative Judge

1. The Government did not present a signed copy of Applicant's SF 86 at the administrative hearing because the signed copy had been lost or misplaced (Tr. 15). However, in answering the SOR allegation that she had falsified material facts on her SF 86 by answering "no" to questions 38 and 39, Applicant responded: "I admit only in that I cannot deny that my response to questions 38 and 39 must have been "no."