

DATE: May 12, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-22326

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Jonathan Beyer, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant was involved in two automobile accidents. Following the first accident she was also to bring her financial obligations current. Following the second, she was unable to meet approximately \$28,000.00 on the eleven debts listed in the SOR and had to seek bankruptcy protection. All but one of the debts has now been discharged in bankruptcy. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from her past financial problems. Clearance is granted.

STATEMENT OF THE CASE

On October 21, 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 December 5, 2002, the Applicant answered the SOR and requested a hearing. The case was assigned to me on January 27, 2003. A Notice of Hearing was issued on February 20, 2003, scheduling the hearing, which was held on March 11, 2003.

The Government's case consisted of eight exhibits (Gov Ex). The Applicant relied on her own testimony and three exhibits (App Ex). Following the hearing, one additional document was received, provisions having been made for its submission following the hearing. Department Counsel (DC) having no objection to their admission, the submissions were admitted. The transcript (Tr.) of the hearing was received on March 19, 2003.

It was alleged the Applicant owed approximately \$28,000.0 on 11 debts. The Applicant admitted owing the debts.

FINDINGS OF FACT

The Applicant is 39 years old, has worked for a defense contractor since December 2000, and is seeking a security clearance.

In 1984, the Applicant finished high school. The Applicant was married in March 1989, divorced in December 1993, and married in May 1995. In January 1996, she and her husband were involved in an automobile accident which caused her knees to hit the dash board. Prior the accident none of her bills were overdue. Following the accident, she was unable to work full time for over a year while receiving medical treatment. Her employer did not have disability insurance. She had knee scopes performed in June 1996 and October 1996. Following the second scope, she returned to work but was off work again due to a blood clot in her knee. In November 1996, she was able to return to work full time. After receiving a settlement⁽²⁾ from this accident, all medical debts incurred from this accident plus her credit card obligations were paid. (Tr. 25, 26)

In September 1998, the Applicant purchased a new car for \$22,066.00. In October 1999, she was involved in a second automobile accident which caused her to be out of work for 10 months, due in part to back problems. During her period of unemployment, she used credit cards to purchase food and clothing. Following the second accident, she went to Consumers Credit Counseling Service (CCCS) due to her financial difficulties resulting from her unemployment due to the accident. CCCS helped with debt consolidation and she began to get control of her debts. (Gov Ex 2) As of June 2000, she had made \$2,915.00 in payments through CCCS, which reduced her \$10,764.85 debt by \$1,666.00. (Gov Ex 4) In July 2000, she realized she could not make it financially where she was living and moved to her current location. After her move, she did not make any further payments to CCCS.

Until June 2000, they made the \$276.00 monthly car payments. At that point, they were unable to continue making payments and returned the car to the motor company, which then sued for \$12,000.00 (SOR subparagraph 1.j). The company wanted to garnish 50% of her monthly income. It was the inability to work with this creditor which caused the Applicant to seek bankruptcy.

Prior to her move, the Applicant gave advance notice of their intent to move and was told she could move, but would the security deposit would be forfeited. The Applicant agreed to the loss of the security agreement. After the move, the company claimed the apartment was left in a mess and claimed \$1,145.00 for additional cleaning costs. The Applicant disputes that the apartment was left a mess, disputes the additional cleaning fees, and disputes this is a legitimate obligation.

In May 2001, a year and a half after the accident, a settlement of \$12,000.00 was received of which attorney's fees were \$4,301.00 and medical expenses were \$3,698.00. (Gov Ex 8) The Applicant received the remaining \$4,000.00 of which she used \$3,200.00 to buy a used car and spent the remainder to pay the tax, tags, and registration on the vehicle.

In June 2002, the Applicant went to a money management service (Gov Ex 5) to discuss the debt of approximately \$10,000.00 owed to four creditors. The payment schedule would have required \$199.00 per month payments. No payments were made through the service. After talking with the service, she and her husband discussed their financial difficulties with a bankruptcy attorney. He advised them not to make any further payments on their debts and they followed this advice. (Tr. 57) It took them a few months to get together the attorney's fee. In November 2002, they filed for Chapter 7 bankruptcy relief. Chapter 7 was chosen instead of Ch 13, Wage Earners Plan, because it allowed them "to start over fresh and clean" sooner. (Tr. 65) In bankruptcy, she and her husband listed liabilities of \$58,413.99, assets of \$8,770.14, current monthly income of \$3,548.47, and current monthly expenditures of \$3,060.00. (App Ex D) The debts of the Applicant and her husband were discharged in February 2003. (App Ex A) All of her debts listed in the SOR, with the exception of the apartment bill, were discharged in bankruptcy.

The Applicant currently has no credit cards, has no problem meeting her \$435.00 monthly rent and utility bills, has no debt, and has no financial difficulties. The Applicant and her husband's combined monthly income is \$3,500.00 and their monthly expenses are approximately \$1,675.00 leaving a monthly net remainder of \$1,850.00. (Tr. 51)

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.)

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* 484 U.S. at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant then has the burden of establishing 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.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, Financial Consideration. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk that is inconsistent with the holding of a security clearance. Under Guideline F, an Appellant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. The Applicant's overall history of financial difficulties, which started in the mid 1990s, and continues to early 2003, provides concern. The Appellant owed approximately \$28,000.00 on 11 accounts. Disqualifying conditions (DC) 1 [\(3\)](#) and 3 [\(4\)](#) apply.

In January 1996, the Applicant was involved in an automobile accident and was unable to return to full time employment until November 1996. Before the accident, her financial obligations were met in a timely manner. Following settlement on the accident, all of her obligations were paid. In October 1999, the Applicant had a second automobile accident in she was involved in a second automobile accident and was out of work for 10 months. Due to her unemployment, she was unable to meet her financial obligations. She went to CCCS which assisted her with debt consolidation. By June 2000, she had made almost \$3,000.00 in through CCCS. This evidences a good faith effort to pay her debts. MC 6 [\(5\)](#) applies.

Even with the loss of employment, the Applicant was able to make her \$276.00 monthly car payment until June 2000.

The car was surrendered at that time resulting in a \$12,000.00, which represents more than 40% of the total debt listed in the SOR. It was the inability to work with this creditor which caused the Applicant to seek bankruptcy protection.

The settlement from the second accident was much less than had been anticipated. In May 2001, a year and a half after the accident, she received \$4,000.00 even though she had been out of work for ten months. She then discussed her financial problems with a money management service before deciding to seek bankruptcy protection. All of her debts listed in the SOR, with the exception of the apartment bill, which she disputes as a legitimate debt, were discharged in bankruptcy in February 2003. The Applicant and her husband have a monthly net remainder of \$1,850.00, have no problem meeting their rent or utility bills. They have no credit cards, no debt, and no financial difficulties.

The Applicant's financial difficulties were caused by the second automobile accident, which was a factor beyond her control. Mitigating Condition 3-[\(6\)](#)

applies. I find for the Applicant as to SOR subparagraphs 1.a. through 1.k.

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 Considerations): 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

Subparagraph 1.k.: 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. The total settlement was \$42,000.00, however the Applicant does not remember how much of that she received.
3. DC 1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
4. DC 3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)
5. MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)
6. 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.)