

DATE: February 5, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-23553

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq, Department Counsel

Peregrine Russell-Hunter, Esq., Chief Department Counsel

FOR APPLICANT

Philip D. Cave, Esq.

SYNOPSIS

To achieve financial stability for herself and her children, Applicant spent several

years paying off debts incurred with her ex-husband. In 2002, she applied for a home mortgage, and filed with her application a settlement offer from one of her creditors that she had altered because she believed a restriction noted thereon no longer applied. Pursuant to an oral agreement modifying the terms of the original written settlement offer, Applicant paid the debt. Applicant's falsification was not deliberate, and her record contains no other evidence of conduct raising a security concern. She appears trustworthy and able to safeguard classified material. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On May 5, 2003, under the applicable Executive Order ⁽¹⁾ and Department of Defense Directive, ⁽²⁾ DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-security concerns raised under Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on May 20, 2003, and elected to have a hearing before an administrative judge. The case was assigned to me on August 12, 2003. On September 23, 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the transcript (Tr.) of the proceeding on September 30, 2003.

FINDINGS OF FACT

The SOR contains one allegation of disqualifying conduct under Guideline E, Personal Conduct. Applicant denied the allegation.

Applicant is 32 years old and has been employed for four years as a logistician by a defense contractor. During that time her work ethic and professional skills have been positively evaluated by her supervisor. (Ex. A.)

Before becoming a civilian contractor, she served in the Marine Corps for 8 years, from 1991 to 1999. While on active duty, she married a man who served in another branch of the military, and they had two children. Applicant and her husband were not able to be stationed together. Eventually they grew apart. They were legally separated in 1998 and then divorced in 2001. (Tr. 32.)

Together, they had many debts. Applicant received no alimony or child support from her ex-husband. They had an oral agreement to divide payment of the debts they acquired during the marriage. The husband did not honor his part of the agreement, and Applicant set about paying his share of the debts as well as her own. To resolve her indebtedness, Applicant approached some of her creditors and requested settlement. She also used her annual federal tax refunds to pay down outstanding debts. (Tr. 32-33.)

When she served in the military, Applicant held a secret clearance. As a civilian contractor, she held a secret clearance. When her employer planned to move to a different location, it became necessary for Applicant to file an application for top-secret clearance. She filed a security clearance application (SF-86) to facilitate her employer's request for top-secret clearance in March 2000. On her SF-86, in response to Question 38, Applicant listed three financial delinquencies of over 180 days.

She was interviewed by special agent A of the Defense Security Service (DSS) in November 2000. She provided a signed sworn statement identifying her two children and her siblings, since she had not listed them on her SF-86. She also provided a personal financial statement and additional information on her debts, including a bank credit card debt which she had been paying on since April 2000. (Ex. 2.) She identified the total amount of a bank credit card debt on her personal financial statement as \$475.

In June 2002, Applicant was contacted by a DOHA Personnel Security Specialist who informed her that some of her November 2000 submissions had been lost or misplaced. She was asked to supply new submissions. In July 2002, Applicant resubmitted information on the status of some of her debts by annotating a credit report dated May 31, 2002. The annotated credit report shows a handwritten notation by Applicant stating that the bank had agreed to settle the delinquent credit card debt for \$900. (Ex. 3, at 3.) On July 8, 2002, she also filed with DOHA a facsimile copy of a letter, addressed to her and dated July 2, 2002, from the bank offering to settle her delinquent credit card debt for \$900, with full payment required in 30 days. (Ex. 8.)

In July and August of 2002, Applicant prepared papers for a home mortgage to be financed through the Veterans' Administration. When she became aware that she would be unable to pay off the bank's offer of settlement within 30 days of July 2, 2002, Applicant contacted the bank's customer service representative to ask her if she could have more time and still settle for \$900. Applicant reported that the customer service representative told her that the bank would accept a full payment of \$900 if it was made at a later date. (Tr. 43-44)⁽³⁾

Applicant then altered the bank's offer of settlement letter by using correction fluid to remove the requirement that the debt be paid within 30 days, and she submitted the altered letter with her mortgage application. (Tr. 44-46.) In August 2002, Applicant was again visited by DSS agent A, who reported that none of Applicant's paperwork was in her file. (Tr. 39.) Agent A asked Applicant to resubmit the July 2, 2002, letter from the bank regarding the \$900 settlement offer. Applicant gave Agent A a copy of the altered letter, which was apparently her only copy of the July 2, 2002 letter. Applicant testified that she told the agent the credit card debt would be paid in December.

On December 12, 2002, Applicant was visited by a second DSS agent, Agent B, who asked her to explain the discrepancy between the original settlement offer letter of July 2, 2002, which had apparently been found by DSS, and the altered letter she had given to Agent A in August 2002. (Tr. 40.) Applicant testified that Agent B accused her of altering the document to get her security clearance. (Tr. 41.) Applicant then prepared a second signed sworn statement in the presence of Agent B explaining why she had altered the July 2, 2002 letter from the bank regarding settlement of her credit card debt. (Ex. 7.)

At her hearing, Applicant admitted she did not list the bank credit card debt on her SF-86 and acknowledged that she should have listed the debt. She stated that she did not intend to misrepresent or lie about the existence of the debt, which appeared on credit reports compiled in May and July of 2002 as charged off in November 1999. (Tr. 46.) She said that when she filed her SF-86 in March 2000, she used a copy of her credit report, current at that time, to identify her existing debts, and she did not list the bank credit card debt because it was not listed on her credit report. (Tr. 50.)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.* 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." Exec. Or. 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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline E - Personal Conduct

The SOR consists of one allegation of falsification under Guideline E, Personal Conduct. That allegation, identified as subparagraph 1.a. of the SOR reads: "In approximately August 2002, you falsified material information on a mortgage loan application by providing a copy of a letter from a creditor which you had altered." Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, such as falsification, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

When an Applicant deliberately provides false or misleading information concerning relevant and material matters to an investigator or other official representative in connection with a personal security or trustworthiness determination, this raises a security concern and may be disqualifying. E2.A5.1.2.3. The security concern resulting from falsification can be mitigated if it was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. E2.A5.1.3.2.

Applicant denied deliberately providing false information to DOHA investigators, to DSS agents, or to her mortgage

company. She admitted removing a sentence from the creditor's offer of settlement that stated the offer of settlement would be withdrawn if she did not pay the settlement amount in 30 days. She removed the sentence after she was told by the creditor's agent that she could have more than 30 days to pay the settlement amount.

We begin by examining whether Applicant's act of removing a sentence from her creditor's offer of settlement constitutes deliberate falsification. There is no doubt that Applicant removed the sentence by using correction fluid. She argued that she removed it because the time limit in the sentence no longer applied to the agreement that she and the creditor had made as a result of her telephone conversation with the creditor's agent. The new oral agreement between Applicant and the creditor extended the payment period beyond 30 days, and it was this material fact that Applicant wanted to convey to her mortgage company. While she chose an inept, or unsophisticated, or naive way to convey this information, it cannot be said that she was untruthful about the agreement she had negotiated with her creditor.

Applicant is a lay person, not a trained investigator or lawyer. Her explanation for altering the letter of settlement is credible. Her alteration of the letter of settlement was an isolated event in an otherwise solid record of good judgment and responsible behavior. I have considered the record as a whole, and I have applied the whole person standard to the facts of this case. I do not find that Applicant's alteration of her creditor's letter was a deliberate falsification under Guideline E of the Directive, nor was it an attempt to mislead her mortgage company about the settlement offer, which, pursuant to her agreement with her creditor, she paid in full in December 2002. Applicant has successfully provided an explanation for her conduct that rebuts the disqualifying condition alleged by the Government. She has demonstrated that it is clearly consistent with the national interest to grant or continue her security clearance.

FORMAL FINDINGS

I conclude the following as to the allegation in the SOR:

Paragraph 1. Guideline E: FOR APPLICANT

Subparagraph 1.a.: For Applicant

DECISION

In light of all of 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 Applicant. Clearance is granted.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Applicant paid the \$900 and settled the bank credit card debt in December 2002. Applicant's Exhibit B is a letter from the credit card coordinator for the bank, dated January 6, 2003, acknowledging that Applicant's debt has been paid in full.