

DATE: January 26, 2004

In Re:

SSN:-----

Applicant for Security Clearance

ISCR Case No. 01-25767

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se ⁽¹⁾

SYNOPSIS

This 52-year-old Quality Control Manager was married from 1980 to 1993. Her ex-husband went into business with his brothers and another firm. Business problems led to five substantial debts being incurred, none of which Applicant was aware until after lawsuits and judgments, one in 1992 and the other four in 1994, in which she was named but never served. The December 1993 divorce decree made the husband responsible for all business related debts, relieving Applicant of legal responsibility to pay them. The debts/judgments do not appear on current credit reports. The government has not proven that the debts/judgments are still open and valid, nor that Applicant is responsible for resolving them. Clearance is granted.

STATEMENT OF THE CASE

On June 20, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On July 18, 2003, Applicant submitted a response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me for resolution on September 5, 2003. On September 24, 2003, a Notice of Hearing was issued, setting the hearing for October 16, 2003. At the hearing, the Government did not present any witnesses but offered ten exhibits, Government Exhibits (GX) 1 - 10. Applicant

testified and offered 20 exhibits, which were marked as Applicant's Exhibits (AX) A - U. All exhibits were admitted without objection. The transcript (Tr) was received at DOHA on October 28, 2003.

FINDINGS OF FACT

Applicant is a 52- year-old engineer for a defense contractor. The SOR contains six allegations, 1.a. - 1.f. Applicant denies the debts alleged in SOR 1.a. - 1.e., but admits "being financially sound. . . ." This last admission is accepted as a finding of fact as to how Applicant *views* her financial situation.

After considering the totality of the evidence derived from the hearing testimony and all evidence of record, I make the following FINDINGS OF FACT as to each SOR allegation:

Guideline F (Financial Considerations)

1.a., 1.b., 1.c., 1.d., and 1.e - The debts and judgments in the amounts cited in these five allegations are valid as stated. The judgments, all entered in 1994, except for the judgment in 1.d.,

which was entered in 1992. All of the debts and judgments relate to the business activities of Applicant's then husband. Applicant played no part in the business and was unaware of the financial problems and judgments until after the fact. (Tr at 57). Before that, she had never been served with legal process or otherwise put on notice. Some of the lawsuits refer to her by name and others use only the legal term *et ux* [and wife] Applicant and her husband were divorced in December 1993, and the court's order of dissolution places the legal responsibility for all business related debts [this includes those cited in the SOR] on the husband.

Applicant denies legal responsibility of any of the debts, and has made an effort to resolve only one, that cited in SOR 1.d., so that she could obtain new home loan. She did so by making a payment covering the taxes due, and receiving a special warranty deed (AX C). A series of 2002 and 2003 credit reports do not contain any reference to the debts/judgments cited in the SOR.

1.f. - Applicant currently is in a positive financial condition and has the income to cover her current debts.

Applicant has an exemplary work record (AX A, AX B, AX C, and AX D and Tr at 27-29).

Applicant was married in 1980, had three children, and was divorced in 1993. She retained custody of the children and her ex-husband was ordered by the court to provide child support. During part of the marriage, the husband and his brothers operated a "family" produce business. (Tr at 55). She had no affiliation with the business other than the fact that her husband was a partial owner. (Id.). As far as Applicant knows, this business became "verbal partners" with a business in a nearby state. That business had financial losses and problems, including taxes, which creditors sought to recover from her husband's business. Applicant also learned that her husband had obtained and used a \$250,000 credit line that had not been repaid. (Tr at 56). These problems led to foreclosures and lawsuits, which resulted in the judgments cited in the SOR.

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to this case:

Guideline F (Financial Considerations)

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:

None

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

The debts alleged in SOR 1.a - 1.e are based on information found in a credit report, dated June 14, 2001 (GX 3) and court judgments from State A. (GX 4 - GX 9). I have carefully considered the July 18, 2003 letter from Attorney S, attached to Applicant's response to the SOR and Applicant's exhibits. I conclude that the judgment debts cited in the SOR *were* the result of unpaid obligations incurred by her now ex-husband as a result of his business activities during their marriage. Applicant's name appears on the credit report and judgment documents along with her ex-husband because, as his wife, she was legally responsible for the debts incurred during the marriage.

However, Applicant has provided a copy of a Decree of Divorce, filed on January 14, 1994 (Attachment A to response to SOR), which contains the following determination:

The Respondent [the husband] shall hold Petitioner [Applicant] harmless and indemnify her for any liability incurred as a result of the aforementioned lawsuits [both lawsuits resulting from the husband's business dealings] pending against the parties or liens pending against [their] home, as result of the husband's business dealings.

Applicant has also provided a copy of a recent credit report, dated July 15, 2003, which supports her contention that the cited debts are no longer considered legal; obligations owed by Applicant. (Attachment B to response to SOR).

The largest debt cited in the SOR is \$63,222.12 (1.d.), owed to Title Insurance Company A. Applicant has provided a copy of a partial release on a recent sale of Applicant's home, showing all taxes having been paid. (Attachment C to response to SOR).

As Applicant contends, the debts cited in the SOR were all related to her husband's business dealings. (Tr at 59 - 63 and GX 8). On the advice of counsel, she did not contact the creditors cited in the SOR because she believed the divorce

decree made her free of any legal obligation for the cited debts. (Tr at 61). Applicant still believes she is not legally responsible for the debts and judgments in question, which are now ten years or more old. Based on the totality of the record, I conclude this is not an unreasonable belief.

Applicant claims she was not aware of the judgments until she received notice of them. There is no evidence she was ever served, either directly or through her ex-husband, who she had divorced in 1993. Whether or not the judgments were legally valid, without such service, is beyond my competence and jurisdiction to decide. (2) What I can recognize and decide is that the divorce court ended whatever obligation she had to pay these debts. I find her efforts to sell off the family home to raise money to pay off some of her "ex-husband's liabilities" to reflect a sense of moral responsibility, rather than a recognition of a legal obligation.

The government's evidence is not clear as to Applicant's responsibility. In the most recent judgment document, a Renewal of Judgment Affidavit, dated in July 1997, the caption reads [Applicant's former husband], et ux ["and wife"]. However, Applicant, who was not served and was not aware of his action, had not been married for some four years at the time, and the body of the pleading refers only to the husband by name. (GX 7).

There is no evidence whether the debts no longer appear on the recent credit report because the creditors no longer seek payment from her or because of the passage of time. What is clear is that the Government's June 2001 credit report does not cite any judgments, nor does the August 2001 credit report (AX I), the July 2003 credit report (AX L), or the October 2003 credit report (AX A), both submitted by Applicant. The strength of Applicant's current credit status is suggested by her being able to obtain a home loan for about \$130,000 in March 2002. (AX C).

The amounts cited in the SOR are significant and are not disputed. However, Applicant's legal responsibility for those debts, particularly after the divorce decree was issued in December 1993, is disputed. The burden of providing these disputed facts is on the government. The government's evidence is a combination of judgment documents now almost ten years old and Applicant's sworn statement of September 26, 2001, the date that appears in each SOR allegation.

I conclude that in her statement, Applicant related what she believed at the time to be true, but she has subsequently realized she was incorrect, based on the explicit language of the 1993 divorce decree, which imposed sole responsibility on her ex-husband. If Applicant had understood this fact earlier, she could have sent the decree to the creditors named in the SOR.

There are two concerns implicit in the Financial Considerations guidelines. First that a person who is financially overextended is at risk of having to engage in illegal acts to generate funds, but such over extension is not shown under our facts. The second concern is that the manner in which excessive debts are incurred or resolved may show poor judgment, unreliability, and untrustworthiness. Applicant was not aware of the debts as they were incurred by her husband, so the first concern is not applicable. As to the second concern, I conclude that Applicant reasonably believed she was not legally liable, so I cannot find she was unable or unwilling to pay the debts, if in fact they still exist.

Applicant has received high praise from her employer and work colleagues. (AX Q, R, and T). She has gone beyond the allegations to provide a fuller picture of her character and behavior. (AX U). Applicant is said by a colleague to be a person of "high standards, work ethics, and integrity." (AX Q). Based on the totality of the evidence, I conclude that the government has not established that the debts/judgment cited in the SOR are still outstanding and, even assuming they are, it has not been shown that Applicant is presently legally liable.

Disqualification and Mitigation,

Financial Considerations - I conclude that the evidence does not show a history of not meeting financial obligations (DC 1) or an inability or unwillingness to satisfy debts (DC 3). None of the other possible disqualifying conditions are applicable under our facts and circumstances. Overall, I conclude that Applicant has shown herself to be a woman of integrity and one who takes her obligations seriously. Considering the evidence as a whole, I conclude that the evidence does not show that any risk exists that Applicant would ever act against U.S. security interests.

FORMAL FINDINGS

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

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

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 Applicant.

BARRY M. SAX

ADMINISTRATIVE JUDGE

1. The spelling of Applicant's last name, as shown above in the caption, conforms to the spelling given in the SOR, but is incorrectly spelled. In her documents, and confirmed at the hearing, Applicant spells her last name -----, not -----. I have retained the incorrect spelling on the decision to avoid confusion in handling the existing case file.
2. I do have a concern about the judgment cited in SOR 1.a. It was issued on May 2, 1994 and names her husband and Applicant, but they had been divorced since December 1993 and there is no indication of service to Applicant of any kind.