

DATE: September 11, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-26417

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant owes approximately \$16,000 in debts. Her financial problems date back several years. Applicant admits the existence of the bad debts and has expressed an intention to satisfy them. However, despite her expressed intention to take action in the future, she has failed to put forward specific plans for payment or to demonstrate that she has paid the debts. Clearance is denied.

STATEMENT OF THE CASE

On August 22, 2002, pursuant to Executive Order No. 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, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant that specified reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

In the SOR, the Government alleged that Applicant was disqualified from obtaining a security clearance because of financial considerations (Guideline F). By Answer dated October 2, 2002, Applicant's responded to the SOR. Applicant requested that her case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on June 4, 2003. The FORM contained documents identified as Items 1 through 6. By letter dated June 4, 2003, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. A response was due on July 10, 2003. Applicant did not submit any information within the time period of 30 days after receipt of the FORM. On July 17, 2003, the case was assigned to me for a decision.

FINDINGS OF FACT

In her answer to the SOR, Applicant admitted the factual allegations involving Guideline F, Financial Considerations, as set out in the SOR in subparagraphs 1.a, 1.b., 1.c., 1.g., 1.h., 1.j., 1.k., and 1.m. She denied the factual allegations involving Guideline F, Financial Considerations, as set out in the SOR in subparagraphs 1.d., 1.e., 1.f., 1.i., and 1.l. Applicant's admissions are incorporated as findings of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant, who is 38 years old, served for 8 years in the United States Air Force and received an honorable discharge in 1995. In December 2000, at the time she filed her Security Clearance Application (SF-86), Applicant was employed as a technician by a Defense contractor. (Item 4) Applicant's personal history includes two marriages. She is the mother of two minor children. (Item 4) Applicant was divorced from her second husband in 1996. She states that her financial problems began after the divorce, when she was unemployed and had to rely on child support income and welfare to provide for herself and her two children. (Item 5)

On December 4, 2000, Applicant executed a SF-86. In response to questions asking about delinquent debts, Applicant identified 3 debts, totaling \$3,684, delinquent for over 180 days and 5 debts, totaling \$8,888, delinquent for over 90 days. Three of the five debts identified as overdue for 90 days are the same debts identified as overdue for 180 days. (Item 4) In a signed, sworn statement dated June 14, 2001, Applicant acknowledged responsibility for 9 debts identified in a credit bureau report dated March 23, 2001. She denied knowledge of one account listed on the credit report, and she disputed 4 debts listed on the credit bureau report, stating that the amount due on one of the four debts was only half as much as was reported by the credit bureau, that two of the debts were the responsibility of her former spouse, and that one should have been paid on her behalf by Medicaid (Item 5) Applicant's personal financial statement was appended to her signed sworn statement and she acknowledged that she had sufficient financial resources to repay her debts over time. She further stated that she planned "to remain financially solvent in the future." (Item 5, at 4)

Applicant's Answer and Supplemental Answer to the SOR consists of 11 pages and is dated October 2, 2002. In her Answer Applicant admits responsibility for debts unpaid as of March 23, 2001, in the amount of approximately \$16,600, as identified in subparagraphs 1.a, 1.b., 1.c., 1.g., 1.h, 1.j., 1.k., and 1.m of the SOR. Applicant denies responsibility for debts identified in the SOR at subparagraphs 1.d., 1.e., 1.f., 1.i., and 1.l. and, in support of her denial, she submits pages numbered 1, 34, 35, and 36 from a document she identifies as a Final Decree of Divorce, dated March 19, 1996, which she says show that the court decreed that the Respondent, identified as her former spouse, was responsible for paying 6 additional debts incurred during their marriage. Three debts identified in subparagraphs 1.e, 1.i., and 1.l of the SOR are identified in the Final Decree of Divorce as the responsibility of the former spouse. These debts total approximately \$3,897. Applicant provides no explanation for why she does not owe debts identified at subparagraphs 1.d. and 1.f. of the SOR, nor does she provide evidence of satisfaction of the 8 debts she admits in her answer to the SOR.

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. *See* Directive, Enclosure 2.

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted on to safeguard classified information and material twenty-four hours a day. The Government is therefore properly concerned where available information indicates that an applicant for a security clearance may be involved in conduct that

demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

An evaluation of whether the applicant meets the security guidelines includes consideration of a number of variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge must consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; (9) the likelihood for continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2. *See* Exec. Or. 12968 § 3.1(b).

Adjudicative Guideline F, Financial Considerations (Attachment 6 to Enclosure 2) is most pertinent to this case. The security concern identified under Guideline F is that a person who is financially overextended can be pressured to engage in illegal acts to generate funds. Conditions that could raise a security concern in this case and which may be disqualifying include:

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

E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

Relevant conditions that could mitigate security concerns about the Applicant's financial problems include:

E2.A6.1.3.1. The behavior was not recent;

E2.A6.1.3.2. It was an isolated incident;

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.

Burden of Proof

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 an applicant's admissions or by other evidence) and establishes 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 clearly consistent with the interests of national security to grant or continue a security clearance for the applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. Where the facts proven by the Government or admitted by the applicant raise doubts about the applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. In *Egan*, 484 U.S. at 531, the Supreme Court concludes that "[t]he clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Accordingly, doubts against an applicant's security worthiness are to be resolved against the applicant.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described above, I conclude the following with respect to each allegation set forth in the

SOR:

Subparagraph 1.a. of the SOR alleges, under Guideline F, Financial Considerations, that Applicant is indebted to a creditor in the amount of approximately \$737 on an account opened in November 1991, and that, as of March 23, 2001, the account had not been paid. Subparagraph 1.b. of the SOR alleges, under Guideline F, that Applicant is indebted to a creditor in the amount of approximately \$1,582 on an account opened in September 1998 and, that, as of March 23, 2001, the account had not been paid. Subparagraph 1.c. of the SOR alleges, under Guideline F, that Applicant is indebted to a creditor in the amount of approximately \$2,148 on an account opened in August 1999, and, that as of March 23, 2001, the debt had not been paid. Subparagraph 1.g. of the SOR alleges, under Guideline F, that Applicant is indebted to a creditor in the amount of approximately \$1,125 on an account opened in September 1993, and, that as of March 23, 2001, the account had not been paid. Subparagraph 1.h. of the SOR alleges, under Guideline F, that Applicant is indebted to a creditor in the amount of approximately \$209 on an account opened in October 1999, and that, as of March 23, 2001, the account had not been paid. Subparagraph 1.j. of the SOR alleges, under Guideline F, that Applicant is indebted to a bank in the amount of approximately \$7,864 on an account opened in 1999 and, that, as of March 23, 2001, the debt had not been paid. Subparagraph 1.k. of the SOR alleges, under Guideline F, that Applicant is indebted to a creditor in the amount of approximately \$928 on an account opened in 1997 and, that as of March 23, 2001, the account had not been paid. Subparagraph 1.m. of the SOR alleges that Applicant is indebted to a creditor in the amount of approximately \$2,000 on an account opened in January 1995, and that, as of March 23, 2000, the account had not been paid. Applicant admits that she is responsible for these debts, which total approximately \$16,600. She also states that her former husband is responsible for five additional debts attributed to her in the SOR and identified as subparagraphs 1.d., 1.e., 1.f., 1.I, and 1.l. She avers that she intends to pay the debts attributed to her, but submits no evidence of payment. Pages 35 and 36 of the document identified as the Final Decree of Divorce show indebtedness by the former spouse for debts alleged as Applicant's responsibility in subparagraphs 1.e., 1.i., and 1.l. of the SOR. Applicant provides no evidence from the Final Decree of Divorce to show that she does not owe debts alleged in subparagraphs 1.d. and 1.f. of the SOR.

Through Applicant's own admissions, the Government has established a *prima facie* case that Applicant is financially overextended. Applicant has admitted 8 of the 13 financial delinquencies specified in the SOR and identified as disqualifying conditions under ¶¶ E2.A.6.1.2.1 and E2.A.6.1.2.3 of Guideline F.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's acknowledged delinquencies involve long-standing debts which continue to be unpaid to this day. Thus, neither mitigating condition E2.A.6.1.3.1, nor mitigating condition E3.A.6.1.3.2 applies.

Applicant argues in her signed, sworn statement that her financial delinquencies were beyond her control and caused by unemployment after leaving military service in 1995 and reduced circumstances resulting from her 1996 divorce and her responsibilities for caring for her two young children. (Item 5). The record shows a pattern of financial instability going back five years before the divorce, when Applicant was employed, and continuing to the present. Three of the eight delinquencies identified in the SOR and admitted by Applicant occurred on accounts opened in 1991, 1993, and 1995, when Applicant was serving in the military and before the divorce took place, and the three largest debts occurred on accounts opened in 1998 and 1999, two and three years, respectively, after the 1996 divorce. Applicant's SF-86 indicates that she was unemployed from 1995 through 1997. In 1998 she held a work study position, and in 1999 she was employed as a technician. While I find persuasive Applicant's argument that mitigating condition E2.A.6.1.3.3 applies in part to the facts of her case, I also find that mitigating condition E2.A.6.1.3.6 is inapplicable because Applicant's debts remain outstanding and nothing in the record indicates that she has initiated a good-faith effort to repay her creditors or to otherwise resolve her debts. In her signed statement of June 14, 2001, Applicant indicated that she intended to pay debts for which she believed she was responsible. She provided a financial statement showing that she had resources to begin repayment of some of the debts. However, the record does not show that she has taken any action to pay or otherwise resolve her indebtedness. A promise to take action in the future, however sincere, is not a substitute for evidence that the Applicant is taking specific and timely steps to address her delinquent debts. *See* ISCR Case No. 01-03055 (App. Bd. Mar. 21, 2002). Accordingly, allegations in subparagraphs 1.a., 1.b., 1.c, 1.g., 1.h., 1.j., 1.k., and 1.m of the SOR are concluded against the Applicant.

Applicant submits 4 pages of a document identified as a final decree of divorce from her second husband and alleges

that he, and not she, is responsible for paying the debts alleged in subparagraphs 1.e., 1.i., and 1.l. of the SOR. Because many pages of the decree are omitted and it is not possible to be assured that the limited information provided by Applicant is determinative of the former spouse's obligation, I do not find Applicant's submission to be persuasive in identifying those debts as the responsibility of her former husband. Accordingly, the allegations in subparagraphs 1.e., 1.i., and 1.l. of the SOR are concluded against the Applicant. The allegations in subparagraphs 1.d. and 1.f. are also concluded against Applicant because she fails to present evidence that these are not her debts.

In my evaluation of the record, I have carefully considered each piece of evidence in the context of the totality of evidence and under all of the Directive guidelines that were generally applicable or might be applicable under the facts of the case. Under the whole person concept, I conclude that Applicant has not successfully overcome the Government's case opposing her request for a DoD security clearance.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1, Financial Considerations (Guideline F): AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: Against the Applicant

Subparagraph 1.l.: Against the Applicant

Subparagraph 1.m.: 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 or continue a security clearance for the Applicant. Clearance is denied.

Joan Caton Anthony

Administrative Judge