

KEYWORD: Financial

DIGEST: Applicant is a 42-year-old employee of a DoD contractor who experienced financial problems incident to a divorce that dissolved her four-year marriage to her fourth husband. Because there is no evidence she had experienced financial problems previously, even while raising four children without financial assistance from their father, and no persuasive evidence of an extravagant lifestyle, the recent discharge of her delinquent debts in bankruptcy is found to constitute a good-faith effort to resolve her delinquent debts. Clearance is granted.

CASENO: 01-27371.h1

DATE: 08/12/2002

DATE: August 12, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-27371

DECISION OF ADMINISTRATIVE JUDGE

JOHN R. ERCK

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 42-year-old employee of a DoD contractor who experienced financial problems incident to a divorce that dissolved her four-year marriage to her fourth husband. Because there is no evidence she had experienced financial problems previously, even while raising four children without financial assistance from their father, and no persuasive evidence of an extravagant lifestyle, the recent discharge of her delinquent debts in bankruptcy is found to constitute a good-faith effort to resolve delinquent debts. Clearance is granted.

STATEMENT OF THE CASE

On March 4, 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. It 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 a security clearance should be granted denied or continued.

Applicant answered the SOR in writing on March 29, 2002, and requested a hearing before a DOHA Administrative Judge. The case was assigned to this Administrative Judge on June 5, 2002. On July 8, 2002, 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 seven exhibits. Applicant testified on her own behalf and submitted 12 exhibits. A transcript (Tr.) of the proceeding was received on July 17, 2002.

FINDINGS OF FACT

The SOR alleges Applicant is delinquent in making payments on financial obligations totaling more than \$22,500.00. In her answer, Applicant admits she is delinquent on each of the alleged obligations. I accept her admissions and, 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 42-years-old and was employed by a DoD contractor as a "Member Technical Staff B" from April 2000 through December 2001. Although her employment was terminated on December 28, 2001, her employer has assured her they are "holding (her) job until this matter (her security clearance) is cleared up." Applicant testified and provided documentation of her employment by another DoD contractor from 1993-1997 (Applicant Exh. L). It is not clear from the information provided that Applicant was granted a security clearance during this period of employment.

Applicant attributes the delinquent debts identified on the SOR to the dissolution of the marriage to her fourth husband in August 1995. She insists this was the first time she has gotten as far behind on her financial obligations⁽¹⁾ (Tr. 23, 56). Previously she "couldn't afford credit"(Tr. 23); She and her previous husbands lived from paycheck-to-paycheck and could never afford to buy anything and go into debt (Tr. 56-57). Even though she did not receive child support from her four children's father, she managed to get by financially (Tr. 24). Her explanation for how she was left financially devastated by the dissolution of her fourth marriage is atypical. Her difficult financial circumstances were not caused by her ex-husband leaving her with a mountain of debt which he incurred and refused to pay⁽²⁾ (Tr. 59). She was left with the debts alleged in the SOR because her fourth husband earned more money than her previous husbands, and encouraged her to embark on a lifestyle which required her to borrow money and go into debt (Tr. 58-59). He encouraged her to buy a truck, to work part-time, and to go back to school (Tr. 58). This encouragement caused her to incur a \$6,523.00 indebtedness to Creditor B for a truck that was repossessed and a \$9,307.00 indebtedness to Creditor I for student loans. Because she was able to get a credit card, she incurred the \$185.00 indebtedness to Creditor C, a clothing store. Of the remaining debts, a total of \$1,837.00 to was incurred (to Creditors A, D, H, J, and K)for medical treatment and related expenses; \$385.00 was incurred (to Creditors E and G) for utility and municipal obligations, and a \$4,310.00 debt was incurred (to Creditor H) in a dispute with a landlord over the termination of a lease to an apartment which Applicant vacated to accept employment in another part of the country (Tr. 44).

In November 2001, Applicant stated (in her signed, sworn statement to the Defense Security Service) she intended to file bankruptcy by the end of the year (Govt. Exh. 2). She did not file as planned because her mother became very ill, and Applicant, along with her sister and brother, assumed responsibility for her care until she died February 13, 2002. Applicant filed for bankruptcy on March 1, 2002 and included a copy of the *FORM B9A: NOTICE OF CHAPTER 7 BANKRUPTCY CASE, MEETING OF CREDITORS & DEADLINE* with her March 29, 2002 answer to the SOR.

At her Administrative Hearing, Applicant presented a copy of the *DISCHARGE OF DEBTOR* issued to her on July 3, 2002 by the United States Bankruptcy Judge for the District in which she resides. Although she did not include a copy of the schedule listing the debts discharged by her bankruptcy petition, Applicant testified all of the debts listed on the SOR were discharged, including the student loan indebtedness to Creditor I..[\(3\)](#)

Applicant testified she is current in her payments on an additional \$8,000.00 student loan--

not discharged in bankruptcy and not listed on the SOR (Tr. 60). In June 2000, Applicant purchased a modest home (for \$32,000.00) after having saved \$2,000.00 for the down payment by working at part-time jobs (Tr. 61, Applicant Exh. K). She has made all of her payments since that date (Tr. 36).

When she was employed by the DoD contractor (from April 2002 to December 2001), Applicant established herself as a very competent employee with excellent job skills in a wide variety of relevant job performance categories (Applicant Exhibits A, B, and C). She received two raises and a \$750.00 lump sum payment for her efforts (Tr. 25).

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 decisions with reasonable consistency which are clearly consistent with the interests of national security. 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:

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

E2.1.2.3. 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, separation);

E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Burden of Proof

The Government has the burden of proving any controverted facts alleged in the SOR. If the Government established its case, the burden of persuasion shifts to Applicant to establish her security 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. Where the facts proven by the Government raises doubt about Applicant's 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 under the appropriate legal precepts and factors, this Administrative Judge concludes the government has established its case with regard to Guideline F. In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section E.2.2., as well as those referred to in the section dealing with the Adjudicative Process.

A security concern is raised by Applicant's failure to pay her financial obligations in accordance with the originally agreed upon terms and by her recent bankruptcy filing. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant has explained that she incurred the debts that became delinquent and ultimately caused her to file bankruptcy while she was married to someone who encouraged her participate in a life style that she had not previously experienced. She purchased items and services which she would not have purchased had she not been married to him. However, in reviewing the delinquent obligations listed on her SOR, only the indebtedness to Creditor B for a truck she probably did not need, and the indebtedness to Creditor C for clothes she purchased on credit--and may not have purchased absent her husband's encouragement--are expenditures for items that might be characterized as frivolous. A substantial portion of the indebtedness (\$15,839.00) listed on her SOR and eventually discharged in bankruptcy, was incurred for housing, for education, for medical treatment and related services, and for municipal services and utilities.

Except for the items noted above, there is no suggestion Applicant's financial distress resulted from a frivolous and irresponsible life style. She lives in a modest home and does not have delinquent credit card debt as a result of expenditures for extravagant and inappropriate life style purchases. Appellant cannot be faulted for incurring medical bills or for attempting to better herself by improving her financial future through additional education and training. In deciding whether Applicant's financial problems can or should be mitigated, favorable consideration has been given to

the fact that more than \$9,000.00 of her delinquent debt was incurred for medical bills and education. Favorable consideration has also been given to Applicant's unchallenged testimony that she raised four children without financial assistance from their father, and did not experience financial problems until after her 1995 divorce. Finally, Applicant's recent bankruptcy is recognized as a legitimate, good-faith effort to resolve her delinquent debts. Although she has not had time to demonstrate improved financial management since the very recent discharge of her debts, credence is given to her unchallenged testimony that she did not have problems paying her bills before her 1995 divorce and to other evidence of a responsible lifestyle. Applicant is credited with faithfully making the mortgage payments on the home she purchased in June 2000 and with making regular payments on her second education loan. Guideline F is concluded for 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

DECISION

In light of all the circumstances presented by this case, it is clearly consistent with the national interest to grant Applicant's security clearance.

John R. Erck

Administrative Judge

1. To corroborate her testimony that she did not have a history of financial problems, Applicant presented a copy of the credit report obtained by the lending institution when she and her ex-husband purchased their home in 1991 (Applicant Exh. H).
2. Applicant testified her husband gave her the house in the divorce settlement (Tr. 23); she was unable to cover her other expenses and to pay the \$628.00 monthly mortgage expense.
3. Because debts incurred for educational purposes are not always discharged, or dischargeable, in bankruptcy, Applicant was asked to forward a schedule of the discharged debts (Tr. 60-61, 67). Although she has not complied, her unchallenged testimony the indebtedness to Creditor was discharged is accepted.