

DATE: September 22, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-00641

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 21-year-old applicant purchased a new small car in 2001, but after a few months was unable to make two successive insurance payments. An auto accident totaled the now uninsured car, which was then repossessed, leaving a liability of \$13,000, which Applicant was unable to pay. The debt was discharged in bankruptcy under Chapter 7 in 2002. She has a monthly net income of \$1,400, which after expenses leaves a remainder of \$60. She is current on all of her financial obligations, except for a single debt of \$37. The record does not establish a pattern of financial irresponsibility. She misunderstood the question about repossessions in her SF 86, and answered "No" because the debt was being discharged in bankruptcy. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On December 12, 2002, 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 January 2, 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 on the written record, i.e., without a hearing. Department Counsel issued a File of Relevant Material (FORM) on February 3, 2003, and Applicant received it on February 18, 2003. The Form instructed Applicant that any response to the FORM had to be submitted within 30 days of its receipt by Applicant. The response was due on March 21, 2003. Applicant did not submit any response to the FORM. The matter

was assigned to me for resolution on arch 25, 2003.

FINDINGS OF FACT

Applicant is a 20-year-old employee of a defense contractor. The SOR contains three allegations, 1.a. - 1.c., under Guideline F (Financial Considerations), and one allegation, 2.a., under Guideline E (Personal Conduct). In her response to the SOR, Applicant *admitted* all of the SOR allegations, without explanation (Government Exhibit (GX) 3). All of Applicant's admissions are incorporated into this decision as FINDINGS OF FACT. After considering the totality of the evidence derived from the FORM, including but not limited to Applicant's response to the SOR, I make the following additional FINDINGS OF FACT as to each SOR allegation:

Guideline F (Financial Considerations)

1.a. - Applicant petitioned for Chapter 7 bankruptcy protection in November 2001. Her unsecured debt of approximately \$13,000 was discharged in February 2002.

1.b. - Applicant has a past due debt to Creditor A in the amount of \$37, for a delinquent debt turned over for collection.

1.c. - Applicant's Personal Financial Statement of November 14, 2001 indicates that Applicant is financially capable of paying the debt cited in 1.b., above, as evidenced by a monthly net remainder of approximately \$60.

Guideline E (Personal Conduct)

SOR 2.a. - Applicant did not intentionally falsify a material fact on her security clearance application (SF 86), dated March 13, 2001, when she replied to Question **35. YOUR FINANCIAL RECORD - REPOSSESSIONS**, "In the last seven years, have you had any property repossessed for any reason?" by answering "No," and failing to cite the November 2000 repossession of her 2000 Mazda (GX 6).

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.

Because Applicant chose to have this matter decided without a hearing and without submitting any additional information in response to the FORM, all credibility determinations and findings of fact are necessarily based entirely on the contents of the FORM. Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent.

GUIDELINE F (Financial Considerations)

Conditions that could raise a security concern and may be disqualifying:

3. Inability or unwillingness to satisfy debts.

Condition that could mitigate security concerns include:

2. The behavior is an isolated incident;
6. The individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

GUIDELINE E (Personal Conduct)

Condition that could raise a security concern and may be disqualifying:

2. the deliberate omission, concealment, or falsification of relevant and material facts from any security clearance application.

Condition that could mitigate security concerns include:

1. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;

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

As of the closing of the record, Applicant was 20 years old. The sole explanation for the conduct alleged in the SOR is found in her November 4, 2001 sworn statement to the Defense Security Service (DSS) (GX 5), at which time Applicant was about 19 years old. The events described in the record began with her purchase of a new small car in June 2000, when she was 18, with a down payment of \$2,500 and monthly payments of \$325.00, in addition to which she paid \$175.00 per month in insurance premiums. A few months later, in September and October 2000, she was unable to pay her insurance premiums because of her low paying employment.

In November 2000, she was in a single vehicle accident, which she admits was caused by her relative lack of driving experience. The car was effectively totaled. When she filed an insurance claim, the insurance company informed her the policy had been canceled for lack of payment of premiums. As a result, she decided she had no option but to allow the car to be repossessed, after which she learned she still owed \$13,027 on the car loan. She consulted with a paralegal and decided to file for Chapter 7 bankruptcy protection, rather than Chapter 13, because she did not have the money to make installment payments. She obtained a job at a grocery store within walking distance of her residence and did not need a car to function. The Personal Financial Statement (PFS) she prepared as part of her sworn statement shows a monthly net income of about \$1,400, monthly expenses of \$1,325 (including \$650 in rent), and a net remainder of \$60, as alleged in SOR 1.c.

Applicant's explanation for why she did not mention the repossession in her SF 86 is that she was "listing it on [her] bankruptcy petition" (GX 5). Although this rationale is not further discussed, I have evaluated it in the context of her age and financial immaturity, and I conclude the omission was not made with any intent to deceive. The same PFS indicates that Appellant was making \$25 per month payments on a hospital bill of \$1,700 but not on the \$96 debt cited

in SOR 1.b., which is given in her PFS as \$127. The most recent document of record, the September 16, 2002 credit bureau report (GX 7), gives the amount owed to this creditor as \$37. As stated in the SOR, the government is concerned because of Applicant's (1) Chapter 7 bankruptcy filed in November 2001, (2) her failure to pay a delinquent \$96.00 debt to a health care provider; and (3) the availability of an estimated \$60.00 net remainder as shown in her PFS.

Financial Considerations

SOR 1.a. - This Applicant, then 19, filed a Chapter 7 bankruptcy petition in 2001, with the aid of a paralegal, because she had no money with which to pay the more than \$13,000 demanded by the car dealer after the repossession of her ruined car. Presumably, she had to convince a Federal Bankruptcy Judge that this legal remedy to terminating liability for a specific debt was appropriate under the circumstances. The DoD security clearance process is based on findings as to an Applicant's judgment, reliability, and trustworthiness. Bankruptcies are generally not considered a negative factor in security clearance determinations unless the circumstances indicate an absence of such qualities. These factors can include multiple bankruptcies, and evidence that debts were incurred with the intent to later avoid responsibility by filing for bankruptcy. In the present case, Applicant is too young to have much of a financial history, but what history there is, as reflected in the credit bureau reports, shows minimal financial activity of any kind, and few problems.

SOR 1.b. - As to the single past due debt cited in SOR 1.b. as \$96, the most recent credit bureau reports it as \$37. The existence of a debt to this creditor is admitted by Applicant but there is no explanation as to whether all or part of it been paid. Based on the totality of the record, I conclude that Applicant owes about \$37 on this debt. Applicant's PFS shows her to be current with her monthly expenses other than the \$37 debt. Under these circumstances, the record does not show that she is presently "financially overextended."

SOR 1.c. - The "\$60" remainder figure cited in the SOR is derived from Applicant's PFS, but in the context of around \$1,400 in roughly equal monthly income and expenses, \$60 is not much of a financial cushion. Whatever adverse inference can be derived from the continued existence of this debt, its impact is minimal. Applicant has expressed an intent to pay the remaining small debt as her financial situation allows (GX 5).

Disqualifying and Mitigating Conditions

Condition that could raise security concerns and may be disqualifying includes:

3. an inability or unwillingness to satisfy debts, applicable specifically to the \$37.00 debt owed to creditor A. In context of the entire record, this \$37 debt does not constitute "an inability or unwillingness to satisfy debts."

Conditions that could mitigate security concerns include:

2. the behavior was an isolated event;

3. the conditions that resulted in the behavior were largely beyond her control.

Applicant's failure to pay off the remaining \$37 owed to Creditor A has not been explained by Applicant but, overall, the small amount of this single debt is not sufficient by itself, or along with the other evidence, to lead to a conclusion that Applicant lacks the financial judgment, reliability, and trustworthiness required of anyone seeking a security clearance.

Personal Conduct

SOR 2.a. - Applicant's explanation is not easy to follow, but I have considered it in the context of decision making by this young and financially inexperienced individual, who has apparently otherwise been financially current. In summary, I conclude that Applicant was not seeking to deceive the Government when she answered "No" to Question 35 on her SF 86.

Disqualifying and Mitigating Conditions

Conditions that could raise security concerns and may be disqualifying include:

None that are established by the record.

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 Consideration) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Guideline E (Personal Conduct) For the Applicant

Subparagraph 2.a. 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