

DATE: March 4, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-01614

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 56-year-old security guard employee of a defense contractor. She admitted she has 11 unpaid and delinquent debts totaling over \$22,000. Applicant has made few if any attempts to pay these debts. She filed bankruptcy over one year ago, but has not been discharged. Applicant has not mitigated the financial considerations concerns. Clearance is denied.

STATEMENT OF THE CASE

On October 7, 2003, the Defense Office of Hearings and Appeals (DOHA), under 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. The SOR detailed reasons under Guideline F (Financial Considerations) why DOHA could not make the 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 conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

Applicant submitted a signed and sworn statement, dated October 25, 2003. She admitted all the allegations contained in the SOR. Applicant requested her case be decided on the written record in lieu of a hearing.

On December 12, 2003, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. She was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did file a response to the FORM by the January 25, 2004 due date. The case was assigned to me on January 28, 2004.

FINDINGS OF FACT

Applicant admitted all of the SOR allegations. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is a 56-year-old security guard. She is widowed, and takes care of her nephew. She has been continuously employed since 1991 in the security officer work field. (Item 4 at 1 to 4)

Applicant admits her eleven debts. She has had health problems, including a fall which injured her elbow. That injury required medical treatment and she has had to pay the costs herself. Her homeowners insurance would not pay for the medical treatments, and her municipality declined to reimburse her, even though she fell on the sidewalk. Her house burned down in 1996 and she lost her financial records. From 1995 to 1997 she took care of her mother and grandmother, both of whom died by 1997. One of the bills owed was her grandmother's debt and Applicant was a co-signer on the account. Applicant's low salary prevents her from paying substantial amounts on these debts. Applicant feels a moral obligation to pay her debts. (Item 3; Item 5 at 1 to 7)

Applicant filed for bankruptcy in 2003, but did not have the money to pay the attorney all at once. She paid him over the balance of the year, and in January 2004 had a Creditors Meeting. There is no information on the current status of the bankruptcy, or which of Applicant's debts are included in the bankruptcy, or which debts will be discharged. (FORM Response; Item 6)

Applicant's debts and status are as follows:

SOR ¶	Nature and Amount	Current Status	Record
1.a.	Loan company; \$553	Owed	Answer; Items 5, 7
1.b.	Credit card; \$1,509	Owed	Same
1.c.	Physician; \$55	Owed	Same
1.d.	Loan company; \$1,919	Owed	Same
1.e.	Hospital collection agency; \$9,814	Owed	Same
1.f.	Finance company; \$406	Owed	Same
1.g.	Collection agency; \$1,097	Owed	Same
1.h.	Loan company; \$613	Owed	Same
1.i.	Collection agency; \$153	Owed	Same
1.j.	Finance company; \$3,880	Owed	Same
1.k.	Bank; \$2,522	Owed	Same

Applicant has no installment payment plan to pay these debts. Applicant's year 2000 personal financial statement shows she had \$5.00 remaining at the end of each month, after paying for necessities and on two credit cards (only one of which is listed on the SOR) and the Internal Revenue Service on a tax debt (also not listed on the SOR). Applicant's income now and in the past does not support the debt load she has incurred. Applicant's nephew in year 2000 was allegedly looking for work to help pay the bills, but Applicant did not submit any current information on his contributions to reducing her debt load. (Item 3 at 5; Item 5 at 2)

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 judgement, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing he use,

handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* Section 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of:

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation;
- (3) how recent and frequent the behavior was;
- (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 (See Directive, Section E2.2.1. of Enclosure 2).

Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. See *Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive Para E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive Para. E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. See Exec . Or. 12968 Section 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of 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. Directive, ¶ E2.A6.1.1.

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

- (1) A history of not meeting financial obligations. Directive, ¶ E2.A6.1. 2.1.
- (3) Inability or unwillingness to satisfy debts. Directive, ¶ E2.A6.1.2.3.

Conditions that could mitigate security concerns include:

None

CONCLUSIONS

In the SOR, DOHA alleged Applicant failed to pay delinquent debts that were past due, charged off, or placed for collection (subparagraphs 1.a. to 1.f.). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1. Applicant has a history of not paying her debts from credit cards and loans, or for medical services rendered. She is unable or unwilling to pay her delinquent debts. Applicant admits she has not paid her debts. Disqualifying Conditions (DC) 1 and 3, listed above, apply.

Applicant's debts are currently owed and are part of a pattern of non-payment over several years. Therefore, Mitigating Conditions (MC) 1 (the behavior is not recent) and 2 (It was an isolated incident) do not apply. I do not find that any other MC apply to the Applicant's case. The finding is against Applicant on this guideline.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F: Against Applicant

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

DECISION

In light of all the circumstances and facts presented by the record in this case, it is not clearly consistent with the interest of national security to grant a clearance to Applicant. Clearance is denied.

Philip S. Howe
Administrative Judge