

DATE: June 25, 2003

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-01962

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Jonathan A. Beyer, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's financial irresponsibility was not mitigated where Applicant's debts were caused both by circumstances beyond her control and her own irresponsibility and where she had taken no effective action to address her indebtedness, despite having the means to do so. Applicant did not falsify her financial history because she was unaware of an alleged state tax lien at the time she completed her clearance application. Clearance denied.

**STATEMENT OF THE CASE**

On 6 January 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant answered the SOR and requested a hearing. The case was assigned to me on 14 March 2003, and received by me and set the same day. On 18 March 2003, I issued a notice of hearing for 3 April 2003.

At the hearing, the Government presented seven exhibits--six admitted without objection--and no witnesses; Applicant presented three exhibits--admitted without objection--and the testimony of three witnesses, including herself. DOHA received the transcript on 11 April 2003.

**PROCEDURAL ISSUES**

At the hearing, I gave Applicant until the close of business on 25 April 2003 to provide me with copies of any financial records relating to the allegations in the SOR. To date, I have received no submissions from Applicant.

**FINDINGS OF FACT**

Applicant admitted the allegations of subparagraphs 1. a., d., e., g., h., i., j., and k. of the SOR. Accordingly, I incorporate these admissions as findings of fact. She denied subparagraph 1.b. because she claims to have paid the auto

loan in full. She denied subparagraph 1.c. because she disputes the amount of damage claimed by the landlord. She denied subparagraph 1.f. because she claims that it is a duplicate of subparagraph 1.g., albeit for a different amount. She denied the allegation of paragraph 2. (2)

Applicant--a 47-year old employee of a defense contractor--seeks access to classified information. She has previously held a clearance.

On 8 May 2001, Applicant executed a Security Clearance Application (SCA)(SF 86)(G.E. 1) on which she truthfully disclosed a variety of adverse financial circumstances, including a 1996 IRS lien for \$19,000.00 in taxes and penalties. The SOR alleges that she failed to disclose a state tax lien for back taxes filed in 1999. Applicant testified that she was unaware of the lien until she was given a copy of it at the hearing (G.E. 7). (3) I find her testimony credible on this point.

The SOR alleges Applicant's 11 delinquent credit accounts totaling approximately \$26,573.00. Except for 1.k. (\$19,000.00), 1.c. (\$4,117.00), 1.i. (\$1,164.00), and 1.a. (\$914), none of the debts are over \$500.00. However, only the debt at 1.j. (\$412.00) has been paid, despite the fact that Applicant has the apparent means to begin payment on the small accounts and none of the remaining small accounts are more than \$300.00.

Although the debts (to the same cable company) at 1.f. and 1.g. have different amounts and different account numbers, I accept Applicant's claim that the accounts are the same. Applicant disputes the debt at 1.b., asserting that she had paid off the amount owed on the automobile, but did not provide corroboration of that claim. She also disputes the amount of the damage asserted by her former landlord in 1.c. (4) However, Applicant has taken no formal action to contest the landlord's asserted claim.

Applicant attributed her past due accounts to a variety of factors: sporadic support from her self-employed husband, later separation and ultimate divorce from him in 2000, a separated daughter--and three of the daughter's four children--living with her, and her husband's failure to accurately report his self-employment on their joint IRS returns. She asserts that the medical debts at d. and e. are co-pay amounts required by her divorce decree to be paid by her former husband, but has provided no corroboration of that claim.

Applicant is currently making payments on only one of the debts alleged in the SOR, the IRS lien, and that only because the IRS is seizing her income tax refunds. She has been unable to avail herself of "innocent spouse" protections, although she has refiled her petition. She is also preparing an offer in compromise to the IRS, but is waiting to see the IRS response to her former spouse's offer in compromise. She tried credit counseling, but gave it up when the agency fees left virtually nothing to pay her creditors.

Applicant's co-worker considers her an honest employee who is not a security risk. Applicant's daughter confirms that she is living with Applicant, but unable to contribute much to family finances because of her own domestic situation. Applicant's daughter also confirms that the debts at 1.h. and 1.i.--while in Applicant's name--are for wireless and telephone service fees generated by the daughter and her husband while living in Applicant's house.

Applicant acknowledges her debts and states a desire to satisfy them. However, she admits she has taken no action to pay even the small debts that she does not dispute in any fashion (1.g. and 1.h.). Nor has she taken any action to enter into a repayment plan for the larger debts that she does not dispute (1.a. and 1.i.). She puts the needs of her family ahead of her personal finances.

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section 6.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

### **FINANCIAL CONSIDERATIONS (GUIDELINE F)**

E2.A6.1.1. **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.

E2.A6.1.2. Conditions that could raise a security concern and 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;

E2.A6.1.3. 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. . . divorce or separation).

### **PERSONAL CONDUCT (GUIDELINE E)**

E2A5.1.1. **The Concern:** Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. . .

E2. A5.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, . . . in connection with a personnel security or trustworthiness determination;

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

### **Burden of Proof**

Initially, the government must prove controverted facts alleged in the SOReasons. If the government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. Where facts proven by the government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

### **CONCLUSIONS**

The government has established its case under Guideline F. The record evidence clearly establishes Applicant's indebtedness and her current unwillingness to address that indebtedness. While circumstances beyond her control may

have contributed to the original indebtedness in some instances, she has taken no effective action to address the debts that she does not dispute or to take effective action to dispute the debts she disagrees with.

Applicant meets none of the mitigating factors for financial considerations. Her financial difficulties are both recent and not isolated; indeed they are ongoing. It does not appear that Applicant has stopped digging herself into a financial hole, much less started to pull herself out of it. I resolve Guideline F against Applicant.

The government has established its case under Guideline E. Applicant disclosed the financial difficulties she was aware of, but did not know that the state had filed a tax lien for back taxes in 1999. I resolve Guideline E for Applicant.

### **FORMAL FINDINGS**

#### Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: For the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Subparagraph k: Against the Applicant

#### Paragraph 2. Guideline E: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For 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 Applicant.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996, and by Change 4 dated 20 April 1999 (Directive).
2. Although she correctly noted that subparagraph b. is identical to subparagraph a.

3. The government acknowledged that the exhibit had not previously been provided to Applicant.

4. When Applicant moved to the state where she is now employed, she had a remaining term the lease for her house. She obtained the landlord's permission for her daughter and the daughter's husband to live in the house for the remainder of the lease. The debt is for claimed damage at the end of the lease. The telephone bill at 1.i. is for calls made by the daughter and her husband during this period.