

DATE: December 31, 2005

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-07059

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant and her husband incurred substantial debt when they decided he should stay home to educate their son. A 1995 bankruptcy and an installment payment plan to the IRS are resolving their financial situation. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 28 December 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision⁽¹⁾-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 24 January 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on 27 June 2005. On 14 September 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 27 September 2005.

FINDINGS OF FACT

Applicant is a 53-year-old training analyst for a defense contractor for whom she has worked for 24 years. She is married, and the couple has a 21-year-old son. She has held a security clearance since 1981. She is well-respected by her employer and her coworkers as dedicated, honest, trustworthy, and loyal.

In the early 1990s, Applicant and her husband decided that one of them should stay at home to be with their son when he came home from school. Her husband quit his job and Applicant became the family breadwinner. At the time, the couple had considerable credit card debt. Applicant's husband withdrew money from his 401K plan to help pay off some of these debts, knowing the family would be unable to do so solely on his wife's income. He deferred paying taxes on the withdrawal until the end of the tax year. The couple failed to save any of the money from the 401K withdrawal and thus were unable to pay their taxes. In 1995, the Internal Revenue Service (IRS) perfected a lien against Applicant and her husband for \$3,534 for tax year 1991 and \$22,077 for tax year 1992.

In September 1995, the couple filed for Chapter 7 bankruptcy. They declared secured claims of \$70,404, an unsecured priority claim owed the IRS of \$27,615, and unsecured nonpriority claims of \$25,115. Many of their debts were discharged in bankruptcy in December 1995. The couple confirmed the secured debts for their house, car, and computer. The unsecured priority IRS claim remained.

Applicant's husband suffers from diabetes which led to kidney failure in September 1999. He suffered a stroke and is now completely disabled. Based on her husband's physical condition, the couple applied for relief from the IRS, but was denied based on the equity in their house. However, Applicant and her husband have an installment agreement with the IRS to pay \$680 a month for five years. Applicant has met all scheduled payments.

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant is indebted to the IRS for a tax lien issued in January 1995 for tax years 1991 and 1992 (¶ 1.a) and had debts of approximately \$153,000 discharged in bankruptcy in 1996 (¶ 1.b). Applicant admitted, with exceptions, each of the allegations. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government's evidence established potentially disqualifying conditions under Guideline F. Applicant has a history of not meeting her financial obligations (DC E2.A6.1.2.1) and has been unable to satisfy her debts (DC E2.A6.1.2.3). An applicant may mitigate financial considerations security concerns by showing the conditions that resulted in the debts were beyond her control (MC E2.A6.1.3.3) and she initiated good-faith efforts to repay overdue creditors or otherwise resolve her debts (MC E2.A6.1.3.6). Conditions beyond Applicant's control did not result in the accumulation of these debts. Applicant and her husband made a conscious decision for him to stay home with their child. However, after their son departed for college, Applicant's husband was unable to return to work because of his physical condition. This certainly contributed to the couple's inability to quickly correct their financial situation. Therefore, I conclude MC E2.A6.1.3.3 applies. The evidence also supports a finding that Applicant has initiated good-faith efforts to resolve her outstanding debt to the IRS through the installment agreement on which she has been faithfully paying. MC E2.A6.1.3.6.

I have considered all of the disqualifying and mitigating conditions as well as the adjudicative process factors. Applicant is current on her bills and is conscientiously paying the IRS delinquency. She understands that incurring additional delinquent debts or failing to continue to pay on the IRS installment agreement will lead to the loss of her clearance. Under all the circumstances of this case, I find for Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

James A. Young

Administrative Judge

1. As required by Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).