

DATE: May 3, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-11034

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant wrote two checks totaling \$118.70 to a retailer in May 1998 while she was still in college. The checks were not honored as the bank did not have an account for her on file, and as a result, she was charged with two misdemeanor counts of passing fraudulent checks. In October 1998, she was charged with driving with a suspended license. Fines for the check and driving offenses were not paid until February 2003 and August 2001, respectively, after warrants had been issued for her arrest. Two delinquent accounts went unpaid until 2003, although she has a record of timely payment of her student loans and living expenses. Applicant has taken steps to ensure her financial irresponsibility will not recur. Criminal conduct concerns persist because of her issuance of fraudulent checks and her failure to timely comply with court-ordered sanctions. Clearance is denied.

STATEMENT OF CASE

On July 15, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant which detailed reasons 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 the Applicant. [\(1\)](#) DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on Financial Considerations (Guideline F) and Criminal Conduct (Guideline J).

On August 28, 2003, Applicant filed her response to the SOR and requested a hearing before a DOHA administrative judge. The case was assigned to me on October 9, 2003, and pursuant to notice of October 22, 2003, a hearing was scheduled for November 19, 2003. At the hearing held as scheduled, the Government's case consisted of eight exhibits. Applicant testified as reflected in a transcript received December 3, 2003. The record was held open until December 1, 2003, for Applicant to submit proof of payment of the two debts not contested and of fines and fees associated with a January 1997 automobile accident. No documentation was received.

FINDINGS OF FACT

DOHA issued an SOR because of four delinquent accounts with an alleged current total balance due of \$527.00, the issuance of two checks totaling \$118.70 in ay 1998 on a closed account, a misdemeanor driving on a suspended license offense in October 1998, and Applicant's failure to timely pay court-ordered fines for the fraudulent checks and driving on suspended license offenses. Applicant admitted two of the delinquent accounts that she has since satisfied. She denied any knowledge of the other debts, both for telephone services. Applicant also admitted the criminal conduct in 1998, indicating she thought she had fulfilled her obligations at the time. As soon as she learned of additional fines and/or the consequences (outstanding warrants for her arrest) of not paying the fines, she addressed them without delay. Her admissions are incorporated as findings of fact. After a complete and thorough review of the evidence, I render the following additional findings:

Applicant is a 26-year-old site asset manager employed by a defense contractor since June 2000. She seeks a confidential security clearance for her duties that include acquisition, inventory, and proper operation of computer equipment.

As a high school student, Applicant resided alternately with her father and her mother who are separated and live in geographically distant areas. Near the end of her junior year, she moved back to live with her mother in state A where she remained until she graduated in May 1996. Shortly after graduation, she received a speeding ticket in state A. In September 1996, Applicant matriculated in a private college located in state B.

In January 1997, Applicant was involved in an automobile accident in state B due to bad weather. Advised by the responding officer that she need not report the accident since there was no personal injury and little property damage, Applicant did nothing. Three months later, she was cited for not filing an accident report, and was required to appear in court and pay fines and fees. That December, state A suspended her operator's license for the speeding ticket she received in May 1996. Since she was at college living off campus in an apartment in state B, Applicant did not receive notice of the suspension, and she continued to operate a motor vehicle.

Paying her way through school through a combination of student loans and employment as a lifeguard at a local YMCA, Applicant failed to pay an automobile/tire service company on a debt incurred in about May 1997. A \$372 delinquent balance (SOR subparagraph 1.c.) was charged off to profit and loss.

On May 13, 1998, Applicant purchased a bathing suit from a local retailer that she needed for her job at the YMCA.⁽²⁾ Applicant issued a check (check #1) made out in the amount of \$59.95 to the retailer. The check was drawn on an account in her name under her local address in state B. Two days later, Applicant issued another check (check #2) to the same store from the same account, this one for \$58.75. Both checks were returned unpaid, stamped "account not on file."⁽³⁾ By registered letter dated May 20, 1998, the merchant notified Applicant at the address listed on her check that check #2 had not been honored and demanded restitution plus a \$30 bad check fee within 7 days of receipt. By registered letter dated May 23, 1998, the merchant demanded payment of check #1 and an additional \$30 bad check fee. After the store applied a credit on file, Applicant owed \$139.70 for the worthless checks. Since the semester had ended, Applicant had returned to state A for the summer, and did not receive the letters. When she returned to school in September 1998, she lived in a campus dorm. She denies receiving any correspondence while in state A from the merchant in state B about the bad checks. The letters were returned to the store unclaimed.

While en route to her job in mid-October 1998, Applicant was pulled over for running a stop sign in state B. A check of her state A operator's license revealed it was suspended. Applicant was then arrested and her car impounded on a charge of operating after license suspended or revoked, a misdemeanor. She was ordered to pay court costs of \$94.50 by December 18, 1998, and was notified that her failure to pay the amount in full by the due date would result in issuance of a bench warrant and an additional warrant fee of \$125. Applicant did not pay the fine by the due date.

Applicant spent the second semester of her junior year abroad. Out of the country from February 1999 to August 1999, she did not receive registered letters sent by the local merchant in May 1999 and June 1999 demanding payment of the bad checks. In April 2000, Applicant purchased her class ring on credit. She failed to make payments, and a \$393 delinquent balance was placed for collection in February 2001 (SOR subparagraph 1.b.).

On earning her degree, Applicant began working for her current employer in June 2000. Needing a confidential security clearance for her duties, Applicant completed a security clearance application (SF 86) in early October 2000. No information of potential security concern was reported by Applicant on her SF 86. ⁽⁴⁾

In early December 2000, the local merchant to whom Applicant had issued the bad checks filed a criminal complaint alleging two counts of fraudulent checks. Later that month, a district court summons was mailed to Applicant notifying her of a court appearance in January 2001. Applicant failed to appear, and a warrant was issued for her arrest in early February 2001. ⁽⁵⁾ Applicant was unaware of the outstanding warrant until August 1, 2001, when she was interviewed by a Defense Security Service (DSS) special agent about the bad checks and warrant. Applicant expressed an intent to contact the court to resolve the matter.

On August 10, 2001, Applicant presented herself to the court to clear up the outstanding warrant against her. She paid \$94.50 for the 1998 driving while license suspended charge, and was arraigned that day on two counts of fraudulent checks, small amounts. ⁽⁶⁾

Applicant pleaded nolo contendere to both counts and the charges were filed for one year on payment of restitution and fees. Applicant signed an agreement promising to pay total costs of \$187 on or before September 14, 2001. When Applicant failed to make the payment, a capias warrant was issued for her arrest. ⁽⁷⁾

A check of Applicant's credit in late February 2001 revealed a \$372 unpaid charge off debt (SOR subparagraph 1.c.), a \$302 debt placed for collection in February 2000 (SOR subparagraph 1.d.), and a \$134 past due bad debt in collection since January 1999 (SOR subparagraph 1.a.). She was paying on her student loans as agreed. In June 2001, Applicant purchased her residence, taking on a 30 year mortgage of \$99,700, to be repaid at \$781 per month.

On February 3, 2003, Applicant was asked to respond to an interrogatory from DOHA concerning resolution of the arrest warrant issued for failure to appear and pay for the fraudulent checks. With Applicant's payment on February 20, 2003, of the \$187 in fees, the bench warrant was withdrawn.

A check of Applicant's credit record in March 2003 revealed a \$393 debt for her class ring had been placed for collection in February 2001 and was unpaid (SOR subparagraph 1.b.). The \$372 debt (SOR 1.c.) was reported as charged off to profit and loss by the creditor in about September 1997 with last activity August 1998 and a zero balance. ⁽⁸⁾ The \$134 debt for telephone services (SOR 1.a.) was listed as still in collection status with the unpaid balance increased to \$144. A retail consumer credit card debt of \$369 had been paid after charge off. She was current in her mortgage and student loans.

In June 2003, Applicant refinanced her mortgage. Applicant paid off her class ring debt by bank check as a condition of the refinancing. Concerning the \$144 debt reported in March 2003 as an unpaid collection account, Applicant has been unable to determine that she opened the account. While she has a cellular telephone account with the company, it is in her fiance's name. The \$302 collection debt listed on her February 2001 credit report does not appear on her March 2003 credit report and she has been advised by the creditor that there is no account in her name.

As of November 2003, Applicant was paying her financial obligations (consolidated student loan, car insurance) timely through automatic withdrawals from her checking account. Her fiancé handles most of their bills.

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

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

Enclosure 2 of the Directive sets forth personal 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 that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. 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.

Considering the evidence as a whole, I find the following adjudicative guidelines to be most pertinent to this case:

Financial Considerations

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.A6.1.3.1. The behavior was not recent.

Criminal Conduct

E2.A10.1.1. The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness.

E2.A10.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A10.1.2.1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged;

E2.A10.1.2.2. A single serious crime or multiple lesser offenses.

E2.A10.1.3.1. The criminal behavior was not recent.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of the Applicant, I conclude the following with respect to Guidelines F and J:

Under Guideline F, the security eligibility of an applicant is placed into question when the applicant is shown to have a history of excessive indebtedness, recurring financial difficulties, or a history of not meeting her financial obligations. The Government must consider whether individuals granted access to classified information are because of financial irresponsibility in a position where they may be more susceptible to mishandling or compromising classified information. Of the four debts alleged by the Government as having been charged off or placed for collection, Applicant disputes two of them. Both of the disputed debts (those alleged in SOR subparagraphs 1.a. and 1.d.) surfaced in checks of her credit, but the \$302 collection debt alleged in 1.d. is not listed on her recent March 2003 credit report. That creditor has been unable to locate an account opened in Applicant's name. The evidence is not sufficient to prove Applicant owes the creditor listed in 1.d. As for the other disputed debt, Applicant testified she has a current cellular phone account through the creditor, but it is under her fiancé's name. Her challenge to the legitimacy of the debt is based on her having had no need to open the account. Yet there is no definitive evidence that this debt, which appears on both her February 2001 and March 2003 credit reports, is not her debt. Applicant does not contest the charged off accounts of \$393 for her class ring and \$372 to an auto/tire service. Her admitted failure to timely pay these debts is potentially security disqualifying under E.2.A6.1.2.1. *A history of not meeting financial obligations*, and E2.A6.1.2.3. *Inability or unwillingness to satisfy debts*, of the Financial Considerations guideline.

In mitigation, the debts were not recent (*see* mitigating condition E2.A6.1.3.1.). They were incurred when Applicant was still in college.⁽⁹⁾ Since going to work for the defense contractor in June 2000, Applicant has established a record of timely payment of her student loan obligations. She has also taken out a mortgage, and with a recent refinancing in June 2003, paid off the debt alleged in SOR subparagraph 1.b. as well as an apparently outstanding utility debt. While she did not provide documentation of repayment, her testimony as to being required to satisfy the debts in order to refinance is credible. As for the \$372 charged off balance of the other admitted delinquency (SOR 1.c.), Applicant testified her aunt paid the debt for her when she was still in college. As of March 2003, the account balance was reported to be zero after charge off, but her credit record does not reflect the account had been paid after charge off. Applicant did not provide any documentation showing the debt has been paid, but her understanding that it has been satisfied explains her failure to make any payments on that debt. There is no evidence of any recent efforts by the creditor to collect on that debt.

Applicant is to be credited with arranging for automatic repayment of her car insurance and consolidated student loan to ensure no future financial delinquency. With limited exception, she has responsibly addressed her financial obligations since she graduated from college.⁽¹⁰⁾ Even when she fell behind as a college student, the amount of the delinquency was small and does not reflect a habit of overspending. There is no evidence of recent extravagance which might threaten her current financial solvency. She was considered a good enough credit risk to be granted a mortgage and to refinance. A favorable outcome is warranted as to the Guideline F concerns.

Of greater security concern in this case is Applicant's issuance of two checks (albeit in small amounts) in May 1998 on a closed account. Charged criminally in December 2000 with two counts of misdemeanor fraudulent check, Applicant was apparently unaware of the charges until August 2001 when she learned from the DSS agent that there was an active warrant for her arrest. Her voluntary appearance before the court about a week after her DSS interview is to her credit, but it does not mitigate the concerns caused by her issuing the checks on a closed account or by her subsequent failure to pay the court-ordered fines/costs until February 2003 after she had signed a document indicating she would pay the amount by September 14, 2001. Disqualifying conditions E2.A10.1.2.1. for allegations or admission of criminal conduct, and E2.A10.1.2.2., for multiple lesser offenses, are clearly pertinent to an evaluation of her current security suitability.

While Applicant's immature age (a 20-year-old sophomore in college) at the time she wrote the checks (*see* E2.2.1.4. of the adjudicative process factors) and the passage of more than five years (*see* E2.A10.1.3.1., criminal behavior was not recent) are somewhat mitigating, Applicant's failure to timely address her legal obligations once she learned of them reflects recent disregard with the law that is incompatible with possession of a security clearance. Her belated payment of the court imposed sanctions in February 2003 was prompted by DOHA's issuance of the interrogatory rather than by a sincere desire to rectify her criminal acts.

Moreover, Applicant remains unwilling to accept responsibility for her criminal conduct, raising doubts about her

rehabilitation. On direct examination, she attributed her issuance of the bad checks to her parents' failures to deposit money into her account. Her explanation would be plausible if hers was a case of a check being returned for insufficient funds. However, the record clearly indicates the checks were dishonored due to no account on file. Applicant is adamant the account was not closed when she wrote the checks ("*I believe school ended, at the very earliest, the last week of May. So I still would have had the account until then.*" Tr. 44). Undercutting that testimony, the bank had denied payment and notified the local merchant by May 20, 1998 and May 23, 1998, respectively. The dishonored check included in Exhibit 7 reflects that check was drawn on an account held individually rather than jointly with her mother as she suggested at one point during her testimony. Applicant had both access to, and control of, the account. Assuming it was her practice to close the account at the end of the school year, she had an obligation to keep the account open until all checks presented had cleared. At her hearing, she claimed to have no recall of how or when the account was closed, or of even who closed the account (Tr. 61). It is Applicant's burden to prove the account was not closed when she issued the checks and her vague and uncorroborated testimony does not meet that burden.

When she presented herself to the court in August 2001, she told the clerk she wanted to clear up the outstanding warrant against her. She testified at her hearing that she thought the \$94.50 paid on that occasion was for the fraudulent checks, notwithstanding the amount corresponded with the balance owed for the driving while license suspended charge. Even if it was a valid assumption initially, she also signed a document promising to pay \$187 by September 14, 2001. When asked about her failure to make that payment, Applicant responded, "*I don't have a good excuse for it.*" She denied intentional disregard of that obligation ("*I'm sure it just slipped through the cracks.*" Tr. 53). Whether her failure to attend to that obligation was negligent or intentional, it raises serious doubts about her judgment and reliability.

With respect to the concerns raised by her operating an automobile while her license was suspended, Applicant's testimony as to her license being suspended without her knowledge is credible, given she was attending college two states away when the suspension went into effect. Yet she promised the court she would pay \$94.50 by December 18, 1998, and she was placed on notice a bench warrant would be issued for failure to pay. Legitimate security concerns exist where an applicant chooses not to attend to legal obligations until such time as he or she faces adverse consequences for the failure to do so. Applicant's payment in August 2001 of the \$94.50 is noted in her favor, and would have been enough to mitigate the security concerns had she not acted similarly with regard to the criminal sanctions imposed for the fraudulent checks. SOR subparagraphs 2.a. and 2.b. are resolved against her.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline F: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Paragraph 2. Guideline J: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against 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. Clearance is denied.

Elizabeth M. Matchinski**Administrative Judge**

- 1.
2. Applicant initially placed blame on her parents, neither of whom deposited funds into her account. (Tr. 33, 41). Applicant had a responsibility to ensure that any checks written by her would be covered by her account.
3. Applicant denies knowing the account was closed at the time she issued the checks and claims to have little recall of opening or closing the account. (Tr. 61). Since the account was only in her name, and her mother was living in another state, it is not likely it was closed without her knowledge.
4. Traffic offenses with fines of less than \$150 are not required to be reported unless the offense was alcohol or drug-related. Applicant was assessed \$94.50 in court fees for operating after suspension.
5. The date reflected on the police report as the date of arrest is the date on which the district court issued the summons. Applicant denies she was arrested on that date, and in fact, there is no evidence Applicant received notice of the January 2001 court appearance date. Available district court records (Ex. 7) reflect a return of service date in August 2001, the same day Applicant went to the court to clear up the matter of the outstanding warrant per her testimony.
6. The pertinent state statute provides as follows:

§ 19-9-24 Fraudulent checks - Small amounts. -
 1. (a) Any person who purchases any goods, materials, or services, makes payment for that purchase by check, draft, or order for payment of money, and takes possession of the goods or materials, or has the benefit of the service, and who subsequently orders payment stopped on the check, draft, or order for payment, or who, with intent to defraud, makes, draws, utters, or delivers any check, draft, or order for the payment of money, in an amount not exceeding one thousand dollars (\$1,000), upon any regulated institution or other depository, knowing at the time of making, drawing, uttering, or delivering that the maker or drawer has not sufficient funds in, or credit with, that regulated institution or other depository for the payment of that check, draft, or order, in full, upon its presentation, shall, upon conviction, be fined not more than five hundred dollars (\$500) or be imprisoned not exceeding one year, or may be subjected to both fine and imprisonment.
 - (b) With regard to the purchase of any goods or materials, it shall not be in violation of this section if goods or materials are returned to the vendor within three (3) business days of the filing of the stop payment order.
 - (c) The word "credit" means an arrangement or understanding with the regulated institution or other depository, for the payment of the check, draft, or order.
 - (d) Any person violating any of these provisions may be prosecuted and proceeded against in any judicial district or in any county in which the offense was committed, or in which the check, draft, or order was uttered or delivered.
7. Applicant testified she thought on August 10, 2001, the \$94.50 was for the fraudulent checks as she assumed all costs assessed for the driving while license suspended had been taken care of three years earlier. (Tr. 52). When confronted with her signed agreement to pay the \$187 by September 14, 2001, Applicant admitted she had not paid the fine/fee for the bad checks until after she received the interrogatory from DOHA.
8. Applicant testified the debt was paid for her by her aunt when she was still in college. (Tr. 39). Her recent credit report reflects a zero balance owed.
9. Applicant's March 2003 credit report makes it clear that the class ring was purchased in April 2000 during her senior year. The February 2001 date alleged in SOR subparagraph 1.b. is when the account was placed with the listed collection agent.

10. The glaring exception is her belated payment of court-ordered costs for the fraudulent checks (see discussion under Guideline J), which was not cited by the Government as raising Financial Considerations issues.