

DATE: March 12, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-11152

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant went bankrupt in 1996 and 2002. The Statement of Reasons (SOR) lists four debts totaling \$1,091. One debt was included in her most recent bankruptcy and she has paid the other three debts. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from a debt of such magnitude. Clearance is granted.

STATEMENT OF THE CASE

On October 16, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating DOHA could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. (u) On November 4, 2003, the Applicant answered the SOR and requested a hearing. The case was assigned to me on December 1, 2003. A Notice of Hearing was issued on January 29, 2004, scheduling the hearing, which was held on February 11, 2004.

The Government's case consisted of ten exhibits (Gov Ex). The Applicant relied on her own testimony and seven exhibits (App Ex). Following the hearing, six additional pages of documents were received, provisions having been made for their submission following the hearing. Department Counsel (DC) having no objection to their admission, the submissions were admitted. The transcript (Tr.) of the hearing was received on February 24, 2004. DC moved to withdraw SOR subparagraph 1.f. The motion was granted.

FINDINGS OF FACT

The SOR alleges financial considerations (Guideline F) and personal conduct (Guideline E). The Applicant denies two debts totaling approximately \$700, denies she is unwilling to pay her debts, and denies the personal conduct allegations. She admits the remaining 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 same, I make the following additional

findings of fact.

The Applicant is 43 years old, has worked for a defense contractor since July 1999, and is seeking a security clearance. The Applicant is regarded by those who know her as mature, hardworking, trustworthy, loyal, and a dedicated parent with a good work ethic. (App Ex B) She is taking college classes and was on the President's List Honors for earning a grade point average of 3.96 or above during the Fall quarter of 2003. She anticipates graduating in December 2006. Her student loans are deferred until after graduation.

In 1993, the Applicant and her husband separated. In 1995, the Applicant's husband filed for Chapter 7 bankruptcy protection. At that time the Applicant was not working. In January 1996, the Applicant filed for Chapter 7 bankruptcy protection listing liabilities of approximately \$140,569 which included a \$125,000 mortgage. The fair market value of the house was equal to the mortgage. In May 1996, her debts were discharged. Without filing for bankruptcy protection she would have been liable for all of the joint marital debts.

In December 1996, the Applicant moved to another state to be with her mother who was very ill, suffering from cancer. The Applicant grew up in a household where credit cards were used to pay monthly living expenses. She now understands this is not the way to live. However, following her move to be with her mother, she used credit cards to pay her living expenses. Following her 1995 bankruptcy, various banks issued her credit cards. She lived with her mother for approximately two years before moving to another state where her brother lived.

In June 2002, she again filed for bankruptcy protection under Chapter 7. Her assets were approximately \$23,214 and liabilities were approximately \$32,476. Approximately one half of the liabilities was a \$15,861 secured auto loan and approximately one half was unsecured debt of approximately \$16,614. In October 2002, her debts were discharged. She retained the car and continues to make payment on the car in a timely manner.

Debtor	Amount Owed	Sworn Statement	Current Status
1.c. utility bill	353	was paid 10/27/03	Was paid 10/27/03
1.d Medclr (original creditor Emergency Physician)	191	Included in bankruptcy as NCO Financial Services	No longer appears on her credit reports.
1.e. Pizza hut	42		Was paid 9/23/03
1.f. US Bank	8957	Car loan	Withdrawn by government. Applicant had not been late during the prior 11 months.
1.g. GTE phone bill	505	AFMI has asked the credit bureaus to delete this account.	Letter 10-26-03. Account was paid in full.
Amount owed	10048	Amount owed excluding 1.f	\$ 1,091.00

The Applicant has received credit counseling and has gained financial knowledge. The Applicant has taken several accounting classes and a bankruptcy class as part of her college classes. At work she deals with budgets and spreadsheets. Starting in 2003, the Applicant prepared a monthly budget for herself and her son. The Applicant's take home pay ranged from \$2,174 to \$2,964. She receives monthly child support of \$678. For three months during 2003 she received \$450 rent from her sister. Her income after expenses ranged from \$407 to \$2270 per month. (App Exs D, H) She continues to maintain a monthly budget and stays within her budget. She knows how much she spends, for what reasons, and can tell what she can afford and when to say no. She also budgets for unexpected emergencies. The Applicant has \$16,761 in her retirement account and \$300 in savings.

The Applicant is living for the future, not just for today. She hopes one day to buy a home. She maintains a single credit card in order to make hotel reservation or for car rental should the need arise. The account status is "pays as agreed." She is involved in her church, has been baptized, been saved, and is involved in helping youth change their lives. She is teaching her 11-year-old son how to properly manage credit. He has a monthly budget, and each week they go over his expenses.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive as well. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts proven must have a nexus to an Applicant's lack of security worthiness.

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. 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.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Financial Considerations (Guideline F) 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.A6.1.1.

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

1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

Conditions that could mitigate security concerns include:

4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control. (E2.A6.1.3.4.)
6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)

Personal Conduct (Guideline E) 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.

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

1. Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances. (E2.A5.1.2.1.)

Conditions that could mitigate security concerns include:

1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability. (E2.A5.1.3.1.)

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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." Executive Order 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.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, 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 which 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. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant then has the burden of establishing her security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue her security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, Financial Consideration. Under Guideline F, an Applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk that is inconsistent with the holding of a security clearance. Here, the Applicant's history of two bankruptcies and sporadic payment on her debts provides concern. The Applicant owed approximately \$ 1,000.00 to four creditors. Disqualifying Conditions (DC) 1 [\(2\)](#) and 3 [\(3\)](#) apply.

The government withdrew the SOR allegation concerning her car payment. The Applicant has taken accounting classes, received financial counseling, and has had monthly budget since January 2003. She stays within her budget. The Applicant has \$16,761 in her retirement account, \$300 in savings. Her payments are current on the single credit card she maintains.

The Applicant has paid three of the debts and the fourth was included in her bankruptcy. I find Mitigating Conditions 4 [\(4\)](#) and 6 [\(5\)](#) apply. I find for the Applicant as to SOR subparagraph 1.c., 1.d., 1.e., 1.g., and 1.h.

In 1996, following separation from her husband and his filing for Chapter 7 bankruptcy protection, she was forced to also file for protection. Her liabilities were approximately \$140,569 consisted mainly of the \$125,000 mortgage. Her liabilities, excluding the mortgage, were approximately \$15,000. Following the first bankruptcy, the Applicant was sent a number of credit cards, which she used for living expenses when she moved to be with her mother during her mother's illness. She now understand credit cards are not to be used to pay daily living expenses. Her use of the cards resulted in a second bankruptcy in 2000. She had assets of approximately \$23,214 and liabilities of approximately \$32,476. Approximately one half of the liabilities was her car debt which she kept and the other half unsecured debt. I will not find against the Applicant because she had to seek bankruptcy protection. I find for the Applicant as to SOR subparagraphs 1.a. and 1.b.

The Government has satisfied its initial burden of proof under guideline E, (Personal Conduct). Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal

conduct which creates doubt about the person's judgment, reliability, and trustworthiness. The Applicant has gone bankrupt twice and had incurred financial debts.

For the above reasons I find the financial considerations have been mitigated. Following her 1996 bankruptcy, the Applicant used newly issued credit cards to pay her living expenses. The Applicant grew up in a household where it was normal to use credit cards to pay living expenses. She had received financial counseling and now understands how to use credit responsibly. She maintains a monthly budget and is living within that budget. I have found for the Applicant as to financial considerations. For the same reasons, I find for her as to the Guideline E allegations.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

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

Paragraph 1 Guideline F (Financial): 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

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: Withdrawn

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

Paragraph 2 Guideline E (Personal Conduct): FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: 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 the Applicant. Clearance is granted.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.

2. DC 1. A history of not meeting financial obligations. (E2.A6.1.2.1.)

3. DC 3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

4. MC 4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control. (E2.A6.1.3.4.)

5. MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)