

DATE: January 20, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-28891

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Christopher M. Swanson, Esq.

SYNOPSIS

Applicant and her husband filed for bankruptcy in 1994 as a result of him being laid off from his job during the recession of 1992 and the failure of a business they started. In 1997, Applicant's husband fell ill and incurred a debt of over \$15,000 for medical expenses not covered by insurance. Applicant failed to demonstrate sufficient mitigation of the financial considerations security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 11 August 2003, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 16 September 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 12 November 2003. On 11 December 2003, 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 transcript (Tr.) of the proceeding on 31 December 2003.

FINDINGS OF FACT

Applicant is a 62-year-old access controller for a defense contractor. Ex. 1 at 1, 2. She is married and has eight grown children. Ex. 1 at 6-8. Applicant performs her duties efficiently and reliably and is well-liked by her employers. Ex. A. Applicant has opened her home to sailors in the U.S. Navy away from home. Ex. B. On occasion she receives financial help from her daughters. Ex. 4 at 2.

In 1992, Applicant's husband was laid off during the recession. Applicant and her husband started a computer services business that eventually failed. As a result, they were unable to pay off the debts incurred to finance the business. In 1994, the couple had their debts discharged in Chapter 7 bankruptcy proceedings. Tr. 24-25; Ex. 2. Applicant filed a

financial statement with a Defense Security Service investigator that stated Applicant and her husband had a net remainder of \$226 a month after paying their monthly expenses. Ex. 4 at 3

Sometime between 1997 and 1999, Applicant's husband fell seriously ill and incurred a substantial hospital bill of over \$15,000. Applicant expected the bill to be taken care of by her state medical insurance. It was not. She received a couple of calls from the hospital staff about the bill, but kept referring them to the insurance company. The debt now stands at over \$20,000. After notification of the hearing, Applicant sent a money order for \$10 to the collection agency towards payment of the \$20,000 debt. Ex. G.

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.

CONCLUSIONS

In the SOR, DOHA alleged Applicant had her debts discharged in bankruptcy in 1994 (¶ 1.a.), a delinquent debt of over \$20,000 (¶ 1.b.), and failed to pay the delinquency despite her income exceeding her expenses (¶ 1.c.). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established by substantial evidence and Applicant's admissions each of the allegations contained in the SOR. Applicant has a history of not meeting her financial obligations (DC E2.A6.1.2.1) and is unable or unwilling to satisfy her debts (DC E2.A6.1.2.3). At the same time, the debts that were the subject of the SOR were both incurred by conditions beyond Applicant's control (MC E2.A6.1.3.3.)—her husband was laid off, their business failed, and her husband incurred medical expenses because of a severe illness. She admits receiving a "couple" of calls from the hospital, but claims she was never notified her husband was denied coverage by their insurance. Tr. 21. Nevertheless, Applicant has a debt of over \$20,000 that she has not made any good-faith effort to resolve. Even after being interviewed about the debt in August 2002 and receiving the SOR in August 2003, she did nothing until December 2003, shortly before the hearing—no financial counseling, no discussions with the collection agency, no appeal of the

insurer's decision not to pay the hospital debt. Apparently, she never even sought assistance from her daughter, an attorney practicing corporate transactional law at a large national law firm in the same state. Ex. F. Until the hearing, Applicant's attitude was one of refusing to deal with collection agencies and having no intent to satisfy the account "until my financial situation improves enough to accommodate it without sacrificing our comfort." Ex.4 at 2. Applicant failed to sufficiently mitigate security concerns raised by her financial situation.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

DECISION

In light of all of 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.

James A. Young

Administrative Judge

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