

DATE: November 18, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-28896

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Robert J. Tuidor, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial problems began in 1991 when she sustained injuries which led to a period of unemployment. After trying unsuccessfully to pay her debts, she filed for bankruptcy under Chapter 7 in 1992 and received a discharge of her debts. In 1999, events beyond her control, including a job layoff and medical care for herself and an infant child, who later died, caused her to fall back into debt. Applicant asserts that she was unaware of the status of many of her delinquent accounts at the time she filed her application for a security clearance. Subsequently, she reviewed her credit report and developed a plan for paying her debts and rehabilitating her credit standing. She has put in over 1400 hours of overtime work to earn the money to pay the debts alleged in the Statement of Reasons and to cure her financial instability. 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 February 5, 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), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on March 3, 2003 and elected to have a hearing before an administrative judge. The case was initially assigned to Administrative Judge Roger Willmeth, but due to caseload considerations, was subsequently assigned to me on June 3, 2003. A Notice of Hearing was issued on June 19, 2003 scheduling the hearing for July 10, 2003. On July 10, 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. The Government submitted nine exhibits (Ex.) and Applicant submitted seventeen. The Government called no witnesses and Applicant called one. At the conclusion of the hearing, without objection from either Party, the record was held open for 30 days for Applicant to submit additional evidence if she so wished. The transcript (Tr.) was received on July 21, 2003. On August 10, 2003, Applicant filed, by facsimile, a 9-page document, including her transmittal message, containing additional information on accounts that had a balance due on the day of her hearing. Without objection from Department Counsel, Applicant's additional submissions were

admitted into evidence in this matter.

FINDINGS OF FACT

The SOR in this case contains 23 allegations of disqualifying conduct. Eighteen allegations relate to conduct charged under Guideline F, Financial Considerations. Four allegations relate to conduct charged under Guideline E, Personal Conduct, and one allegation relates to conduct charged under Guideline J, Criminal Conduct.

Applicant admitted the factual allegations as set forth in subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., and 1.i. of the SOR, involving Financial Considerations under Guideline F. In her response to the SOR, Applicant denied the allegations at 1.j., 1.k., 1.m., 1.p., and 1.q., under Guideline F, the allegations at 2.a., 2.b., 2.b.(1), and 2.b.(2) under Guideline E, and the allegation at 3.a. under Guideline J. She stated that she "agreed" with the allegations at 1.l., 1.n., 1.o., and 1.r. (3)

Applicant's admissions are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant, who is 38 years old, has worked for two and one-half years as a radiological control technician for a defense contractor. She is married and the mother of two daughters and a step daughter. Since 2000, she has been a Navy reservist. She is in the process of completing a college education. Last year she put in over 1430 hours of overtime work to earn extra money to pay off her debts and rehabilitate her credit rating. Applicant and her husband have prequalified for a home loan and have plans to build a house. At present, they and their three children live in an apartment.

In 1991, when Applicant was single and the sole support of her older daughter, she sustained back, neck and knee injuries and was unable to work for several months. After falling behind in her bills, Applicant was unable to pay her debts and filed for Chapter 7 bankruptcy in 1992. By action of the bankruptcy court, her debts in the amount of approximately \$21,000 were discharged.

Applicant met her husband in 1996. In May 1999, Applicant gave birth, prematurely, to a baby girl, who died three days later. In November 1999, Applicant lost her job when her employer lost its contract. Her employer offered her another position in a neighboring State, but she declined to move her family and leave her mother, who was in ill health. She returned to school, and the financial burdens of her two-earner household fell solely upon her husband. In December 1999, Applicant's mother died. Applicant reports that for the first 9 months or so of the year 2000, she was grieving and found it difficult to carry on. To help her, her husband took over the family correspondence, bank accounts, finances, and bill paying. (Answer, Personal Statement, at 1; Ex. 2, at 2.)

In August 2000, Applicant set about finding work again. She joined the active reserves for the U.S. Navy. In late January 2001, she was interviewed and subsequently offered a job with a government contractor. She was directed to complete a security clearance application and to turn it in to her employer as soon as possible so that she could attend an orientation course for new employees. When she completed and signed her security clearance application on February 14, 2001, she was unaware of many of the debts attributed to her on her credit report. When she was told by her new employer that a check of her credit status revealed unpaid debts and judgments, Applicant set about paying off her existing debts. She denies falsifying her SF-86 or failing to be candid about her financial status. (Answer, Personal Statement, at 1.) She denies falsifying her answers on the SF-86 with criminal intent. (Tr. 41-42.)

Applicant was interviewed by Defense Security Service agents about her financial problems on May 29, 2002 and August 12, 2002. In her signed, sworn statements, Applicant discussed her various debts and her progress in paying her creditors. (Ex. 2 and Ex. 3.) The SOR issued by DOHA on February 5, 2003 relied upon Applicant's signed sworn statement of May 29, 2002 and a Report of Credit dated August 6, 2002 to allege unpaid debts, judgments, and other unmet financial obligations. At her hearing on July 10, 2003, and in her post-hearing submissions, Applicant presented persuasive evidence demonstrating that she had paid or settled the debts and financial liabilities alleged in the SOR.

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. *See* Directive, Enclosure 2.

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted on to safeguard classified information and material twenty-four hours a day. The Government is therefore properly concerned where available information indicates that an applicant for a security clearance may be involved in conduct that demonstrates poor judgment, untrustworthiness, lack of candor, or unreliability. These concerns include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

An evaluation of whether the applicant meets the security guidelines includes consideration of a number of variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge must consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; (9) the likelihood for continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2. *See* Exec. Or. 12968 § 3.1(b).

Adjudicative Guidelines F, Financial Considerations (Attachment 6 to Enclosure 2), E, Personal Conduct (Attachment 5 to Enclosure 2), and J, Criminal Conduct (Attachment 10 to Enclosure 2) are most pertinent to this case. The security concern identified under Guideline F is that a person who is financially overextended can be pressured to engage in illegal acts to generate funds. Conditions that could raise a security concern in this case and which 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;

Relevant conditions that could mitigate security concerns about the Applicant's financial problems include:

E2.A6.1.3.1. The behavior was not recent;

E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation);

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

The relevant provisions of Guideline E which apply to the facts of this case are:

E2.A5.1.1. 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.

A condition that could raise a security concern and may be disqualifying is:

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, determine

employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

In this case, the following conditions could mitigate security concerns :

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

E2.A5.1.3.5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress.

The relevant provisions of Guideline J which apply to the facts of this case are:

E2.A.10.1.1. The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

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

E2.A.10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged.

E2.A.10.1.2.2. A single serious crime or multiple lesser offenses.

In this case, the following condition could mitigate security concerns:

E2.A10.1.3.4. The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur.

Burden of Proof

An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by an applicant's admissions or by other evidence) and establishes conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless clearly consistent with the interests of national security to grant or continue a security clearance for the applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. Where the facts proven by the Government or admitted by the applicant raise doubts about the applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. In *Egan*, 484 U.S. at 531, the Supreme Court concludes that "[t]he clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Accordingly, doubts against an applicant's security worthiness are to be resolved against the applicant.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described above, I conclude the following with respect to each allegation set forth in the SOR:

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Applicant has a history of not meeting her financial obligations, and, on its face, her financial history suggests an inability or unwillingness to satisfy her debts, conditions which raise security concerns under subparagraphs

E2.A6.1.2.1 and E2.A6.1.2.3 of Guideline F. Applicant admitted the allegation at 1.a. of the SOR, that she had filed for bankruptcy in 1992 and that her debts of over \$21,000 had been discharged. However, in her signed sworn statements of May 29, 2002 and August 12, 2002, in her answer to the SOR, and in her testimony and exhibits, Applicant provided persuasive evidence to show that she has taken charge of her financial life and has paid overdue accounts to creditors and resolved the debts and financial obligations alleged in the SOR.

Specifically, Applicant was able to show that she had paid or settled the debts or judgments alleged at 1.b., 1.d, 1.e., 1.f., 1.g., 1.h., 1.j., 1.m., 1.n., 1.o., 1.p., 1.q., and 1.r. of the SOR. She demonstrated that she had made agreements with the creditors to pay the debts alleged at 1.c and 1.l., totaling \$1100, by the end of August 2003. She demonstrated that allegation 1.j. of the SOR reflected a double charge, that the actual balance due had been paid in full in March 2001, and that as of July 2003 the account balance was zero. She also demonstrated that the unpaid judgment alleged at 1.i. of the SOR, in the amount of \$130, and the unpaid judgment alleged at 1.k of the SOR, in the amount of \$138, were likely duplicate debts for anesthesia services to a health care provider. Applicant provided evidence that she had paid one of the judgments in full and that the other was being investigated as a duplicate charge.

Applicant persuasively demonstrated her financial problems had been caused in the past by conditions largely beyond her control and that her inability to meet her debts was not recent behavior, pursuant to mitigating conditions E2.A6.1.3.1 and E2.A6.1.3.3 of Guideline F. She persuasively demonstrated that, pursuant to mitigating condition E2.A6.1.3.6, she had initiated a good-faith effort to repay overdue creditors or to otherwise resolve her debts. Accordingly, I find for Applicant on all 18 subparagraphs of the SOR relating to Guideline F, Financial Considerations.

The SOR also alleges that Applicant deliberately concealed or falsified relevant and material information about her financial indebtedness on her signed and certified SF-86, thus giving rise to allegations under Guideline E, Personal Conduct, and Guideline J, Criminal Conduct. Applicant denied the allegations of concealment and deliberate falsification and stated that her failure to report her past financial obligations was an honest mistake and not pertinent to a determination of her judgment, trustworthiness, or reliability

In subparagraph 2.a. of the SOR the Government alleged that, in executing her response to question 37 on the SF-86, Applicant deliberately failed to disclose the unpaid judgments alleged at subparagraphs 1.h. and 1.i of the SOR., thus raising a security concern under subparagraph E2.A8.1.2.2 of Guideline E. In subparagraph 2.b. of the SOR the Government alleged that in executing her responses to questions 38 and 39 on the SF-86, the Applicant deliberately failed to list her financial delinquencies of over 180 days in the past seven years and current financial delinquencies of over 90 days, thus raising additional security concerns under subparagraph E2.A8.1.2.2 of Guideline E. The Government further alleged in subparagraph 2.b(1) that Applicant's deliberate falsifications were identified in the allegations specified in Paragraph 1 of the SOR. In subparagraph 2.b(2) of the SOR the Government alleged that after completing her security clearance application, Applicant settled several accounts that she should have listed on her application. Applicant asserts that she was unaware of the unpaid judgments recited in allegations 1.h and 1.I of the SOR and the financial delinquencies referenced in allegation 2.b. of the SOR. In response to allegation 2.b(2), she acknowledges that after completing her SF-86, she obtained a copy of her credit report, learned of the judgments and delinquencies attributed to her, and set about paying her creditors as soon as possible by earning extra money through overtime work. (Signed, sworn statement dated May 29, 2002; Tr. 45-46.)

In subparagraph 3.a. of the SOR the Government alleges under Guideline J that Applicant signed and certified her SF-86 knowing that she had made intentional false statements thereon. Applicant denies signing and certifying her SF-86 with the knowledge that her responses were not true, complete, and correct to the best of her knowledge and belief. (Tr. 41.)

At the conclusion of Applicant's testimony, the Government conceded her assertion that her failure to list judgments and delinquencies attributed to her on her credit report could be seen as an honest mistake and declined to pursue the SOR allegations related to Guidelines E and J. (Tr. 57.) The extenuating circumstances offered by Applicant correspond to mitigating conditions E2.A5.1.3.1 and E2.A5.1.3.5 under Guideline E and subparagraph E2.A10.1.3.4. under Guideline J. I find for Applicant on the four allegations in the SOR relating to Guideline E and the one allegation in the SOR relating to Guideline J.

In my evaluation of the record, I have carefully considered each piece of evidence in the context of the totality of evidence and under all of the Directive guidelines that were generally applicable or might be applicable under the facts of the case. Under the whole person concept, I conclude that Applicant has successfully overcome the Government's case opposing her request for a DoD security clearance.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1, Financial Considerations (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

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: For the Applicant

Subparagraph 1.k.: For the Applicant

Subparagraph 1.l.: For the Applicant

Subparagraph 1.m.: For the Applicant

Subparagraph 1.n.: For the Applicant

Subparagraph 1.o.: For the Applicant

Subparagraph 1.p.: For the Applicant

Subparagraph 1.q.: For the Applicant

Subparagraph 1.r.: For the Applicant

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

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.b(1): For the Applicant

Subparagraph 2.b(2): For the Applicant

Paragraph 3, Criminal Conduct (Guideline J): FOR THE APPLICANT

Subparagraph 3.a.: 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.

Joan Caton Anthony

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.
3. Applicant's assertions that she agreed with the allegations are interpreted as admissions.