

DATE: November 4, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-32036

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent debts she primarily accrued in connection with medical care she believed to be covered by her medical insurance at work. Unable to address her delinquent debts in recent years due to reduced work and related loss of income attributable to personal health and family issues, she has since entered into repayment arrangements with most of her creditors and established payment histories with them. Applicant by her good-faith payment efforts mitigates security concerns associated with her delinquent debts, and she successfully refutes allegations of falsification of her security clearance application (SF-86) by a demonstrated misunderstanding of the status of her debts. Clearance is granted.

STATEMENT OF THE CASE

On November 17, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to 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 Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on December 8, 2003, and requested a hearing. The case was assigned to me on June 2, 2004, and scheduled for hearing on July 20, 2004. A hearing was convened on July 20, 2004, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of six exhibits; Applicant relied on two witnesses (including herself) and four exhibits. The transcript (R.T.) was received on July 28, 2004.

PROCEDURAL ISSUES

Before the close of the hearing, Applicant requested and was granted additional time to supplement the record with

details of her inquiries, settlement plans and payments to her listed creditors. Applicant was afforded 14 days to supplement the record. The Government, in turn, was afforded seven days to respond. Within the time permitted, Applicant supplemented the record with documentation of her inquiries, payment plans, payments and correspondence with her creditors. Her submitted exhibits are accepted as Applicant's exhibits E through J.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to have incurred numerous delinquent debts: six in all that exceed \$4,000.00. Under Guideline E, Applicant is alleged to have falsified her SF-86 of July 2002 by omitting her delinquent debts over 180 and 90 days delinquent, respectively.

For her response to the SOR, Applicant admitted three of her alleged delinquent debts and the excess of her monthly expenses over her income. She denied both the remaining three debts and allegations she falsified her security clearance application (SF-86). Applicant claimed she was making monthly payments on two of the listed creditors and denied any knowledge of the others. Applicant claimed her gross monthly income as a truck driver varies from month to month, but that she made payments on the debts she was aware of when her income increased. She attributed her SF-86 omissions to her lack of knowledge of delinquent debts and reliance on a friend to take care of her bills while she is on the road. She claimed she will address her debts in the future as she is able to do so.

FINDINGS OF FACT

Applicant is a 44-year-old truck driver for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

As a truck driver for her current defense contractor since 1989, Applicant is regularly away from home for long periods of time (typically 35 to 40 days at a time) and relies on the spouse of a fellow truck driver to take care of her bills in her absence. She incurred several medical debts in the late 90s due to personal health problems and deaths in her immediate family. For health reasons, she has missed a lot of work (two to three months a year) and remains reliant on workman's compensation for her disability. With the \$2,500.00 monthly disability payments she receives, she pays \$400.00 a month on her mortgage (on a home she purchased in 1995) and makes assorted payments on her insurance, telephone and utilities, medical prescriptions, and her respective medical provider accounts (*see* exs. D and F through J; R.T., at 73-89). After paying for her household essentials from the balance of her roughly \$1,000.00 in net monthly receipts, she uses the balance to take care of current medical and assorted bills, which leaves her with little to devote to her old debts covered in the SOR (R.T., at 73-74).

Only recently through access to her May 2004 credit report has she been able to identify her delinquent debts: two consumer-related (creditors 1.a and 1.b) and the remainder medical-related (creditors 1.c through 1.h). She has always assumed that her medical bills were being covered by her employer's medical insurance carrier. After her employer was acquired by another firm (*see* exs. 4 and E), this purchasing parent company assumed responsibility for her medical insurance and apparently ceased paying the required insurance premiums. This failure to pay the required premiums apparently caused the employer's medical insurance to lapse. Unable to secure reimbursement from her medical carrier, her providers billed her directly for their services. After failing in two bankruptcy petitions in 1999 and 2001 to remain a viable going concern, the parent ceased doing business and sold its assets back to the current company owners (ex. E).

In recent years, Applicant has missed a lot of work (typically, two to three months a year) due to personal health problems of her own and deaths in her immediate family (R.T., at 88-89). Applicant expects to return to work in August 2003. With her fellow driver scheduled for surgery, she will be making her cargo trips alone, confident in her ability to handle the loads. Her documented money orders attached to her interrogatory answers (ex. 3) reflect recent payments on several of her listed creditors (*see* exs. 3 and D). With the anticipated increased income from regular work, she fully expects to be able to meet the payment conditions of the creditors she has payment arrangements with (which includes most of the remaining debts covered by the SOR). Applicant's expressed commitments are backed by documented payment arrangements and payments with all but one of her listed creditors (*viz.*, a small creditor identified as creditor 1.g) and are sufficiently credible to warrant acceptance as well intended expressions of payment resolve (*see* exs. F

through I). Some of her medical accounts have been resubmitted to her company's insurance carrier and conceivably may be covered by her insurance; although this is not certain (*see ex. F*).

Asked to complete her July 2002 SF-86, Applicant omitted her debts that were 180 days and 90 days delinquent, respectively. She attributes her omissions to misunderstandings over whether she had any debts that were 180 and 90 days delinquent. Relying on the spouse of her fellow driver to take care of her debts while she was on the road, she assumed her debts were either payed by her medical insurer or her friend and never knew any of her debts were delinquent until she later looked at the credit report (*see exs. 5 and 6; R.T., at 90-93*).

Applicant is highly regarded by her trucking supervisor as a conscientious and dedicated driver (*see ex. A*). She is credited with transporting materials for the Government over her 14 years of her employment with her company, as well as hazardous materials and waste. Applicant is estimated to have logged over 828,000 accident-free miles for her trucking employer during her period of employment.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

The Concern: An individual who is financially overextended is at risk at having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Disqualifying Conditions

DC 1. A history of not meeting financial obligations.

DC 3. Inability or unwillingness to satisfy debts.

Mitigating Conditions

MC 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).

MC 6. The individual initiated good-faith efforts to repay overdue creditors or otherwise resolve debts.

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Disqualifying Conditions: None.

Mitigating conditions: None.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSION

Applicant, a highly regarded truck driver for the employer she has been associated with for over 14 years, accrued considerable delinquent debts in the late 90s: most medically related, which her insurance carrier failed to pay due to probable premium lapses, and two (creditors 1.a and 1.b) consumer-related. Altogether, Applicant accumulated over \$4,000.00 of medical and consumer debts. The Government's security concerns center on the amount of delinquent debt she accumulated and her ensuing omissions of these debts from her pertinent answers to her SF-86.

Financial Issues

Applicant consistently relied on her medical insurance to pay her medical bills from creditors 1.c through 1.g), and failed to address her accumulating medical debts that were not covered by her insurance carrier. Due to work-related disabilities, she has had to rely considerably on workman's compensation disability payments in recent years, which have not been enough to take care of all her consumer-related debts. On this record, two of the Disqualifying Conditions (DC) of the Adjudicative Guidelines for financial considerations apply: DC 1 (history of not meeting financial obligations) and DC 3 (inability or unwillingness to satisfy debts).

Applicant's debts are attributable to a variety of extenuating circumstances: loss of work attributable to her personal health problems and family losses and misplaced reliance in her insurance company's tending to her medical bills. Her remaining debts involve consumer-related debts she was unable to address while ill and out of work.

Extenuation of Applicant's debts is not enough in and of itself to overcome the adverse trust implications associated with her accumulating delinquent debts amidst little evidence of her affirmatively addressing them until she received the SOR. But Applicant documents her entering into repayment arrangements with most of her listed creditors and establishing payment histories with them. Considering that most of her debts involve medical services which likely should have been covered by her employer's medical insurance, but were not, her repayment efforts with each of these creditors is entitled to considerable credit.

Applicant mitigates active security concerns associated with her debt problems by her payment efforts with most of her covered debts. Appraising Applicant's extenuating circumstances with respect to all of her covered debts, Applicant may take advantage of MC 3 (conditions largely beyond the person's control) of the Adjudicative Guidelines to extenuate her debt delinquencies. She may also avail herself of the mitigation benefits of MC 6 (initiated good-faith effort to repay overdue creditors) based on her repayment efforts.

Taking into account all of the circumstances of Applicant's accumulated debts and the good- faith efforts she demonstrated in satisfying her debts, even in the face of apparent insurance lapses and personal health/family issues,

favorable conclusions warrant with respect to subparagraphs 1.a through 1.h as to the allegations governed by the Adjudicative Guidelines pertinent to Guideline F.

Falsification Concerns

Posing potential security concerns, too, are Applicant's documented omissions of her covered delinquent debts from the SF-86 she executed in July 2002. Her omissions are, however, attributable to her mistaken uncertainty over whether her debts (which she believed were either covered by her insurance or otherwise were taken care of by her fellow driver's wife while she was out on the road). True, Applicant might have been more diligent about checking on the status of her debts. Nonetheless, mistaken understanding of the status of her debts, attributable to her reliance on others (*viz.*, her insurance carrier and her fellow driver's wife) to address her bills, provide the most credible explanation for her SF-86 omissions in this case.

Applicant's explanations of her omissions are persuasive enough to avert inferences of knowing and wilful omission. There being no misconduct substantiated, no need to show extenuation or mitigation arises. *Cf.* ISCR Case No. 02-13568 (February 13, 2004). While Applicant's efforts lack due diligence inquiries of the state of her debts, her efforts reveal enough mistaken reliance on the unknown state of her debts to enable her to refute the allegations of falsification of her SF-86 covered in subparagraphs 2.a and 2.b Guideline E. [\(U\)](#)

In reaching my decision, I have considered the evidence as a whole, including each of the E 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE F (FINANCIAL): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 1.d: FOR APPLICANT

Sub-para. 1.e: FOR APPLICANT

Sub-para. 1.f: FOR APPLICANT

Sub-para. 1.g: FOR APPLICANT

Sub-para. 1.h: FOR APPLICANT

GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Sub-para. 2.a: FOR APPLICANT

Sub-para. 2.b: FOR 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 Applicant's security clearance. Clearance is granted.

Roger C. Wesley

Administrative Judge

1. Subparagraph 2.b of the SOR is mislabeled 2.c.