

DATE: May 6, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-12036

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate the financial considerations security concern raised by her delinquent debts totaling over \$25,000. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On 28 May 2003, DOHA issued a Statement of Reasons (SOR) ⁽¹⁾ detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. In her undated Answer, Applicant elected to have her case decided after a hearing by an administrative judge. On 11 December 2003, DOHA issued a notice of hearing, scheduling the hearing for 6 January 2004. Due to illness, Applicant was unable to attend the hearing. Rather than reschedule the hearing, Applicant asked that her case be decided on the written record. Department Counsel submitted the Government's written case on 22 January 2004. A complete copy of the file of relevant material (FORM) was provided to Applicant, and she was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on 25 February 2004 and did not submit any matters by the date it was due-26 March 2004. The case was assigned to me on 13 April 2004.

FINDINGS OF FACT

Applicant is a 39-year-old driver for a defense contractor. She married her current husband in 1991.

The IRS placed one tax lien against Applicant's husband for his tax delinquencies. SOR ¶ 1.a. The IRS has concluded Applicant is not personally liable for these tax delinquencies. Item 9 at 2.

Applicant and her husband owe approximately \$25,000 to the IRS for underpayment of federal income taxes for tax years 1991, 1992, 1998, and 1999. Item 3 at 1; SOR ¶ 1.b. Applicant and her husband hired a certified public accountant

to negotiate a resolution of their debts to the IRS. Item 3 at 7. The file does not contain evidence that the negotiations were successful or that Applicant is making any payments to satisfy the debt.

Applicant has several delinquent debts outstanding. Applicant's credit report (Item 8 at 4) shows she has two bad debts with one credit union for \$1,157 and \$1,600. SOR ¶¶ 1.c. and 1.d. She asserts there is only one debt, for \$1,600, she has established a payment plan, and she has been paying it off. Item 11 at 5. There is no evidence in the record establishing such payments or the plan.

Applicant's credit report lists three other bad debts for \$176 (¶ 1.e.), \$220 (¶ 1.f.), and \$183 (¶ 1.g.). Applicant asserts that the \$176 debt is in dispute, the \$220 debt has been paid, and the \$183 debt is being paid. Answer.

Applicant provided a statement about her debts to a Defense Security Service agent on 7 February 2002. Attached to the statement is a financial data sheet in which Applicant claims she and her husband have a net monthly income that exceeds their monthly expenses by \$1,868, after making payments on several debts not listed in the SOR. Item 7 at 2.

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, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

In the SOR, DOHA alleged the IRS filed two federal tax liens against Applicant's husband for underpayment of his 1990 federal income taxes which have not been satisfied (¶ 1.a.); Applicant and her husband owe the IRS approximately \$25,000 for underpayment of federal income taxes for tax years 1991, 1992, 1998, and 1999 (¶ 1.b.); Applicant has several delinquent debts totaling over \$2,700 (¶¶ 1.c.-1.g.); and Applicant's financial worksheet showed that she and her husband had over \$1,800 remaining after paying their monthly expenses (¶ 1.h.). 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 each of the allegations set forth in the SOR by substantial evidence. Applicant has a history of not meeting her financial obligations (DC E2.A6.1.2.1.) and appears to be unwilling to pay her debts (DC E2.A6.1.2.3.). The IRS debt alleged in ¶ 1.a. is clearly her husband's sole responsibility. I therefore find ¶ 1.a. for Applicant. However, I recognize that Applicant's ability to pay her debts will certainly be affected by the resolution of her husband's debt to the IRS.

After carefully reviewing the credit reports and Applicant's Answer, there is insufficient evidence to conclude that there is only one debt to the credit union. The credit report lists them with different account numbers and Applicant has provided no evidence to convince me they are one and the same. Applicant has likewise provided insufficient evidence to demonstrate she has paid or is paying the other debts alleged. From her financial statement, it appears she has sufficient funds to pay off some of the smaller debts and pay down the larger ones. I find none of the mitigating conditions listed under the guideline applicable to this case. Therefore, I find against Applicant on all of the SOR allegations, except ¶ 1.a.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: 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, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.