

DATE: May 17, 2005

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-12842

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Graham T. Jennings, Esq.

SYNOPSIS

Applicant is a senior computer systems analyst technical writer for a defense contractor. In the mid-1980s, she was divorced and required to raise two children as a single mother. She incurred debt because of these reasons beyond her control. Her debts were discharged in bankruptcy in 1998. She paid her delinquent debts to the IRS, and the two alleged credit card debts were discharged by the bankruptcy and are not active debts. Applicant's debts are not recent and she initiated a good-faith effort to repay the debts. She has mitigated security concerns based on financial considerations. Clearance is granted.

STATEMENT OF THE CASE

On January 15, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on January 28, 2004. The SOR alleges security concerns under Guideline F (Financial Considerations) of the Directive.

Applicant answered the SOR in writing on February 15, 2004, denying the allegations under Guideline F. Her request for a hearing before an administrative judge was received by DOHA on March 8, 2004. Department Counsel was prepared to proceed with the case on December 22, 2004, and the case was assigned to me on January 3, 2005. A notice of hearing was issued on February 15, 2005, and the hearing convened on March 22, 2005. Nine government exhibits, 26 Applicant exhibits, and the testimony of the Applicant were received during the hearing. The record was held open for Applicant to submit additional information. Applicant timely submitted additional information on April 22, April 25, May 10, and May 16, 2005, without objection from Department Counsel. The transcript was received on March 31, 2005.

FINDINGS OF FACT

Applicant is a 61-year-old senior computer systems analyst technical writer for a defense contractor. She has been employed by the same contractor since 1987 even though the company has been bought by other defense contractors. She has held a security clearance since 1974 when she started employment as a civilian for one of the military services. (1) Applicant received excellent performance ratings, was steadily promoted and awarded for her work. Her supervisors praised her work performance. (2) She and her present husband have paid off their mortgage, (3) and her monthly income exceeds her monthly expenses, so she has sufficient discretionary income. (4)

Applicant was divorced and became a single mother raising two boys in the mid-1980s. Applicant did not receive alimony or child support from her former husband. She did not have enough taxes withheld from her pay and she incurred federal tax liability from 1984 to 1989. She also incurred credit card and other debts because of financial problems from her divorce and being a single mother. The Internal Revenue Service started garnishing 75% of her wages in 1996 for taxes due. She went further in debt and filed for discharge in bankruptcy in September 1997. Her debts, including part of her federal tax debt, were discharged in bankruptcy on February 5, 1998. (5)

There are three allegations of delinquent debt in the SOR. Debt 1.a. in the SOR is an Internal Revenue Service tax lien. Applicant paid her past due taxes in 1998 and is current on her federal taxes. Applicant paid part of the tax debt by garnishment and part was discharged in the bankruptcy. (6)

Debt 1.b. in the SOR is a credit card delinquent debt. Debt 1.c. in the SOR is a delinquent credit card debt. These debts were incurred prior to Applicant's petition in bankruptcy. The debts were inadvertently not included in the list of creditors for the 1998 bankruptcy. However, unsecured debts not included in a bankruptcy petition are discharged in a Chapter 7 bankruptcy. (7) The debts were listed as delinquent on subsequent credit bureau reports. Even though Applicant claims the debts were discharged in bankruptcy, she contacted the creditors concerning the debts with the intent to pay them if they were valid debts. The creditor for debt 1.b. responded that there is no debt owed them by Applicant. (8) Applicant contact the creditor for debt 1.c. a number of times but the creditor has not responded. A letter from Applicant's attorney to the last known address of the creditor was returned by the postal service with the notation that there was no current forwarding address. The attorney obtained a contact telephone number and Applicant learned the account was sold to a collection agency. Applicant contacted the collection agency and learned there was no record of a debt owed by Applicant. (9)

POLICIES

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." (10) Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. (11)

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. (12) An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence. (13)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. (14) 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information. (15) Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts. (16) An applicant "has the ultimate burden of

demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ⁽¹⁷⁾ "[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." ⁽¹⁸⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." ⁽¹⁹⁾

Based upon a consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F - Financial Considerations: A security concern exists for an individual who is financially irresponsible. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions section below.

CONCLUSIONS

I have carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The government has established its case under Guideline F. Applicant's delinquent debts brings the matter under Financial Considerations Disqualifying Conditions Directive ¶ E2.A6.1.2.2 (*a history of not meeting financial obligations*); and Directive ¶ E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*). Applicant had financial issues in the mid-1980s and early 1990s and incurred delinquent debts, three of which are noted as allegations in the SOR. Even though these debts had been satisfied in the 1998 discharge in bankruptcy and should not have been listed by the credit reporting agency as delinquent debts, I conclude the above Financial Considerations Disqualifying Conditions have been established.

Applicant presented a number of reasons to mitigate the security concerns under financial considerations. I have considered Financial Considerations Disqualifying Conditions Directive ¶ E2.A6.1.3.1 (*the behavior was not recent*); Directive ¶ E2.A6.1.3.3 (*the conditions that resulted in the behavior were largely beyond the person's control (e.g., . . . or a death, or divorce or separation)*); and Directive ¶ E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts*). Applicant had financial problems in the mid-1980s to early-1990s caused by her divorce and the requirement to raise two children as a single mother without alimony or child support. These are old debts arising over ten years ago and her behavior in not paying the debts is not recent. The conditions that caused her to incur debts, divorce and raising two children as a single mother without alimony or child support, were beyond her control. Applicant successfully initiated a good-faith effort to pay overdue creditors or otherwise resolve debt. She satisfied the Internal Revenue Service debt by paying part through wage garnishment and discharging part in bankruptcy. The credit card debts were discharged in bankruptcy. The debts by law are discharged even though not included in the list of creditors. Bankruptcy is a legal and permissible means of resolving debts. However, a discharge in bankruptcy does not preclude considerations of the security significance of the actions leading to the delinquent debts. ⁽²⁰⁾ In examining the financial considerations leading to the bankruptcy, the delinquent debt was caused by conditions beyond her control and she took action to resolve the delinquent debts. She paid the IRS debt by wage garnishment and bankruptcy. While the other debts were discharged in the bankruptcy, she tried to learn the status of the debts and if they are still considered valid debts with the intent to pay them if considered valid debts. The creditors informed her the debts are no longer considered valid debts. Since the 1998 discharge in bankruptcy, Applicant has her financial situation under control. She not only made a good-faith effort to pay creditors and resolve all debt issues, she has succeeded. Applicant's documentary information shows no further debt to creditors. Applicant has mitigated security concerns based on financial considerations.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is eligible for access to classified information.

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, Guideline F FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.c.: For Applicant

DECISION

In light of all of 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 Applicant. Clearance is granted.

Thomas M. Crean

Administrative Judge

1. Tr. 52-54.
2. Applicant exhibits F thru I (Performance reviews and merit raises); Applicant exhibit AA (Letter of Commendation, dated Mar. 15, 2005).
3. Applicant exhibit Z (Mortgage payoff letter, dated Jul. 12, 2202).
4. Applicant exhibit BB (Budget income and expense statement, dated Mar. 15, 2005).
5. Tr. 57; Tr. 74-75; Government exhibit 8 (Bankruptcy journal, dated Dec. 12, 2004); Applicant exhibit M (Bankruptcy discharge court order, dated Feb. 5, 1998).
6. Tr. 56-59; Applicant's additional documents submitted Apr. 22, 2005 (Letter from IRS, dated Mar. 23, 2005).
7. Tr. 59-60; 11 United State Code ¶ 727(b); 11 United States Code ¶ 523(a)(2), (4), and (8).
8. Applicant's additional documents, dated Apr. 25, 2005 (Letter from Applicant's attorney, dated Apr. 25, 2005).
9. Applicant's additional documents, dated May 10, 2005 (Letter from Applicant's attorney, dated May 10, 2005).
10. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
11. Directive ¶ E2.2.1.
12. *Id.*
13. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
14. *See* Exec. Or. 10865 § 7.
15. Directive ¶ E3.1.14.
16. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
17. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
18. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
19. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

20. ISCR Case No. 01-26675 at 3 (App. Bd. Jun. 13, 2003), *See*, ISCR Case No. 97-0016 (App. Bd. Dec. 13, 1997).