

DATE: June 17, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-12848

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 38-year-old employee of a defense contractor who incurred approximately \$10,000.00 in debts most of them arising from a divorce and from medical expenses for herself and children. An analysis of the delinquent debts and Applicant's answer and supplemental submission indicates that the only remaining debts are for approximately \$1,200.00 and are being re-paid in a systematic fashion. Her omission of information about several of the delinquencies was not deliberate. Clearance is granted.

STATEMENT OF CASE

On August 25, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement dated September 12, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on November 25, 2003. 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 in refutation, extenuation, or mitigation. Applicant responded on January 30, 2004 and the case was assigned to me on February 25, 2004. A supplemental submission was received and accepted without objection on May 19, 2004.

FINDINGS OF FACT

Applicant admitted all but two of the specific allegations regarding debts in the SOR in her answer. In her subsequent

submission she offered evidence of payment of most of them. After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following additional findings of fact.

Applicant is a 38-year-old employee of a defense contractor who incurred approximately \$10,000.00 in debts most of them arising from a divorce and from medical expenses for herself and children.

An analysis of the debts and Applicant's answer and supplemental submission indicates that the remaining debts total approximately \$1,200.00 and are being re-paid in a systematic fashion. Specifically, the debts identified in the SOR break down as follows:

1. Three debts have been paid and are now off the most recent credit report. (1.a, m, and f)
2. Three others have been paid but are still on the credit report. (1.e, i, and j)
3. One is a duplicate of another debt (1g), and another is based on a medical bill that contained a partial error that has been corrected and paid. (1.l)
4. Of only one debt for \$21.00 is she unsure but will pay if owed. (1.k)
5. The remaining debts totaling \$1,200.00 are owed and are being paid (1.b, c, d, h) except one that is the debt of her former husband who is paying it (1.m).

Applicant acknowledged only one of the delinquent debts on questions 38 and 39 on her SF 86. She also denied the existence of any judgments against her on question 37.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of 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; and (9) the likelihood of continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the 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. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

Applicant's extensive debts prompted the allegation of violation of Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a

security concern and may be disqualifying include

a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) include the fact that the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.) and that the conditions resulting in the problems were largely beyond the person's control such as divorce. (E2.A6.1.3.3.)

Under Guideline E, 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. Directive. (E2.A5.1.1.) The Government has established by evidence and Applicant's admissions that she has omitted relevant and material facts from her personnel security application (SF 86) (E2.A5.1.2.2.) However, the guideline requires that the omission be deliberate.

Because the debts were either paid or being paid with a payment plan, Applicant has mitigated the allegations concerning financial considerations under Guideline F.

Applicant has presented credible arguments that she was unaware of several of the delinquent debts and thus acknowledged only one on questions 38 and 39 on the SF 86. She also was unaware of the two unpaid judgments incurred by her former husband that were identified on her credit report since she was a joint owner of the accounts. She did not have access to a credit report until after the SF 86 process began. I conclude that her omissions were not deliberate.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: For Applicant

Subparagraph 1.l.: For Applicant

Subparagraph 1.m.: For Applicant

Paragraph 2.Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge